

§480-E. Permit processing requirements

The department shall process all permits under this article, except as provided in section 480-E-1, in accordance with chapter 2, subchapter I, and the following requirements. [PL 1999, c. 333, §19 (AMD).]

1. Municipal and other notification. The department shall provide notice according to this subsection.

A. Except as otherwise provided in paragraph B, the department may not review a permit without notifying the municipality in which the proposed activity is to occur. The municipality may provide comments within a reasonable period established by the commissioner and the commissioner shall consider any such comments. [PL 2009, c. 615, Pt. E, §10 (NEW).]

B. The department may not review an application for an offshore wind power project without providing:

(1) Notice to the Maine Land Use Planning Commission when the proposed development is located within 3 miles of an area of land within the jurisdiction of the Maine Land Use Planning Commission; and

(2) Notice to any municipality with land located within 3 miles of the proposed development and any municipality in which development of associated facilities is proposed.

The Maine Land Use Planning Commission and any municipality notified pursuant to this paragraph may provide comments within a reasonable period established by the commissioner and the commissioner shall consider such comments. [PL 2009, c. 615, Pt. E, §10 (NEW); PL 2011, c. 682, §38 (REV).]

[PL 2009, c. 615, Pt. E, §10 (RPR); PL 2011, c. 682, §38 (REV).]

2. Water supply notification and review. If the resource subject to alteration or the underlying ground water is utilized by a community public water system as a source of supply, the applicant for the permit shall, at the time of filing an application, forward a copy of the application to the community public water system and the drinking water program of the Department of Health and Human Services by certified mail and the department shall consider any comments concerning the application filed with the commissioner within a reasonable period, as established by the commissioner.

[PL 2007, c. 353, §10 (AMD).]

3. Dredge spoils disposal. The commissioner may not accept an application for dredge spoils disposal in a coastal wetland unless the following requirements are met.

A. The applicant has collected and tested the dredge spoils in accordance with a protocol approved by the commissioner. [PL 1993, c. 296, §3 (AMD).]

B. The applicant has published notice of the proposed route by which the dredged materials are to be transported to the disposal site in a newspaper of general circulation in the area adjacent to the proposed route. [PL 1989, c. 656, §4 (NEW).]

C. The application has been submitted to each municipality adjacent to any proposed marine and estuarine disposal site and route. [PL 1989, c. 656, §4 (NEW).]

Any public hearing held pursuant to this application must be held in the municipality nearest to the proposed disposal site.

[PL 1993, c. 296, §3 (AMD).]

4. Deferrals. When winter conditions prevent the department or municipality from evaluating a permit application, the department or municipality, upon notifying the applicant of that fact, may defer action on the application for a reasonable period. The applicant may not alter the resource area in question during the period of deferral.

[PL 1989, c. 656, §4 (NEW); PL 1989, c. 890, Pt. A, §40 (AFF); PL 1989, c. 890, Pt. B, §73 (AMD).]

5. Permission of record owner. The written permission of the record owner or owners of flowed land is considered sufficient right, title or interest to confer standing for submission of a permit application, provided that the letter of permission specifically identifies the activities being performed and the area that may be used for that purpose. The commissioner may not refuse to accept a permit application for any prohibited activity due to the lack of evidence of sufficient right, title or interest if the owner or lessee of land adjoining a great pond has made a diligent effort to locate the record owner or owners of flowed land and has been unable to do so.

[PL 1989, c. 890, Pt. A, §40 (AFF); PL 1989, c. 890, Pt. B, §73 (NEW).]

6. Permit display. A person issued a permit pursuant to this article for activities in a great pond watershed shall have a copy of the permit on site while work authorized by that permit is being conducted. Activities exempt by rule from the requirements of this article are not required to be in compliance with this subsection.

[PL 1991, c. 838, §24 (NEW).]

7. Individual permit; maintenance dredging. Notwithstanding section 480-X, if an analysis of alternatives to the dredging project has been completed by the applicant within the previous 10 years pursuant to section 480-X and rules adopted to implement that section as part of an individual permit application, the applicant may update the previous analysis for purposes of obtaining an individual permit for maintenance dredging under this subsection.

[PL 2011, c. 65, §1 (RPR).]

8. Permit by rule; maintenance dredging renewal. An individual permit for maintenance dredging may be renewed with a permit by rule only if the area to be dredged is located in an area that was dredged within the last 10 years and the amount of material to be dredged does not exceed the amount approved by the individual permit.

[PL 2011, c. 65, §2 (RPR).]

9. Permit; reconstruction in V-Zone.

[PL 2005, c. 548, §1 (RP).]

