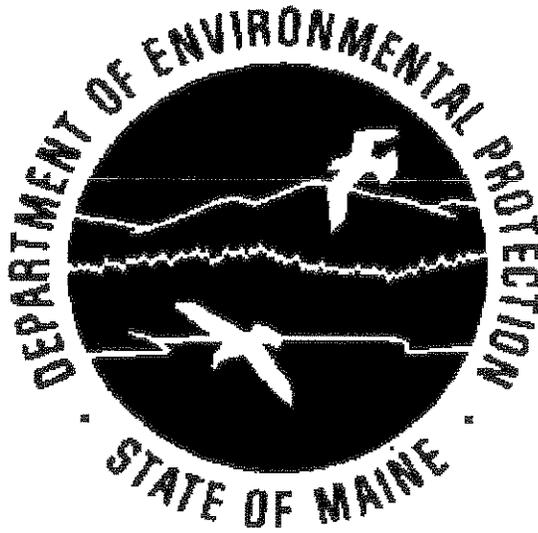


STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

SITE LOCATION OF DEVELOPMENT

RULES



Chapter 372:

POLICIES AND PROCEDURES UNDER THE SITE LOCATION LAW

SUMMARY:These regulations describe the general policies and procedures under the Site Location Law, including scope of review; nature of terms and conditions; Board jurisdiction; completeness of application; requirement of additional information; advisory rulings; access to the site; approval not contingent upon other approvals; title, right or interest; phased development; association responsible for common facilities; standard conditions of approval; and, severability.

- 1. Scope of Review.** In reviewing applications for approval of proposed developments under the Site Location Law, the Board shall consider the size, location, and nature of the proposed development in relation to:
 - A.** The potential primary, secondary, and cumulative impacts of the development on the character, quality, and uses of the land, air, and water on the development site and on the area likely to be affected by the proposed development; and
 - B.** The potential effects on the protection and preservation of the public's health, safety, and general welfare.

NOTE: The Board considers the primary, secondary, and cumulative impacts of a proposed development in relation to the areas of concern articulated in the criteria for approval of 38 M.R.S.A. Section 484 as interpreted by these regulations. "Cumulative impacts" refer to those impacts that are realized when the incremental effects of individual developments add up to the point where certain thresholds* of tolerance are exceeded.

- **2. Nature of Terms and Conditions.** As specified in Section 483 of the Site Location Law, the Board may place terms and conditions on the approval of a proposed development. However, terms and conditions shall address themselves to specifying particular means of satisfying minor or easily corrected problems, or both, relating to compliance with the Site Location Law and shall not substitute for or reduce the burden of proof of the developer to affirmatively demonstrate to the Board that each of the standards of the Site Location Law has been met.

NOTE: In the case of *In re: Belgrade Shores, Inc.*, 371 A.2d 413, 416 (1977), the Supreme Judicial Court of Maine stated:

"In addition to the express authority to impose conditions conveyed by Section 483, Section 481 mandates a 'flexible and practical' approach to site regulation. A series of disapprovals pending the applicant's correction of deficiencies in its proposal would achieve the same effect as conditional approval. We therefore view the choice between those two methods as a question of semantics and, as such, fully within the Board's discretion under Section 483. Further, we believe this conclusion consistent with the pragmatism espoused in Section 481."

"That the Board found non-compliance with two of the four criteria listed in Section 484 does not, as appellants claim, require disapproval. Such a result would be neither practical nor flexible where the noncompliance is minor, easily corrected, or both."

D. When the applicant has eminent domain power over the property, evidence shall be supplied of the ability and intent to use the eminent domain power to acquire sufficient title, right or interest as determined by the Board.

→ **10. Phased Development.** The Board requires that an application for approval include present plans for all phases of a development to be undertaken on a parcel. In the absence of evidence sufficient to approve all phases of the proposed development, the Board may approve one or more phases of the development based on the evidence then available. Approval of phases, however, shall be based on compliance of the entire proposed development with the standards of the Site Location Law.

NOTE: A proper analysis of the potential primary, secondary and cumulative impacts of a proposed development can be made only when all phases of a proposed development are considered. Also, the plans for site modification and pollution mitigation need to be based on the entire extent of a proposed development in order to insure their effectiveness in accomplishing the desired objectives.

