

Relevant Review Standards (excerpts):

- The Natural Resources Protection Act (NRPA), 38 M.R.S. §§ 480-A through 480-JJ
 - 38 M.R.S. § 480-D(1): **Existing uses.** The activity will not unreasonably interfere with existing scenic, aesthetic, recreational or navigational uses.
 - 38 M.R.S. § 480-D(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.
- Department Rules Chapter 310, Wetlands and Waterbodies Protection
 - Chapter 310, § 4: **Wetlands of Special Significance.** All coastal wetlands and great ponds are considered wetlands of special significance. In addition, certain freshwater wetlands are considered wetlands of special significance.
 - Chapter 310, § 5: **General Standards.** The following standards apply to all projects as described in Section 2.
 - A. Avoidance.** The activity will be considered to result in an unreasonable impact if the activity will cause a loss in wetland area, functions, or values, and there is a practicable alternative to the activity that would be less damaging to the environment. The applicant shall provide an analysis of alternatives (see Section 9(A)) in order to demonstrate that a practicable alternative does not exist.

For an activity proposed in, on or over wetlands of special significance, a practicable alternative less damaging to the environment is considered to exist and the impact is unreasonable, unless the activity is described in paragraph (1), (2) or (3) below. An applicant proposing an activity described in paragraph (1), (2) or (3) below shall provide an analysis of alternatives (see Section 9(A)).

- (1) Certain types of projects. The activity is necessary for one or more of the purposes specified in subparagraphs (a) – (h).
 - (a) Health and safety;
 - (b) Crossings by road, rail or utility lines;
 - (c) Water dependent uses;
 - (d) Expansion of a facility or construction of a related facility that cannot practicably be located elsewhere because of the relation to the existing facility, if the existing facility was constructed prior to September 1, 1996;
 - (e) Mineral excavation and appurtenant facilities;
 - (f) Walkways;
 - (g) Restoration or enhancement of the functions and values of the wetlands of special significance; or
 - (h) Shoreline stabilization.

Relevant Review Standards (cont.):

- Chapter 310, § 5(D)(2): Activities may not occur in, on or over any wetland of special significance containing threatened or endangered species unless the applicant demonstrates that:
 - (a) The wetland alteration will not disturb the threatened or endangered species; and
 - (b) The overall project will not affect the continued use or habitation of the site by the species.

When considering whether a single activity is reasonable in relation to the direct and cumulative impacts on the resource, the department considers factors such as the degree of harm or benefit to the resource; the frequency of similar impacts; the duration of the activity and ability of the resource to recover; the proximity of the activity to protected or highly developed areas; traditional uses; the ability of the activity to perform as intended; public health or safety concerns addressed by the activity; and the type and degree of benefit from the activity (public, commercial or personal).

- Chapter 310, § 9(A): **Alternatives Analysis.** A report that analyzes whether a less environmentally damaging practicable alternative to the proposed alteration, which meets the project purpose, exists. Determining whether a practicable alternative exists includes:
 - (1) Utilizing, managing or expanding one or more other sites that would avoid the wetland impact;
 - (2) Reducing the size, scope, configuration or density of the project as proposed, thereby avoiding or reducing the wetland impact;
 - (3) Developing alternative project designs, such as cluster development, that avoid or lessen the wetland impact; and
 - (4) Demonstrating the need, whether public or private, for the proposed alteration.
- Department Rules Chapter 315, Assessing and Mitigating Impacts to Existing Scenic and Aesthetic Uses
 - Chapter 315, § 4: **Scope of Review.** The potential impacts of a proposed activity will be determined by the Department considering the presence of a scenic resource listed in Section 10, the significance of the scenic resource, the existing character of the surrounding area, the expectations of the typical viewer, the extent and intransience of the activity, the project purpose, and the context of the proposed activity. Unreasonable adverse visual impacts are those that are expected to unreasonably interfere with the general public's visual enjoyment and appreciation of a scenic resource, or those that otherwise unreasonably impair the character or quality of such a place.
 - Chapter 315, § 5(H): **Scenic Resource.** Public natural resources or public lands visited by the general public, in part for the use, observation, enjoyment, and appreciation of natural or cultural visual qualities. The attributes, characteristics, and

Relevant Review Standards (cont.):

features of the landscape of a scenic resource provide varying responses from, and varying degrees of benefits to, humans.