10. Road construction associated with forest management activities.

[PL 1999, c. 695, §3 (NEW); MRSA T. 38 §480-E, sub-§10 (RP).]

11. Road construction associated with forest management activities. A permit by rule for road construction or maintenance associated with a forest management activity becomes effective upon receipt of notification by the department as long as:

A. The road construction or maintenance is eligible for a permit by rule; and [PL 2003, c. 23, §1 (NEW).]

B. The notification is on a form provided by the department and is complete. [PL 2003, c. 23, §1 (NEW).]

[PL 2003, c. 23, §1 (NEW).]

12. Dam removal. A person intending to file an application for a permit to remove an existing dam must attend a preapplication meeting with the department and must hold a public informational meeting prior to filing the application. The preapplication meeting and the public informational meeting must be held in accordance with the department's rules on the processing of applications.

[PL 2003, c. 134, §1 (NEW).]

13. Information sharing with affected municipality. When the department issues or denies a permit or approves or denies a permit by rule under this article, the department shall provide a copy of the permitting decision or other authorization or denial to each municipality in which the proposed

activity is to occur. The department may provide the information required under this subsection electronically.

[PL 2019, c. 181, §1 (NEW).]

14. Minor expansion of structures in a coastal sand dune system. The department may authorize a one-time expansion of an existing residential or commercial structure in a coastal sand dune system through permit by rule if:

A. The footprint of the expansion is contained within an impervious area that existed on January 1, 2021; [PL 2021, c. 186, §5 (NEW).]

B. The footprint of the expansion is no further seaward than the existing structure; [PL 2021, c. 186, §5 (NEW).]

C. The height of the expansion is within the height restriction of any applicable law or ordinance; and [PL 2021, c. 186, §5 (NEW).]

D. The expansion conforms to the standards for expansion of a structure contained in the municipal shoreland zoning ordinance adopted pursuant to article 2-B. [PL 2021, c. 186, §5 (NEW).]

For the purposes of this subsection, "structure" does not include a seawall, retaining wall, closed fence or other structure used to stabilize the shoreline or to prevent the movement of sand or water. For the purposes of this subsection, expansion of an existing structure does not include a change from one type of structure to another.

[PL 2021, c. 186, §5 (NEW).]

15. Coastal sand dune system restoration projects; stabilization materials. The department may authorize through a permit or a permit by rule under this article a coastal sand dune system restoration project that uses allowable stabilization materials for the planting of native dune vegetation as long as the project meets the requirements of this subsection and satisfies all other applicable requirements for the permit or permit by rule.

A. Allowable stabilization materials may be used or placed only above the highest annual tide as measured at the time the project construction begins. Allowable stabilization materials may be used or placed in high-velocity zones, or V-Zones, as identified by the United States Department of Homeland Security, Federal Emergency Management Agency in effective flood insurance rate maps under the National Flood Insurance Program. [PL 2023, c. 97, §1 (NEW).]

B. The slope of the constructed dune may not be steeper than the slope of the existing dune in which the allowable stabilization materials are used or placed. [PL 2023, c. 97, §1 (NEW).]

C. Allowable stabilization materials must be used or placed in a manner designed to encourage the revegetation of the dune with native dune vegetation and must remain covered with sand and native dune vegetation throughout and upon completion of the project. [PL 2023, c. 97, §1 (NEW).]

D. Allowable stabilization materials containing or using gravel or cobble may be used or placed only in a dune primarily composed of gravel or cobble or directly adjacent to a beach that is primarily gravel or cobble. Placement of allowable stabilization materials containing or using gravel or cobble must involve the use of gravel or cobble from the dune system or beach or gravel or cobble of a similar texture and color of the gravel or cobble of the dune system or beach. [PL 2023, c. 97, §1 (NEW).]

E. A project that will use or place stakes, anchors or cables made from metal or other nonbiodegradable materials or fabrics, blankets or other stabilization materials made from polylactic acid polymers is not eligible for a permit by rule but may be issued a permit under this article. [PL 2023, c. 97, §1 (NEW).]

The use or placement of allowable stabilization materials within a coastal sand dune system in accordance with a permit or a permit by rule authorized by the department pursuant to this subsection is not considered a permanent structure under this article.

For the purposes of this subsection, "allowable stabilization materials" means natural, plant-based biodegradable or compostable fabrics, erosion control blankets, logs or rolls made from coir, jute, straw, polylactic acid polymers or other similar materials, including materials that contain or use gravel or cobble, discarded holiday trees, other trees fallen or washed up in proximity to the site and stakes, anchors or cables used to secure those materials. For the purposes of this subsection, "native dune vegetation" means dune plant species typically adapted to coastal sand dune systems in the State, including, but not limited to, American beach grass, *Rosa virginiana*, bayberry, beach pea, beach heather and pitch pine.