11. Association Responsible for Common Facilities or Properties. Applications for developments with common facilities or properties, whose operation or maintenance will require the cooperation of more than one person, other than the developer, to satisfy the standards of 38 M.R.S.A. Section 484 over the life of the development, shall include a detailed description of the nature of the person or association which will be responsible for operating or maintaining the common facilities or properties of the development.

NOTE: Examples of types of developments which may require a person or association to be responsible for operating or maintaining common facilities or properties are residential subdivision with private interior roads, common sewage treatment or water supply facilities, or community-owned open space; condominiums; shopping centers; and multi-family residential developments with commonly maintained facilities.

12. Standard Conditions of Approval. Unless otherwise specifically stated in the approval, all Board (or Staff) approvals shall be subject to the following standard conditions:

- A. **Approval of Variations from Plans.** The granting of this approval is dependent upon and limited to the proposals and plans contained in the application and supporting documents submitted and affirmed to by the applicant. Any variation from these plans, proposals, and supporting documents is subject to review and approval prior to implementation. Further subdivision of proposed lots by the applicant or future owners is specifically prohibited without prior approval of the Board, and the applicant shall include deed restrictions to that effect.
- B. **Compliance with All Applicable Laws.** The applicant shall secure and comply with all applicable federal, state, and local licenses, permits, authorizations, conditions, agreements, and orders prior to or during construction and operation, as appropriate.
- C. **Compliance with All Terms and Conditions of Approval.** The applicant shall submit all reports and information requested by the Board or the Department demonstrating that the applicant has complied or will comply with all preconstruction terms and conditions of this approval. All preconstruction terms and conditions must be met before construction begins.

Chapter 373:**FINANCIAL CAPACITY STANDARD OF THE SITE LOCATION LAW**

SUMMARY: These regulations describe the scope of review of the Board in determining a developer's compliance with the "financial capacity" standard of the Site Location Law (38 M.R.S.A., Section 484(1)); the information which shall be submitted, when appropriate, within an application for approval; and, the terms and conditions which the Board may impose on the approval of an application to ensure compliance with the standard.

➔ **1. Financial Capacity to Meet Pollution Control Standards**

- A. Scope of Review.** In determining whether the developer has the financial capacity to meet state air and water pollution control standards,, the Board shall consider all relevant evidence to the effect that the developer has the financial capacity to construct, operate, and maintain all aspects of the development, and not just the pollution control aspects.

NOTE: The Supreme Judicial Court of Maine stated in the case of *In re: Maine Clean Fuels, Inc.* , 310 A. 2d 736, 755 (1973) that "it is clear that the ability to finance the cost of meeting pollution standards is inexorably a part of the ability to obtain total financing." Furthermore, the Board's experience with developers has shown that air and water pollution control equipment is usually installed after all other aspects of the development are completed. If the developer's funds run low or run out toward the end of development, the pollution control aspects of the development may be slighted. Therefore, in determining financial capacity, the Board requires proof of adequate funding for the completion of a development, including the pollution control aspects.

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- B. Submissions.** Applications for approval of proposed developments shall include evidence that affirmatively demonstrates that the developer has the financial capacity to undertake the proposed development, including information such as the following, when appropriate:

- (1) Accurate and complete cost estimates of the development.
- (2) The time schedule for construction and for satisfying pollution abatement measures.
- (3) A letter from a financial institution, governmental agency, or other funding agency indicating a commitment to provide a specified amount of funds and the uses for which the funds may be utilized.
- (4) In cases where funding is required but there can be no commitment of money until approvals are received, a letter of "intent to fund" from the appropriate funding institution indicating the amount of funds and their specified uses.
- (5) The most recent corporate annual report indicating availability of sufficient funds to finance the development together with explanatory material interpreting the report, when requested.
- (6) Copies of bank statements or other evidence indicating availability of funds, when the developer will personally finance the development.

C. **Terms and Conditions.** The Board may, as a term or condition of approval, establish any reasonable requirement to ensure that the developer has the financial capacity to meet state air and water pollution control standards, such as:

- (1) Requiring the posting of a performance bond to ensure that the air and water pollution control plans are completed as approved.

2. **Technical Ability to Meet Air and Water Pollution Control Standards**

A. **Preamble.** The Board is concerned that the developer have not only the financial capacity but also the technical ability and skilled manpower to meet pollution control standards, particularly when a large scale development includes sophisticated pollution abatement measures.

