

38 M.R.S. §344. Processing of applications

1. Acceptance and notification. The commissioner shall notify the applicant in writing of the official date on which the application was accepted as complete for processing or the reasons the application was not accepted. If a written notice of acceptance or nonacceptance is not mailed to the applicant within 15 working days of receipt of the application, the application is deemed to be accepted as complete for processing on the 15th working day after receipt by the department. If the application is not accepted, the commissioner shall return the application to the applicant with the reasons for nonacceptance specified in writing. Any applicant whose application has not been accepted by the commissioner shall attend a presubmission meeting with the department before resubmitting that application. The commissioner shall notify the board of all applications accepted as complete.

An application is acceptable as complete for processing if the application is properly filled out and information is provided for each of the items included on the form. Acceptance of an application as complete for review does not constitute a determination by the department on the sufficiency of that information and does not preclude the department from requesting additional information during processing.

The commissioner shall require the applicant to provide notice to the public for each application for a permit or license accepted. The commissioner shall solicit comments from the public for each application in a manner prescribed by the board in the rules.

38 M.R.S. §480-B. Definitions

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

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.

38 M.R.S. §480-D. Standards

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.

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

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 mining, as defined in section 490-MM, subsection 11, will comply with this subsection, the department shall review an analysis of alternatives submitted by the applicant. For purposes of this subsection, a practicable alternative to mining, as defined in section 490-MM, subsection 11, that is less damaging to the environment is not considered to exist. The department may consider alternatives associated with the activity, including alternative design and operational measures, in its evaluation of whether the activity avoided and minimized impacts to the maximum extent practicable.

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;
- B. Minimizing an impact by limiting the magnitude, duration or location of an activity or by controlling the timing of an activity;
- C. Rectifying an impact by repairing, rehabilitating or restoring the affected environment;
- D. Reducing or eliminating an impact over time through preservation and maintenance operations during the life of the project; or
- E. Compensating for an impact by replacing the affected significant wildlife habitat

38 M.R.S. §480-J. Maps

Maps delineating the boundaries of freshwater wetlands, significant wildlife habitat and fragile mountain areas that meet the criteria of this article shall be available at the offices of the municipality and of the regional council in which the resources are located.

Chapter 2: RULE CONCERNING THE PROCESSING OF APPLICATIONS AND OTHER ADMINISTRATIVE MATTERS (excerpts)

7. Hearings

- A. **Request for a Hearing on a License Application.** The Department shall provide an opportunity for the applicant or any person to request a hearing with respect to any application. A hearing is an opportunity for an applicant, an appellant, any intervenors, and members of the public to provide testimony under oath and for witnesses to be cross-examined on the substance of their testimony. A request for a hearing on an application must be received by the Department, in writing, no later than 20 days after the application is accepted as complete for processing. The request must indicate the interest of the person filing the request and specify the reasons why a hearing is warranted.
- B. **Criteria for Holding Hearings.** Hearings are discretionary unless otherwise provided by law. The Commissioner may conduct a hearing on any application. The Board may conduct a hearing on any application over which it has assumed jurisdiction or on any appeal of a Commissioner license decision. The Department will hold a hearing in those instances where the Department determines there is credible conflicting technical information regarding a licensing criterion and it is likely that a hearing will assist the Department in understanding the evidence. When the Board assumes jurisdiction over an application, it will hold a hearing unless it votes otherwise at the time it assumes jurisdiction.

- 8. Public Meetings on License Applications.** At the Board's or Commissioner's discretion, the Board or Commissioner may schedule and hold public meetings in accordance with Title 38§345-A(5) on license applications in the geographic area of a proposed project or activity for the purpose of collecting comments that become part of the record in a pending action. Any such meeting must be held during the period when written public comments may be submitted to the Department. Such meetings are not subject to the procedural requirements of the *Maine Administrative Procedure Act* or the Department's hearing rules. Persons commenting on the application are not under oath and there is no opportunity for cross-examination. The conduct of a public meeting does not change any other obligation the Department has to hold hearings that are mandatory by statute or required after a timely request is filed. The Department shall notify the applicant, interested persons, and the municipal office of the municipality(ies) where the project would be located of public meetings scheduled by the Department. If the project is located in the unorganized or deorganized areas of the state, the Department shall also notify the appropriate county commissioners.