- Chapter 315, § 7: **Visual impact assessments.** The Department may require a visual impact assessment if a proposed activity appears to be located within the viewshed of, and has the potential to have an unreasonable adverse impact on, a scenic resource listed in Section 10. An applicant's visual impact assessment should visualize the proposed activity and evaluate potential adverse impacts of that activity on existing scenic and aesthetic uses of a protected natural resource within the viewshed of a scenic resource, and to determine effective mitigation strategies, if appropriate. If required, a visual impact assessment must be prepared by a design professional trained in visual assessment procedures, or as otherwise directed by the Department.

In all visual impact assessments, scenic resources within the viewshed of the proposed activity must be identified and the existing surrounding landscape must be described. The assessment must be completed following standard professional practices to illustrate the proposed change to the visual environment and the effectiveness of any proposed mitigation measures. The radius of the impact area to be analyzed must be based on the relative size and scope of the proposed activity given the specific location. Areas of the scenic resource from which the activity will be visible, including representative and worst-case viewpoints, must be identified. Line-of-sight profiles constitute the simplest acceptable method of illustrating the potential visual impact of the proposed activity from viewpoints within the context of its viewshed. A line-of-sight profile represents the path, real or imagined, that the eye follows from a specific point to another point when viewing the landscape. See Appendix A for guidance on line-of-sight profiles. For activities with more sensitive conditions, photosimulations and computer-generated graphics may be required.

A visual impact assessment must also include narratives to describe the significance of any potential impacts, the level of use and viewer expectations, measures taken to avoid and minimize visual impacts, and steps that have been incorporated into the activity design that may mitigate any potential adverse visual impacts to scenic resources.

- Department Rules Chapter 2, Rule Concerning the Processing of Applications and Other Administrative Matters
 - Chapter 2, § 24: **Appeal to the Board of Commissioner License Decisions.**

Regulations also referenced, but not the subject of this appeal:

- Watercraft and Airmobiles, 12 M.R.S. § 13068-A
 - 12 M.R.S. § 13068-A(13): **Headway speed only.** The following provisions govern speeds in certain zones.
 - A. A person may not operate a watercraft at a speed greater than headway speed while within the water safety zone or within a marina or an approved anchorage in coastal or inland waters except:
 - (1) While actively fishing; or
 - (2) While picking up or dropping off one or more persons on water skis in the water safety zone if a reasonably direct course is taken through the water safety zone between the point that the skiers are picked up or dropped off and the outer boundary of the water safety zone.
 - B. For the purposes of this subsection, "headway speed" means the minimum speed necessary to maintain steerage and control of the watercraft while the watercraft is moving.
 - C. The following penalties apply to violations of this subsection.
- Operation of Vessels, Operating Restrictions, 38 M.R.S. §§ 281-285
 - 38 M.R.S. § 281: **Speed restrictions.** Whoever operates any watercraft, vessel, water skis, surfboard, similar device or motorboat, however propelled, upon the tidewaters of any municipality or upon any of the offshore waters within the jurisdiction of this State at a speed greater than is reasonable and proper, having due regard for traffic, proximity to wharves, docks, moorings or shores, and for any other conditions then existing, shall be guilty of a Class E crime.
 - 38 M.R.S. § 285: **Enforcement of operating restrictions.** Every law enforcement officer in this State, including harbor masters and their deputies, shall have the authority to enforce this subchapter, and in the exercise thereof shall have the authority to stop and board any such watercraft, vessel or motorboat found in violation of said subchapter. It shall be unlawful for the operator of any such watercraft, vessel or motorboat to fail to stop upon hail from any such officer, and a violation of the same shall be punished as provided in section 282.
- Maine Nonprofit Corporation Act, 13-B M.R.S. § 101 et. seq.
 - Referenced in entirety by appellants in appeal. Too long to include here.