B. **Scope of Review.** In determining whether the developer has the technical ability to meet state air and water pollution control standards, the Board shall consider all relevant evidence to that effect, such as:

- (1) Evidence that project personnel are capable of properly installing, operating and maintaining pollution control devices.
- (2) Evidence that, even if the applicant's technical personnel have never before constructed or operated a development like the one proposed, competent engineering and field operational personnel will be available and can adapt their training and experience to accomplish the required tasks.
- (3) Evidence regarding the developer's prior conduct as a measure of willingness to meet all terms and conditions of approval established by the Board.

C. **Submissions.** Applications for approval of a proposed development shall include evidence that affirmatively demonstrates that the developer has the technical ability to undertake the proposed development, including information such as the following, when appropriate:

- (1) A statement of the developer's prior experience or appropriate training, or both, relating to the nature of the proposed development.
- (2) A description of the types of personnel who will be employed to design, install, and operate pollution control measures.

D. **Terms and Conditions.** The Board may, as a term or condition of approval, establish any reasonable requirement to ensure that the developer has the technical ability to meet state air and water pollution control standards, such as:

- (1) Requiring the developer to employ a capable engineer or other professional knowledgeable and experienced in the disciplines necessary to ensure that state air and water pollution control standards are met.
- (2) Requiring a training program for the appropriate personnel to acquaint them with the operation and maintenance of pollution control equipment.

4. Adequate Provisions for the Control of Odors

- A. Preamble.** The Board recognizes that offensive odors may be generated by solid waste disposal facilities and certain types of commercial and industrial developments and that these odors can have an undesirable effect on surrounding uses and people living in the area.
- B. Scope of Review.** In determining whether the developer has made adequate provision for the control of odors, the Board shall consider all relevant evidence to that effect.
- C. Submissions.** Applications for approval of any development likely to be the source of offensive odors shall include evidence that affirmatively demonstrates that the developer has made adequate provision for the control of odors, including information such as the following, when appropriate:
- (1) the identification of any sources of odors from the development;
 - (2) an estimation of the area which would be affected by the odor, based on general experience in dealing with the material or process used in the development, or similar materials or processes;
 - (3) proposed systems for enclosure of odor-producing materials and processes, and proposed uses of technology to control, reduce or eliminate odors.
- D. Terms and Conditions.** The Board may, as a term or condition of approval, establish any reasonable requirement to ensure that the developer has made adequate provision for the control of odors.

→ **5. Adequate Provision for Securing and Maintaining Sufficient and Healthful Water Supplies**

- A. Scope of Review.** In determining whether the developer has made adequate provision for securing and maintaining a sufficient and healthful water supply, the Board shall consider all relevant evidence to that effect.
- B. Submissions.** Applications for approval of proposed developments shall include evidence that affirmatively demonstrates that the developer has made adequate provision for securing and maintaining a sufficient and healthful water supply, including information such as the following, when appropriate:
- (1) A letter from the appropriate utility or water district that a sufficient and healthful water supply exists and may be utilized by the development.
 - (2) If water is to be supplied on-site, a letter from a geologist or well driller knowledgeable about the area where the development is located that a sufficient and healthful water supply is likely to be available.
 - (a) If there is reasonable doubt that a sufficient and healthful water supply can be provided by means of on-site wells, the following may be required:

- (i) water from wells located in close proximity to the development site be tested for potability; and/or
 - (ii) a test well be dug or drilled on the development site and a report prepared indicating the volume and potability of water obtained from the well.
- (3) If water supply and sewage disposal are to be handled on-site, and if lots are less than 2 acres in size, identification of the location of wells and on-site sewage disposal systems for each lot. The separation distance between wells and on-site sewage disposal areas shall be at least the minimum distance established in the State of Maine Plumbing Code.
- (4) If water is to be provided by a common source:
- (a) evidence that there will be sufficient water to serve the development;
 - (b) evidence that the common water supply system will be constructed in conformance with the Maine Drinking Water Regulations, authorized by 22 M.R.S.A., Section 601; and
 - (c) evidence that adequate provision has been made for the establishment of a mechanism to ensure proper operation and maintenance of the water supply system.

C. Terms and Conditions. The Board may, as a term or condition of approval, establish any reasonable requirement to ensure the adequate provision of a sufficient and healthful water supply, such as requiring that:

- (1) One or more central wells be installed with adequate water for the development.
- (2) An applicant arrange for adequate water service with a local utility or water district, or provide an adequate off-site common well, in cases where the Board determines that on-site water supplies may not be adequate.
- (3) The location of wells and on-site sewage disposal areas be established by deed conditions.