14. Public Notice of Applications

- A. **Content and Delivery of the Notice.** Unless exempted in section 14(C) of this rule, or other Department rule specific to the type of application, within 30 days prior to filing, an applicant shall give public notice of Intent to File a new, renewal, amendment or transfer application. An application that has been previously returned as incomplete pursuant to section 11(B) of this rule must comply with these requirements if the application is not resubmitted within 30 days of the date it was returned to the applicant. The notice must be mailed by certified mail or Certificate of Mailing to abutters, as determined by local tax records or other reliable means, to the municipal office of the municipality(ies) where the project is located and, if the project is located in the unorganized or deorganized areas of the state, to the appropriate county commissioners. The notice must also be published once in a newspaper circulated in the area where the project is located. Copies of the

published Notice of Intent to File and a list of abutters to whom notice was provided must be submitted with the application. The notice must include the following information:

- (1) Name, address and telephone number of the applicant;
- (2) Citation of the statutes or rules under which the application is being processed;
- (3) Location of the activity;
- (4) Summary of the activity;
- (5) Anticipated date for filing the application with the Department;
- (6) A statement that requests for the Board of Environmental Protection to assume jurisdiction over the application or requests for a hearing on the application must be submitted to the Department in writing no later than 20 days after the application is accepted as complete for processing;
- (7) A statement providing the local filing location where the application can be examined;
- (8) A statement that public comments on the application may be provided to the Department, together with the name and email address of the Department contact person and the mailing address of the Department; and
- (9) Any other information required by applicable rule or law.

- B. **Additional Notice.** After an application has been filed, if the Department determines that the applicant submits significant new or additional information or substantially modifies its application at any time after acceptance of the application as complete, the applicant shall provide additional notice to abutters and interested persons. In the interest of due process, the Department may also require additional public notice at its discretion if a substantial period of time has elapsed since the original public notice.

If a modification application filed as a minor revision is determined during processing to constitute an amendment, Notice of Intent to File in accordance with this section must be provided. The Department may not act on the amendment application earlier than 20 days after the public notice is published.

If a licensee seeks to amend a license regarding an issue that was the subject of an appeal to the Board, notice of the amendment application must be provided to the prior appellant(s) as if they were abutters, in accordance with section 14(A) of this rule.

16. **Public Comment on Applications.** Public comment on applications is allowed during the course of processing the application. The Department may set a deadline for submission of public comment or other evidence on a specific application. Requests for the Board to assume jurisdiction or for a hearing on the application must be received by the Department, in writing, no later than 20 days after the date the application is accepted as complete for processing. The Department shall maintain a list of interested persons for each application.

24. Appeal to the Board of Commissioner License Decisions. Final license decisions of the Commissioner may be appealed to the Board by persons who have standing as aggrieved persons. Notwithstanding Section 2(B), license decisions that may be appealed to the Board include acceptances of permit by rule notifications, decisions on minor revisions, and public benefit determinations.

- A. **Appeal Period.** Within 30 days of the filing of a license decision by the Commissioner with the Board, an aggrieved person may appeal to the Board for review of the Commissioner's decision. The written appeal must specify whether the appellant desires the Board to hold a hearing on the appeal and whether the appellant requests that supplemental evidence be included in the record on appeal. An appellant who does not request a hearing or propose supplemental evidence in the written appeal is considered to have waived any opportunity for a hearing or inclusion in the record of supplemental evidence. The decision to hold a hearing is discretionary with the Board. An untimely appeal must be summarily dismissed by the Chair unless notice of the Commissioner's license decision was required to be given to the person filing an appeal and the notice was not given as required. The Chair's dismissal of an appeal for untimeliness is not subject to appeal to the full Board and is final agency action. In response to a motion by the licensee, the Chair may dismiss an appeal if the Chair decides an appellant is not an aggrieved person. The Chair's ruling to dismiss an appeal for lack of standing as an aggrieved person is appealable to the full Board. The filing of an appeal to the Board does not stay the license decision.
- B. **Content of Appeal**
- (1) The written appeal must include evidence demonstrating the appellant's standing as an aggrieved person; the findings, conclusions or conditions objected to or believed to be in error; the basis of the objections or challenge; and the remedy sought.
 - (2) Exhibits attached to an appeal must be clearly labeled indicating date and source, and indicating whether the exhibit is in the existing record or is proposed supplemental evidence. Unlabeled exhibits may be rejected by the Chair. Electronic links to documents will not be accepted. In the case of lengthy documents, the appellant must specify the relevant portions.
 - (3) If the appellant requests that supplemental evidence be included in the record and considered by the Board, such a request, with the proposed supplemental evidence, must be submitted with the appeal. A request to supplement the record must address the criteria for inclusion of supplemental evidence set forth in section 24(D).
 - (4) If a hearing is requested, the appellant must provide an offer of proof regarding the testimony and other evidence that would be presented at the hearing. The offer of proof must consist of a statement of the substance of the evidence, its relevance to the issues on appeal, and whether any expert or technical witnesses would testify.

