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

SUMMARY: This chapter describes the process for evaluating impacts to existing scenic and aesthetic uses resulting from activities in, on, over, or adjacent to protected natural resources subject to the Natural Resources Protection Act, pursuant to 38 M.S.R.A. § 480-D (1).

**1. Introduction.** In the Natural Resources Protection Act (NRPA), 38 M.R.S.A. §§ 480-A through Z, the Legislature has found and declared that Maine’s rivers and streams, great ponds, fragile mountain areas, freshwater wetlands, significant wildlife habitat, coastal wetlands, and sand dune systems are resources of state significance. Section 480-A states that these resources have great scenic beauty and unique characteristics, unsurpassed recreational, cultural, historical, and environmental value of present and future benefit to the citizens of the State and that uses are causing the rapid degradation and, in some cases, the destruction of these critical resources. The Legislature’s recognition of the scenic beauty of these protected natural resources through statute distinguishes the visual quality of those resources and its value to the general population.

Applicants for permits under the NRPA are required to demonstrate that a proposed activity meets the standards of the NRPA that have been established by the Legislature. Standard 1 in Section 480-D of the NRPA requires an applicant to demonstrate that a proposed activity will not unreasonably interfere with existing scenic and aesthetic uses.

**2. Purpose.** This rule specifies State regulatory concerns, defines visual impacts, establishes a procedure for evaluating visual impacts generated from proposed activities, establishes when a visual assessment may be necessary, explains the components of a visual assessment when required, and describes avoidance, mitigation, and offset measures that may eliminate or reduce unreasonable adverse impacts to existing scenic and aesthetic uses.

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.

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.

5. Definitions. As used in these rules, the following terms have the following meanings. Other terms used in these rules have the meanings set forth at 38 M.S.R.A. § 480-X and Chapter 310, the Wetlands and Waterbodies Protection Rules.

A. Adverse visual impact. The negative effect of a regulated activity on the visual quality of a landscape.

B. Composition. The arrangement of the component parts of a landscape. Component parts are objects or activities usually described in terms of color, texture, line, form, dominance, and scale.

C. Contrast. Comparing the component parts of a landscape in terms of form, line, color, texture, dominance, or scale.

D. Existing uses. The current appearance and use of the landscape, considering previous human alterations.

E. Landscape. An area characterized by its geology, landform, biota, and human influences throughout that area.

F. Mitigation. Any action taken or not taken to avoid, minimize, rectify, reduce, or eliminate actual or potential adverse environmental impact, including adverse visual impact.

G. Practicable. Available and feasible considering cost, existing technology and logistics based on the overall purpose of the activity.

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

I. Viewshed. The geographic area as viewed from a scenic resource, which includes the proposed activity. The viewshed may include the total visible activity area from a single observer position or the total visible activity area from multiple observers’ positions.

J. Visual Quality. The essential attributes of the landscape that when viewed elicit overall benefits to individuals and, therefore, to society in general. The quality of the resource and the significance of the resource are usually, but not always, correlated.

6. Application submissions. An applicant is required to demonstrate that the proposed activity will not unreasonably interfere with existing scenic and aesthetic uses of a scenic resource listed in Section 10. Basic evidence must be provided to ensure that visual concerns have been fully addressed in each application. The applicant must describe the location of the activity and provide an inventory of scenic resources within the viewshed of the proposed activity by completing the MDEP Visual Evaluation Field Survey Checklist (doc. #DEPLW0540) provided in the application. The applicant must describe the activity relative to its location and scale within the viewshed of any scenic resource, including a description of the existing visual quality and landscape characteristics. The applicant may request a pre-application meeting during which the Department can provide guidance for determining the location of the activity relative to scenic resources in the vicinity of the applicant’s parcel.

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.

8. Mitigation. In the case where the Department determines that the proposed activity will have an adverse visual impact on a scenic resource, applicants may be required to employ appropriate measures to mitigate the adverse impacts to the extent practicable. Mitigation should reduce or eliminate the visibility of the proposed activity or alter the effect of the activity on the scenic or aesthetic use in some way. The Department will determine when mitigation should be proposed and whether the applicant’s mitigation strategies are reasonable. The Department may require mitigation by requesting that the applicant submit a design that includes the required mitigation or by imposing permit conditions consistent with specified mitigation requirements.

In its determination whether adverse impacts to existing scenic and aesthetic uses are unreasonable, the Department will consider whether the applicant’s activity design is visually compatible with its surroundings, incorporating environmentally sensitive design principles and components according to the strategies described below.