AUTHORITY: 38 M.R.S.A. Section 343

EFFECTIVE DATE: November 1, 1979

Chapter 375:**NO ADVERSE ENVIRONMENTAL EFFECT STANDARD OF THE SITE LOCATION LAW**

SUMMARY: These regulations describe the scope of review of the Board in determining a developer's compliance with the "no adverse effect on the natural environment" standard of the Site Location Law (38 M.R.S.A. Section 484(3)); the information which shall be submitted, when appropriate, within an application for approval; and, the terms and conditions which the Board may impose on the approval of an application to ensure compliance with the standard.

NOTE: In determining whether the developer has made adequate provision for fitting the development harmoniously into the existing natural environment and that the development will not adversely affect existing uses, scenic character, or natural resources in the municipality or in neighboring municipalities, the Board has identified several specific areas of concern which are dealt with in detail below.

→ **1. No Unreasonable Adverse Effect On Air Quality**

- A. Preamble.** The Board recognizes that point source emissions from certain types of commercial and industrial developments and solid waste disposal facilities and non-point source emissions deriving from industrial, commercial, and governmental developments can have an unreasonable adverse effect on air quality.
- B. Scope of Review.** In determining whether the proposed development will have an unreasonable adverse effect on ambient air quality, through point or non-point sources of chemical pollutants or particulate matter, the Board shall consider all relevant evidence to that effect, such as evidence that:
- (1) The best practicable treatment of point sources of air pollution will be utilized and that point source emissions meet state ambient air quality standards and state emissions standards.
 - (2) The amount of air pollution produced from either point or non-point sources of air emissions will be consistent with the Board's "Policy on Air Quality Use," adopted March 28, 1979.
- C. Submissions.** Applications for approval of proposed industrial, commercial and governmental developments and solid waste disposal facilities shall include evidence that affirmatively demonstrates that there will be no unreasonable adverse effect on air quality, including information such as the following, when appropriate:
- (1) Evidence that an Air Emission License has been or will be obtained.
 - (2) Evidence that increased traffic generated by the development will not significantly effect the ambient air quality. Modeling of the effect of non-point sources of air pollution on ambient air quality may be requested.
- D. Terms and Conditions.** The Board may, as a term or condition of approval, establish any reasonable requirement to ensure that the proposed development will have no unreasonable adverse effect on air quality, such as requiring that:

- (1) Emissions from point sources of pollution be monitored.
- (2) The size of the parking lots be limited in order to limit the amount of non-point source pollutants generated by the development.

2. No Unreasonable Alteration of Climate

- A. Preamble.** The Board recognizes the potential of large-scale, heavy industrial facilities, such as power generating plants, to affect the climate in the vicinity of their location by causing changes in climatic characteristics such as rainfall, fog, and relative humidity patterns.
- B. Scope of Review.** In determining whether the proposed development will cause an unreasonable alteration of climate, the Board shall consider all relevant evidence to that effect.
- C. Submissions.** Applications for approval of large-scale, heavy industrial developments, such as power generating plants, shall include evidence that affirmatively demonstrates that there will be no unreasonable alteration of climate, including information such as the following, when appropriate:
 - (1) Evidence that the proposed development will not unreasonably alter the existing cloud cover, fog, or rainfall characteristics of the area.
- D. Terms and Conditions.** The Board may, as a term or condition of approval, establish any reasonable requirement to ensure that the proposed development will not cause an unreasonable alteration of climate.

3. No Unreasonable Alteration of Natural Drainage Ways

- A. Scope of Review.** In determining whether the proposed development will cause an unreasonable alteration of natural drainage ways, the Board shall consider all relevant evidence to that effect, such as evidence that:
 - (1) Where a development site is traversed by a natural water course, drainage way, channel, or stream, a drainage right-of-way will be provided that substantially conforms with the lines of such natural water courses. Such rights-of-way shall be at least thirty feet in width.
 - (2) Any grading or other construction activity on the site will cause no unreasonable alteration of natural drainage ways such that drainage, other than that which occurred prior to development, will adversely affect adjacent parcels of land and that drainage ways flowing from adjacent parcels of land to the development site will be impeded.
- B. Submissions.** Applications for approval of proposed developments shall include evidence that affirmatively demonstrates that there will be no unreasonable alteration of natural drainage ways, including information such as the following, when appropriate:
 - (1) A plan showing all existing water courses, drainage ways, channels, or streams to be affected by the development, and the nature, width and location of proposed easements, rights-of-

way, culverts, catch basins or other means of channeling surface water within the development and over adjacent parcels of land.