Chapter 310: WETLANDS AND WATERBODIES PROTECTION (excerpts)

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.
- (2) Wetlands with aquatic vegetation, emergent marsh vegetation or open water (Section 4(A)(5) wetlands of special significance). The activity is for a purpose other than specified in Section 5(A)(1)(a) – (h), is located in, on or over a wetlands of special significance having those characteristics described in Section 4(A)(5); and
 - (a) The activity is located at least 250 feet from aquatic vegetation, emergent marsh vegetation, or open water as described in Section 4(A)(5); and
 - (b) The activity does not unreasonably adversely affect the functions and values of the aquatic vegetation, emergent marsh vegetation, or open water, as described in Section 4(A)(5), or the functions and values of the freshwater wetlands that are enhanced or served by the aquatic vegetation, emergent marsh vegetation or open water.

- (3) Certain activity on a pier, wharf, dock or other structure constructed before the effective date of this chapter. An activity is located on a pier, wharf, dock or other structure over a coastal wetland and;
 - (a) The commissioner has reviewed and approved an alternative set of standards pursuant to 38 M.R.S. §438-A(2) that would potentially allow a non water-dependent use; and
 - (b) The pier, wharf, dock or other structure was constructed prior to June 30, 1990 and is still in existence on the date of the application.

B. Minimal Alteration. The amount of wetland to be altered must be kept to the minimum amount necessary.

C. Compensation. Compensation is the off-setting of a lost wetland function with a function of equal or greater value. The goal of compensation is to achieve no net loss of wetland functions and values. Every case where compensation may be applied is unique due to differences in wetland type and geographic location. For this reason, the method, location and amount of compensation work necessary is variable.

In some instances, a specific impact may require compensation on-site or within very close proximity to the affected wetland. For example, altering a wetland that is providing stormwater retention which reduces the risk of flooding downstream will likely require compensation work to ensure no net increase in flooding potential. In other cases, it may not be necessary to compensate on-site in order to off-set project impacts. Where wetland priorities have been established at a local, regional or state level, these priorities should be considered in devising a compensation plan in the area to allow the applicant to look beyond on-site and in-kind compensation possibilities.

- (1) When required. Compensation is required when the department determines that a wetland alteration will cause a wetland function or functions to be lost or degraded as identified by a functional assessment (see paragraph 2 below) or by the department's evaluation of the project. If a functional assessment is not required under this rule, no compensation will be required unless the department identifies wetland functions that will be lost or degraded.
- (2) Functional assessment. Resource functions that will be lost or degraded are identified by the department based upon a functional assessment done by the applicant and by the department's evaluation of the project. The functional assessment must be conducted in accordance with Section 9(B)(3) for all activities except for those listed in Section 5(C)(6) below.
- (3) Location of compensation projects. The compensation must take place in a location:
 - (a) On or close to a project site as necessary to off-set direct impacts to an aquatic ecosystem;
 - (b) Otherwise, compensation may occur in an off-site location where it will satisfy wetland priority needs as established at the local, regional or state level to achieve an equal or higher net benefit for wetland systems, if approved by the department.
- (4) Types of compensation. Compensation may occur in the form of:
 - (a) Restoration of previously degraded wetlands;

- (b) Enhancement of existing wetlands;
- (c) Preservation of existing wetlands or adjacent uplands where the site to be preserved provides significant wetland functions and might otherwise be degraded by unregulated activity; or
- (d) Creation of wetland from upland.