[PL 2023, c. 97, §1 (NEW).]

16. Height increase upon reconstruction or replacement of pier, wharf or dock in, on or over coastal wetland. Notwithstanding any provision of this article to the contrary, the department may authorize through a permit by rule an increase in the height of a pier, wharf or dock located wholly or partially in, on or over a coastal wetland when the pier, wharf or dock is reconstructed or replaced if:

A. The height of the reconstructed or replaced pier, wharf or dock is increased by no more than the amount necessary for the bottom of the lowest horizontal structural component of the deck of the pier, wharf or dock to be 4 feet above the base flood elevation. The deck of the pier, wharf or dock may be extended into the upland only as necessary to accommodate any height increase under this paragraph and an additional row of pilings may be placed under the deck to facilitate that extension; and [PL 2023, c. 531, §1 (NEW).]

B. The reconstructed or replaced pier, wharf or dock otherwise meets all applicable permit by rule standards. [PL 2023, c. 531, §1 (NEW).]

For the purposes of this subsection, "pier, wharf or dock" includes any permanent structures located on the pier, wharf or dock. "Pier, wharf or dock" does not include a seawall, jetty, breakwater or similar structure designed to dissipate wave action.

[PL 2023, c. 531, §1 (NEW).]

REVISOR'S NOTE: (Subsection 16 as enacted by PL 2023, c. 497, §1 is REALLOCATED TO TITLE 38, SECTION 480-E, SUBSECTION 18)

17. Reconstruction or replacement of pier, wharf or dock in, on or over coastal sand dune system. Notwithstanding any provision of this article to the contrary, the department may authorize through a permit or a permit by rule the reconstruction or replacement of a pier, wharf or dock located wholly or partially in, on or over a coastal sand dune system if:

A. The pier, wharf or dock to be reconstructed or replaced was in existence on January 1, 2024; [PL 2023, c. 531, §2 (NEW).]

B. The reconstructed or replaced pier, wharf or dock is built on pilings, posts or similar supports that allow for the free movement of water, wind and sand under the deck of the pier, wharf or dock; and [PL 2023, c. 531, §2 (NEW).]

C. The reconstructed or replaced pier, wharf or dock otherwise meets all applicable requirements adopted by the department by rule. [PL 2023, c. 531, §2 (NEW).]

The department may adopt rules establishing standards for the reconstruction or replacement of a pier, wharf or dock in accordance with this subsection.

For the purposes of this subsection, "pier, wharf or dock" includes any permanent structures located on the pier, wharf or dock. "Pier, wharf or dock" does not include a seawall, jetty, breakwater or similar structure designed to dissipate wave action.

[PL 2023, c. 531, §2 (NEW).]

18. (REALLOCATED FROM T. 38, §480-E, sub-§16) Consistency with mandatory shoreland zoning laws. The commissioner may return an application for a permit under this article as incomplete for processing pursuant to section 344, subsection 1 if the commissioner finds that there is a reasonable likelihood that the proposed activity would be inconsistent with the minimum guidelines for municipal zoning and land use controls adopted by the board pursuant to section 438-A, subsection 1. If an application is returned pursuant to this subsection, the commissioner may require that a resubmitted application be accompanied by a municipal approval demonstrating that the proposed activity is in compliance with the board's adopted minimum guidelines.

[PL 2023, c. 497, §1 (NEW); RR 2023, c. 2, Pt. A, §57 (RAL).]

SECTION HISTORY

PL 1987, c. 809, §2 (NEW). PL 1989, c. 656, §4 (RPR). PL 1989, c. 890, §§A40,B73 (AMD). PL 1991, c. 838, §24 (AMD). PL 1993, c. 296, §3 (AMD). PL 1997, c. 240, §1 (AMD). PL 1999, c. 298, §1 (AMD). PL 1999, c. 333, §19 (AMD). PL 1999, c. 695, §3 (AMD). PL 2003, c. 23, §1 (AMD). PL 2003, c. 134, §1 (AMD). PL 2005, c. 548, §1 (AMD). PL 2007, c. 353, §10 (AMD). PL 2009, c. 615, Pt. E, §10 (AMD). PL 2011, c. 65, §§1, 2 (AMD). PL 2011, c. 682, §38 (REV). PL 2019, c. 181, §1 (AMD). PL 2021, c. 186, §5 (AMD). PL 2023, c. 97, §1 (AMD). PL 2023, c. 497, §1 (AMD). PL 2023, c. 531, §§1, 2 (AMD). RR 2023, c. 2, Pt. A, §57 (COR).

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