- (2) Deed covenants which establish the easements or rights-of-way and provide for their continued maintenance.

C. Terms and Conditions. The Board may, as a term or condition of approval, establish any reasonable requirement to ensure that there will be no unreasonable alteration of natural drainage ways.

→ **4. No Unreasonable Effect on Runoff/Infiltration Relationships**

A. Preamble. The Board recognizes that some developments cause unreasonable increases in stormwater runoff by decreasing the infiltrative capacity of the soils on a development site. The Board also recognizes that increases in stormwater runoff cause increased danger of flooding, the pollution of surface water bodies, and the depletion of groundwater resources.

B. Scope of Review. In determining whether the proposed development will have an unreasonable effect on runoff/infiltration relationships, the Board shall consider all relevant evidence to that effect, such as evidence that:

- (1) A stormwater management system will infiltrate, detain, or retain water falling on the site during a storm of an intensity equal to a twenty-five year, twenty-four hour storm such that the rate of flow of stormwater from the development does not exceed the rate of outflow of stormwater from the site prior to the undertaking of the development.

(a) Developments which convey stormwater directly into the ocean (excluding estuarine tidewaters) exclusively in manmade piped or open drainage systems are exempt from the requirements of this subsection.

- (2) The physical, biological, and chemical properties of the receiving waters will not be unreasonably degraded by the stormwater runoff from the development site.

- (3) The peak discharge of the receiving waters will not be increased as the result of the stormwater runoff from the development site for storms up to a level of intensity of a twenty-five year, twenty-four hour storm.

C. Submissions. Applications for approval of proposed developments shall include evidence that affirmatively demonstrates that there will be no unreasonable effect on runoff/infiltration relationships, including information such as the following, when appropriate:

- (1) Evidence that the proposed stormwater management system has been designed by a professional engineer or other person duly qualified to undertake the design. The designer of the system will evaluate the effectiveness of various stormwater methods and develop and make available for review the hydraulic computations based on accepted engineering practices to demonstrate that the standards established under subsection B, above, will be met.

- (2) Evidence that the stormwater management system will take into consideration the upstream runoff which must pass over or through the development site. The system will be designed to pass upstream flows generated by a twenty-five year frequency through the proposed development without overloading the system or flooding areas not specifically planned for such flooding.
- (3) Evidence that the design of piped or open channel systems will be based on a ten year flow frequency without overloading or flooding beyond channel limits. In addition, the areas expected to be flooded by runoff of a twenty-five year frequency will be designated, and no structures will be planned within such area.
- (4) Evidence that, where permanent embankment-type storage or retention basins are planned, the basins will be designed in accordance with good engineering practice, such as outlined in the Soil Conservation Service Engineering Field Manual or other appropriate references.
- (5) Evidence that rights-of-way or easements will be designated for all components of the stormwater management system lying outside of established street lines.
- (6) Evidence that the developer will maintain all components of the stormwater management system until it is formally accepted by the municipality or a quasi-municipal district, or is placed under the jurisdiction of a legally created association that will be responsible for the maintenance of the system. The charter of such an association must be acceptable to the Board.
- (7) Evidence that the stormwater management system will be fully coordinated with project site plans, including consideration of street patterns, pedestrian ways, open space, building siting, parking areas, recreational facilities, and other utilities, especially sanitary wastewater disposal facilities.
- (8) When the construction of a development is to occur in phases, the planning of the stormwater management system should encompass the entire site which may ultimately be developed, and not limited to an initial or limited phases of the development.

NOTE: The following references may be of assistance to a developer in making the necessary computations and in designing the stormwater management system:

"Urban Hydrology for Small Watersheds", Technical Release No. 55, USDA, Soil Conservation Service, University of Maine, Orono, Maine.

"Water Resources Protection Measures in Land Development - A Handbook", Tourbier and Westmacott, University of Delaware Water Resources Center, Newark, Delaware.

D. Terms and Conditions. The Board may, as a term or condition of approval, establish any reasonable requirement to ensure that there will be no unreasonable effect on runoff/infiltration relationships.