More than one method of compensation may be allowed on a single project. Preference is generally given to restoration projects that will off-set lost functions within, or in close proximity to, the affected wetland. However, other types of compensation may be allowed by the department if the result is an equal or higher overall net benefit for wetland systems.

- (5) Compensation amounts. The amount of compensation required to replace lost functions depends on a number of factors including: the size of the alteration activity; the functions of the wetland to be altered; the type of compensation to be used; and the characteristics of the compensation site. Compensation shall be performed to meet the following ratios at a minimum, unless the department finds that a different ratio is appropriate to directly off-set wetland functions to achieve an equal or higher net benefit for wetlands:
 - (a) 1:1 for restoration, enhancement or creation to compensate for impacts in wetlands not of special significance;
 - (b) 2:1 for restoration, enhancement or creation to compensate for impacts in wetlands of special significance;
 - (c) 8:1 for preservation, including adjacent upland areas, to compensate for impacts in all wetlands.
- (6) Exceptions. Neither a functional assessment nor compensation is required for the following single, complete projects:
 - (a) Freshwater wetlands
 - (i) Alterations of less than 500 square feet in a freshwater wetland of special significance provided that the department determines that there will be only a minimal effect on freshwater wetland functions and values, significant wildlife habitat or imperiled or critically imperiled community due to the activity;
 - (ii) Alterations of less than 15,000 square feet in a freshwater wetland not of special significance, provided that the department determines that there will be only a minimal effect on freshwater wetland functions and values due to the activity;
 - (iii) Alterations in a freshwater wetland for a road, rail or utility line crossing of a river, stream or brook for a distance of up to 100 feet from the normal high water line on both sides, measured perpendicular to the thread of the river, stream or brook, provided:
 - a. Any affected freshwater wetland does not contain significant wildlife habitat or a critically imperiled or imperiled community; and

- b. The total project affects 500 square feet or less of the channel.
- (b) Coastal Wetlands. A coastal wetland alteration that does not cover, remove or destroy marsh vegetation, does not fill more than 500 square feet of intertidal or subtidal area, and has no adverse effect on marine resources or on wildlife habitat as determined by the Department of Marine Resources or the Department of Inland Fisheries & Wildlife as applicable.
- (c) Great Ponds. A great pond alteration that does not place any fill below the normal high water line, except as necessary for shoreline stabilization projects, and has no adverse effect on aquatic habitat as determined by the Department of Inland Fisheries & Wildlife or the Department of Environmental Protection.
- (d) Rivers, streams or brooks. A river, stream or brook alteration that does not affect more than 150 feet of shoreline for a private project or more than 300 feet of shoreline for a public project.
- (e) Walkways/Access structures. A wetland alteration consisting of a walkway or access structure for public educational purposes or to comply with the Americans with Disabilities Act.
- (7) Waiver. The department may waive the requirement for a functional assessment, compensation, or both. The department may waive the requirement for a functional assessment if it already possesses the information necessary to determine the functions of the area proposed to be altered. The department may waive the requirement for compensation if it determines that any impact to wetland functions and values from the activity will be insignificant.

D. No Unreasonable Impact

- (1) Even if a project has no practicable alternative and the applicant has minimized the proposed alteration as much as possible, the application will be denied if the activity will have an unreasonable impact on the wetland. "Unreasonable impact" means that one or more of the standards of the Natural Resources Protection Act, 38 M.R.S. §480-D, will not be met. In making this determination, the department considers:
 - (a) The area of wetland that will be affected by the alteration and the degree to which the wetland is altered, including wetland beyond the physical boundaries of the project;
 - (b) The functions and values provided by the wetland;
 - (c) Any proposed compensation and the level of uncertainty regarding it; and
 - (d) Cumulative effects of frequent minor alterations on the wetland.
- (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).

- 9. Application Requirements.** In addition to broader information required for a Natural Resources Protection Act permit and Water Quality Certification, an application for a wetland alteration activity must contain the following information, unless the department determines that more or less information is needed to evaluate a specific project, based on the nature of the alteration proposed.