A. Planning and siting. Properly siting an activity may be the most effective way to mitigate potential visual impacts. Applicants are encouraged, and may be required, to site a proposed activity in a location that limits its adverse visual impacts within the viewshed of a scenic resource.

B. Design. When circumstances do not allow siting to avoid visual impacts on a scenic resource, elements of particular concern should be designed in such a way that reduces or eliminates visual impacts to the area in which an activity is located, as viewed from a scenic resource. Applicants should consider a variety of design methods to mitigate potential impacts, including screening, buffers, earthen berms, camouflage, low profile, downsizing, non-standard materials, lighting, and other alternate technologies.

C. Offsets. Correction of an existing visual problem identified within the viewshed of the same scenic resource as the proposed activity may qualify as an offset for visual impacts when an improvement may be realized. Offsets may be used in sensitive locations where significant impacts from the proposal are unavoidable or other forms of mitigation might not be practicable. An example of an offset might be the removal of an existing abandoned structure that is in disrepair to offset impacts from a proposal within visual proximity of the same scenic resource. Offsets can also include visual improvements to the affected landscape, such as tree plantings or development of scenic overlooks.

9. Determination. It is the responsibility of the applicant to demonstrate that the proposed design does not unreasonably interfere with existing scenic and aesthetic uses, and thereby diminish the public enjoyment and appreciation of the qualities of a scenic resource, and that any potential impacts have been minimized.

The Department’s determination of impact is based on the following visual elements of the landscape:

A. Landscape compatibility, which is a function of the sub-elements of color, form, line, and texture. Compatibility is determined by whether the proposed activity differs significantly from its existing surroundings and the context from which they are viewed such that it becomes an unreasonable adverse impact on the visual quality of a protected natural resource as viewed from a scenic resource;

B. Scale contrast, which is determined by the size and scope of the proposed activity given its specific location within the viewshed of a scenic resource; and

C. Spatial dominance, which is the degree to which an activity dominates the whole landscape composition or dominates landform, water, or sky backdrop as viewed from a scenic resource.

In making a determination within the context of this rule, the Department considers the type, area, and intransience of an activity related to a scenic resource that will be affected by the activity, the significance of the scenic resource, and the degree to which the use or viewer expectations of a scenic resource will be altered, including alteration beyond the physical boundaries of the activity. In addition to the scenic resource, the Department also considers the functions and values of the protected natural resource, any proposed mitigation, practicable alternatives to the proposed activity that will have less visual impact, and cumulative effects of frequent minor alterations on the scenic resource. An application may be denied if the activity will have an unreasonable impact on the visual quality of a protected natural resources as viewed from a scenic resource even if the activity has no practicable alternative and the applicant has minimized the proposed alteration and its impacts as much as possible through mitigation. An “unreasonable impact” means that the standards of the Natural Resources Protection Act, 38 M.R.S.A. § 480-D, will not be met.

10. Scenic resources. The following public natural resources and public lands are usually visited by the general public, in part with the purpose of enjoying their visual quality. Under this rule, the Department considers a scenic resource as the typical point from which an activity in, on, over, or adjacent to a protected natural resource is viewed. This list of scenic resources includes, but is not limited to, locations of national, State, or local scenic significance. A scenic resource visited by large numbers who come from across the country or state is generally considered to have national or statewide significance. A scenic resource visited primarily by people of local origin is generally of local significance. Unvisited places either have no designated significance or are “no trespass” places. Sources for information regarding specific scenic resources are found as part of the MDEP Visual Evaluation Field Survey Checklist (doc. #DEPLW0540) provided in the application.

A. National Natural Landmarks and other outstanding natural and cultural features (e.g., Orono Bog, Meddybemps Heath);

**B.** State or National Wildlife Refuges, Sanctuaries, or Preserves and State Game Refuges (e.g., Rachael Carson Salt Pond Preserve in Bristol, Petit Manan National Wildlife Refuge, the Wells National Estuarine Research Reserve);

**C.** A State or federally designated trail (e.g., the Appalachian Trail, East Coast Greenway);

**D.** A property on or eligible for inclusion in the National Register of Historic Places pursuant to the National Historic Preservation Act of 1966, as amended (e.g., the Rockland Breakwater Light, Fort Knox);

**E.** National or State Parks (e.g., Acadia National Park, Sebago Lakes State Park);

**F.** 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.(e.g., great ponds, the Atlantic Ocean).

STATUTORY AUTHORITY: 38 M.R.S.A. § 480-A

ADOPTED DATE:

June 5, 2003

EFFECTIVE DATE:

June 29, 2003 - filing 2003-198

APPENDIX A

GUIDANCE FOR THE PREPARATION OF

LINE-OF SIGHT-PROFILES