→ **5. Erosion and Sedimentation Control**

- A. Preamble.** The Board recognizes the importance of controlling erosion and sedimentation to protect water quality and wildlife and fisheries habitat. Additionally, the Board considers topsoil to be a natural resource which should be properly managed. Control of erosion and sedimentation is a concern both during and after construction activities.
- B. Scope of Review.** In determining whether the developer has made adequate provision for controlling erosion and sedimentation, the Board shall consider all relevant evidence to that effect, such as evidence that:
- (1) All earth changes will be designed, constructed, and completed in such a manner so that the exposed area of any disturbed land will be limited to the shortest period of time possible.
 - (2) Sediment caused by accelerated soil erosion will be removed from runoff water before it leaves the development site.
 - (3) Any temporary or permanent facility designed and constructed for the conveyance of water around, through, or from the development site will be designed to limit the water flow to a non-erosive velocity.
 - (4) Permanent soil erosion control measures for all slopes, channels, ditches, or any disturbed land area will be completed within fifteen calendar days after final grading has been completed. When it is not possible or practical to permanently stabilize disturbed land, temporary erosion control measures will be implemented within thirty calendar days of the exposure of soil.
 - (5) When vegetative cover will be established as a temporary or permanent erosion control measure:
 - (a) Plant species to be used and the seeding rates will take into account soil, slope, climate, and duration and use of the vegetative cover.
 - (b) Mulch will be provided at rates appropriate to ensure a minimum of soil and seed loss until an acceptable "catch" of seed is obtained.
 - (c) Reseeding will be done within a reasonable period of time if there is not an acceptable "catch".
 - (6) All development plans will incorporate building designs and street layouts that fit and utilize existing topography and desirable natural surroundings to the fullest extent possible.
- C. Submissions.** Applications for approval of proposed developments shall include evidence that affirmatively demonstrates that adequate provision will be made to control erosion and sedimentation, including information such as the following when appropriate:
- (1) A comprehensive erosion and sedimentation control plan, designed in accordance with the "Maine Environmental Quality Handbook", the U.S.D.A., Soil Conservation Service's "Engineering Field Manual", or another appropriate reference, which includes the following information:

- (a) A description and location of the limits of all proposed construction activities which result in the disturbance of the land.
- (b) A description and location of all existing and proposed on-site drainage.
- (c) The timing and sequence of all proposed land disturbances.
- (d) A description and location of all proposed temporary and permanent erosion and sedimentation control measures, including the timing and sequence of their completion.
- (e) A proposed program for the maintenance of all erosion and sedimentation control facilities which will remain after the project is completed, including a designation of the responsible party.

D. Terms and Conditions. The Board may, as a term or condition of approval, establish any reasonable requirement to ensure that the developer will make adequate provision to control erosion and sedimentation, such as requiring that:

- (1) Erosion control devices be in place before the commencing of other construction activities.
- (2) Construction activity be limited to certain times of the year, particularly when soil type, slope, and the extent of area to be stripped pose serious potential for erosion and sedimentation.

→ **6. No Unreasonable Adverse Effect on Surface Water Quality**

A. Preamble. The Board recognizes that developments have the potential to cause the pollution of surface waters through both point and non-point sources of pollution.

B. Scope of Review. In determining whether the proposed development will have an unreasonable adverse effect on surface water quality, the Board shall consider all relevant evidence to that effect, such as evidence that:

- (1) The development or reasonably foreseeable consequences of the development will not discharge any water pollutants which affect the state classification of a surface water body (38 M.R.S.A. Section 363 et seq.).
- (2) The best practicable treatment of point sources of water pollutants will be utilized.
- (3) The total phosphorous concentrations in all tributaries to great ponds will not exceed the standard established in Department Regulation 583.1 as the result of the proposed development.
- (4) Any effect on surface water temperature will be in compliance with all appropriate standards established in Department Regulations 582.1 - 582.8.

C. Submissions. Applications for approval of proposed developments shall include evidence that affirmatively demonstrates that there will be no unreasonable adverse effect on surface water quality, including information such as the following, when appropriate:

- (1) Where sewage disposal is to be handled off-site by a municipal or quasi-municipal sewage treatment facility, a letter from the authorized agent of the facility stating that there is adequate capacity to ensure satisfactory treatment.
- (2) Evidence that a waste discharge license, as required by 38 M.R.S.A. Sections 413 et seq., has been or will be obtained.

D. Terms and Conditions. The Board may, as a term or condition of approval, establish any reasonable requirement to ensure that the proposed development will have no unreasonable adverse effect on surface water quality.