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.

Chapter 315: ASSESSING AND MITIGATING IMPACTS TO EXISTING SCENIC AND AESTHETIC USES (excerpt)

- 3. Applicability.** This rule applies to the alteration of a coastal wetland, great pond, freshwater wetland, fragile mountain area, river, stream, or brook, as defined in 38 M.S.R.A. § 480-B of the Natural Resources Protection Act (NRPA), that requires an individual permit or is eligible for Tier 3 review. This rule does not apply to an activity that is exempt from permit requirements under the NRPA or that qualifies for a Tier 1 or Tier 2 permit. This rule does not apply to a Permit by Rule unless the Department exercises its discretionary authority to require an individual permit as described in Chapter 305, Section 1 (D). In the review of an application for a permit, the Department must evaluate the potential for unreasonable adverse visual impacts resulting from a proposed activity located in, on, over, or adjacent to a protected natural resource.

Chapter 335. SIGNIFICANT WILDLIFE HABITAT (excerpts)**3. General standards applicable to all activities**

- A. Avoidance.** An activity that would degrade the significant wildlife habitat, disturb the subject wildlife, or affect the continued use of the significant wildlife habitat by the subject wildlife, either during or as a result of the activity, will be considered to have an unreasonable impact if there is a practicable alternative to the project that would be less damaging to the environment.
- B. Minimal alteration.** Alteration of the habitat and disturbance of subject wildlife must be kept to the minimum amount necessary by, among other methods, minimizing the size of the alteration, the duration of the activity, and its proximity to the significant wildlife habitat and subject wildlife. Temporary structures must be used instead of permanent structures wherever possible when they would be more protective of the significant wildlife habitat or subject wildlife.
- C. No unreasonable impact.** Even if the activity has no practicable alternative, and the applicant has minimized the proposed alteration as much as possible, the application will be denied if the activity will have an unreasonable impact on protected natural resources or the subject wildlife. "Unreasonable impact" means that one or more of the standards of the NRPA at 38 M.R.S.A. §480-D will not be met. In making this determination, the department considers the area of the significant wildlife habitat affected by the activity, including areas beyond the physical boundaries of the project and the cumulative effects of frequent minor alterations of significant wildlife habitats.

In order to meet the "harm to habitats; fisheries" standard at 38 M.R.S.A. §480-D(3), the following requirements must be met.

- (1) Unreasonable degradation, disturbance, or effect. The activity may not unreasonably degrade the significant wildlife habitat, unreasonably disturb subject wildlife, or unreasonably affect the continued use of the site by the subject wildlife.

A specific impact may require mitigation on-site or within close proximity to the affected significant wildlife habitat in order to lessen the severity of the impact. For example, altering a portion of a shorebird feeding area that is providing critical habitat for migratory shorebirds will likely require mitigation on-site to ensure that potential effects of the proposed activity are reduced. Mitigation methods may include the implementation of a buffer enhancement plan, deed restriction or other methods as determined by the department.

- (2) Timing. The department may require that construction activities occur during a time when impacts on protected habitats, wildlife, fisheries and aquatic life will be minimized, such as outside of any critical nesting or breeding periods or similar critical periods, depending on the specific habitat and species. For example, an activity that could potentially cause sedimentation, such as excavation, may not be carried out during times of the year when fish are spawning. This requirement must be met unless the work can only practically be completed at that time, and it is determined by the department that the impacts to the protected natural resource will be short term, and will not result in permanent harm to fish, wildlife, or marine resources.

- D. Compensation.** Compensation is the off-setting of a lost habitat function with a function of equal or greater value. The goal of compensation is to achieve no net loss of habitat functions and values. Every case where compensation may be required is unique due to differences in habitat type and

geographic location. For this reason, the method, location, and amount of compensation work necessary is variable.

