

Maine Revised Statutes

Title 38: WATERS AND NAVIGATION

Chapter 5: GENERAL PROVISIONS RELATING TO RIVERS AND STREAMS

Subchapter 1: MILLS AND DAMS

Article 1: ERECTION AND FLOWAGE RIGHTS

Subarticle 1-B: PERMITS FOR HYDROPOWER PROJECTS HEADING: PL 1983, C. 458, §18 (NEW)

§636. Approval criteria

The department shall approve a project when it finds that the applicant has demonstrated that the following criteria have been met. [1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §187 (AMD).]

1. Financial capability. The applicant has the financial capability and technical ability to undertake the project. In the event that the applicant is unable to demonstrate financial capability, the department may grant the permit contingent upon the applicant's demonstration of financial capability prior to commencement of the activities permitted.

[1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §188 (AMD) .]

2. Safety. The applicant has made adequate provisions for protection of public safety.

[1983, c. 458, §18 (NEW) .]

3. Public benefits. The project will result in significant economic benefits to the public, including, but not limited to, creation of employment opportunities for workers of the State.

[1983, c. 458, §18 (NEW) .]

4. Traffic movement. The applicant has made adequate provisions for traffic movement of all types out of or into the development area.

[1983, c. 458, §18 (NEW) .]

5. Maine Land Use Regulation Commission. Within the jurisdiction of the Maine Land Use Regulation Commission, the project is consistent with zoning adopted by the commission. This criterion does not apply to any project that uses tidal or wave action as a source of electrical or mechanical power.

[2009, c. 615, Pt. F, §4 (AMD) .]

6. Environmental mitigation. The applicant has made reasonable provisions to realize the environmental benefits of the project, if any, and to mitigate its adverse environmental impacts.

[1983, c. 458, §18 (NEW) .]

7. Environmental and energy considerations. The advantages of the project are greater than the direct and cumulative adverse impacts over the life of the project based upon the following considerations:

- A. Whether the project will result in significant benefit or harm to soil stability, coastal and inland wetlands or the natural environment of any surface waters and their shorelands; [1989, c. 309, §5 (AMD).]
- B. Whether the project will result in significant benefit or harm to fish and wildlife resources. In making its determination, the department shall consider other existing uses of the watershed and fisheries management plans adopted by the Department of Inland Fisheries and Wildlife and the Department of Marine Resources ; [2009, c. 561, §39 (AMD).]
- C. Whether the project will result in significant benefit or harm to historic and archeological resources; [1983, c. 458, §18 (NEW).]
- D. Whether the project will result in significant benefit or harm to the public rights of access to and use of the surface waters of the State for navigation, fishing, fowling, recreation and other lawful public uses; [1983, c. 458, §18 (NEW).]
- E. Whether the project will result in significant flood control benefits or flood hazards; and [1989, c. 309, §6 (AMD).]
- F. Whether the project will result in significant hydroelectric energy benefits, including the increase in generating capacity and annual energy output resulting from the project, and the amount of nonrenewable fuels it would replace. [1989, c. 309, §6 (AMD).]
- G. [1989, c. 309, §7 (RP).]

The department shall make a written finding of fact with respect to the nature and magnitude of the impact of the project on each of the considerations under this subsection, and a written explanation of their use of these findings in reaching their decision.

[2009, c. 561, §39 (AMD) .]

8. Water quality. There is reasonable assurance that the project will not violate applicable state water quality standards, including the provisions of section 464, subsection 4, paragraph F, as required for water quality certification under the United States Water Pollution Control Act, Section 401. This finding is required for both the proposed impoundment and any affected classified water bodies downstream of the proposed impoundment.

- A. Notwithstanding section 464, subsection 2, the department shall reclassify the waters of the proposed impoundment to Class GPA if the department finds:
 - (1) There is a reasonable likelihood that the proposed impoundment will thermally stratify;
 - (2) The proposed impoundment will exceed 30 acres in surface area;
 - (3) The proposed impoundment will not have any upstream direct discharges except cooling water; and
 - (4) The proposed impoundment will not violate section 464, subsection 4, paragraph F. [1989, c. 309, §8 (NEW); 1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §190 (AMD).]

[1989, c. 309, §8 (NEW); 1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §190 (AMD) .]

SECTION HISTORY

1983, c. 458, §18 (NEW). 1985, c. 772, §§3,4 (AMD). 1989, c. 309, §§5-8 (AMD). 1989, c. 890, §§A40,B187- 190 (AMD). 1995, c. 406, §15 (AMD). 1999, c. 401, §BB19 (AMD). 2009, c. 270, Pt. D, §7 (AMD). 2009, c. 561, §39 (AMD). 2009, c. 615, Pt. F, §4 (AMD).