



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

PAUL R. LEPAGE
GOVERNOR

PATRICIA W. ABO
COMMISSIONER

MEMORANDUM

TO: Board of Environmental Protection
FROM: Michael Mullen, Bureau of Land & Water Quality, Augusta
DATE: November 3, 2011
RE: Amendment of *Permit by Rule Standards*, 06-096 CMR 305(20): post to public hearing

Statutory and Regulatory Reference: Amendments are proposed to Chapter 305 pursuant to general statutory authority at 38 M.R.S.A. §341-D(1-B). 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 (copy attached) and are major substantive rules.

Scope/Description: The proposed amendments 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). Currently, such activities require an individual permit under the NRPA. New activities on undeveloped lots within a high value inland waterfowl and wading bird habitat will continue to need an individual permit.

New activities proposed to be allowed under the amendments, such as buildings, roads and driveways, must be located at least 100 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 100-foot setback may be cleared for development purposes.

To be consistent with other sections of Chapter 305, a new standard is proposed to be added to limited 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, is included.

Environmental issues: Approximately 72% of wetland areas rated for inland waterfowl and wading bird habitat pursuant to the NRPA are rated "moderate". During discussions in legislative committee regarding PL 2011 Chapter 359, the Department was asked to craft PBR amendments to provide applicants with some predictability in carrying out new activities, such as is provided in Section 19 Activities in, on or over significant vernal pool habitat. Utilizing the Maine Department of Inland Fisheries and Wildlife's "Recommended Land Use Guidelines in Inland Waterfowl and Wading Bird Habitats", it was determined that restricting new development to beyond 100 feet from the wetland edge and limiting the clearing in that area to no more than 20% should not result in an unreasonable impact on the habitat. 3

Department Recommendation: The department recommends that the Board post the proposed amendments to Chapter 305 to a public hearing.

Recommended public hearing date: December 1, 2011.

Estimated Time of Presentation: Approximately 10 minutes.

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