- (1) When required. Compensation is required when the department determines that an impact to significant wildlife habitat will cause habitat functions or values to be lost or degraded as identified by the department. This determination may be based on the department's or the Department of Inland Fisheries & Wildlife's evaluation of the project, which may include an evaluation of appropriate information from other sources.
- (2) Types of compensation. Compensation may include one or more of the following methods.
 - (a) A compensation project may be required by the department. Habitat compensation may include the restoration, enhancement or preservation of in-kind significant wildlife habitat or uplands or wetlands adjacent to such habitat. The site of the compensation project must provide significant wildlife habitat functions that might otherwise be degraded by unregulated activity, be located within the affected habitat or within similar habitat located within close proximity to the affected habitat, and the site must be preserved. If habitat priorities have been established at a local, regional or state level, the applicant shall consider those priorities in devising a compensation plan. Directional buffers may also be used in some instances to off-set impacts.
 - (b) In lieu of a compensation project, wholly or in part, payment of a compensation fee into the "Natural Resources Mitigation Fund" may be allowed by the department. The department is authorized to develop an in lieu fee compensation fee program for use in cases of impacts to certain types of significant wildlife habitat. See 38 M.R.S.A. §480-Z(3).
- (3) Compensation amounts. The amount of compensation required to replace lost functions depends on a number of factors including: the type of habitat to be altered; the size of the alteration activity; the functions of the habitat to be altered; and the type of compensation to be used. Compensation as described in Section 3(D)(2)(a) must meet the following ratios of square footage or acreage at a minimum (area restored, enhanced, created or preserved/area impacted), unless the department finds that a different ratio is appropriate to directly off-set habitat functions to achieve an equal or higher net benefit for habitat:
 - (a) 2:1 for restoration, enhancement, or creation;
 - (b) 8:1 for preservation, including adjacent upland or wetland habitat.
- (4) Waiver. The department may waive the requirement for an assessment of habitat functions and values, compensation, or both. The department may waive the requirement for an assessment of the habitat if the department already possesses the information necessary to determine the functions and values of the area proposed to be altered. The department may waive the requirement for compensation if it determines that the impact to habitat functions and values from the activity will be insignificant.

E. Seasonal factors. When determining the significance of a wildlife habitat or impact from a proposed activity, seasonal factors and events that temporarily reduce the numbers and visibility of plants or animals, or obscure the topography and characteristics of a habitat such as a period of high water, snow and ice cover, erosion event, or drought are taken into account. Determinations may be deferred for an amount of time necessary to allow assessment of the resource without such seasonal factors.

- 5. Submission requirements.** The applicant shall submit evidence that affirmatively demonstrates that the activity will meet the standards of the NRPA and this chapter including, but not limited to, the information listed below. Because of the site-specific nature of activities and potential impacts to significant wildlife habitat, the department may, on a case-by-case basis, require more or less information than specified in this section in order to determine whether the standards will be met. Failure to provide any requested information necessary for the processing of the application may result in the application not being accepted as complete for processing or denial of the application.
- A. Description of avoidance measures.** A narrative describing whether a practicable alternative to the alteration exists that would be less damaging to the environment and what alternatives were considered during project design. The narrative must address why the activity cannot avoid or lessen impacts to the significant wildlife habitat by utilizing, managing or expanding one or more other sites; reducing the size, scope, configuration or density of the proposed activity; developing alternative project designs; or by some other means.
- B. Site description and impacts.** A narrative addressing the following.
- (1) Description of activity. A narrative including the following:
 - (a) The dimensions of the activity, the activity site, and the area of the significant wildlife habitat to be altered;
 - (b) The impacts of the activity on subject wildlife and protected natural resources; and
 - (c) The nature and timing of procedures intended to reduce the impacts of the activity on subject wildlife and protected natural resources.
 - (2) Location map. A map showing the location of the proposed activity site in relation to major roads and landmarks.
 - (3) Drawings (Sketch plan). Scale drawings (overhead and side views) showing dimensions of the activity, the activity site, and the area of the significant wildlife habitat to be altered.
 - (4) Description of site characteristics. A description of existing significant wildlife habitat characteristics.
 - (5) Photographs. Photographs of the activity area, showing its characteristics.
 - (6) Description of activity construction. A description of how the activity will be constructed with information on how the activity site will be accessed, and any erosion control measures proposed.
- 6. Terms and conditions.** The department may, as a term or condition of approval, establish any reasonable requirement to ensure that the proposed activity will meet the standards of Title 38 M.R.S.A. §480-D and comply with this chapter.