→ **7. No Unreasonable Adverse Effect on Ground Water Quality**

A. Preamble. The Board recognizes the importance of protecting ground water resources in order to promote the future health, safety, and welfare of the citizens of Maine through the maintenance of an adequate supply of safe drinking water.

B. Scope of Review. In determining whether the proposed development will have an unreasonable adverse effect on ground water quality, the Board shall consider all relevant evidence to that effect, such as evidence that:

- (1) The development will not result in the existing ground water quality becoming inferior to the physical, biological, chemical, and radiological levels for raw and untreated drinking water supply sources specified in the Maine State Drinking Water Regulations, pursuant to 22 M.R.S.A. Section 601. If the existing ground water quality is inferior to the State Drinking Water Regulations, the developer will not degrade the water quality any further.

C. Rebuttable Presumption Against Disposal of Waste in Certain Areas. The Board operates under the rebuttable presumption that the storage and/or disposal of solid wastes, hazardous wastes, and leachable or liquid wastes, including petroleum products and septage, pose serious threats to public health, safety, and welfare through the potential pollution of the ground water when such storage and/or disposal occurs on or above sand and gravel aquifers or the recharge areas of sand and gravel aquifers.

NOTE: Maps of sand and gravel aquifers and their recharge areas are available for portions of the state from the Bureau of Geology, Department of Conservation, Augusta.

- (1) An applicant seeking approval for a development which involves one or more of the activities specified above, must overcome this presumption by persuasive evidence that the development is unique in some way that allows for compliance with the intent of this subsection.

D. Submissions. Applications for approval of proposed developments shall include evidence that affirmatively demonstrates that there will be no unreasonable adverse effect on ground water quality, including information such as the following, when appropriate:

- (1) A comprehensive list, including physical and chemical characteristics and projected quantities of wastes to be disposed of or stored within the proposed development which may potentially contaminate the ground water.
- (2) Methods for preventing ground water pollution as the result of the disposal and/or storage of wastes.
- (3) An evaluation of the geological, hydrologic, and soils conditions of the development site.
- (4) Data establishing background ground water quality.
- (5) Proposed plan of action, and alternatives, to be followed in the event the proposed development results in ground water contamination.

E. Terms and Conditions. The Board may, as a term or condition of approval, establish any reasonable requirement to ensure that the proposed development will have no unreasonable adverse effect on ground water quality, such as requiring that:

- (1) A ground water monitoring program be established and reports be filed with the Department at designated intervals.
- (2) Specified wastes not be disposed of or stored within the proposed development.

→ **8. No Unreasonable Adverse Effect on Ground Water Quantity**

A. Preamble. The Board recognizes the importance of maintaining an adequate supply of ground water for drinking purposes. The Board also recognizes that the depletion of ground water resources can result in the intrusion of salt water into potable ground water supplies and can affect the hydrologic characteristics of surface water bodies (peak flows, low flows and water levels) resulting in adverse effects on their assimilative capacity and recreational use, as well as on certain wildlife habitats. Additionally, new wells can cause a lowering of the ground water supply to the point where existing wells run dry, particularly during the late summer and early fall.

B. Scope of Review. In determining whether the proposed development will have an unreasonable adverse effect on ground water quantity, the Board shall consider all relevant evidence to that effect, such as evidence that:

- (1) The quantity of water to be taken from ground water sources will not substantially lower the found water table, cause salt water intrusion, cause undesirable changes in ground water flow patterns, or cause unacceptable ground subsidence.

C. Submissions. Applications for approval of proposed developments shall include evidence that affirmatively demonstrates that there will be no unreasonable adverse effect on ground water quantity, including information such as the following, where appropriate:

- (1) Estimates of the quantity of ground water to be used by the proposed development.

- (2) In the areas where salt water intrusion, the lowering of the ground water level, or land subsidence have been or can be reasonably be expected to be a problem, a report by a duly qualified person addressing the potential effects of ground water use by the proposed development.

D. Terms and Conditions. The Board may, as a term or condition of approval establish any reasonable requirement to ensure that there will be no unreasonable adverse effect on ground water quantity, such as requiring that:

- (1) A development obtain its water from a surface water source, public community supply, or utility.
- (2) Wells in the surrounding area be monitored to determine the effect of the development on ground water levels.
- (3) People in the surrounding area, whose wells are adversely affected by the development, be provided with new wells or another source of potable water for their use and consumption.

→ 9. Buffer Strips

A. Preamble. The Board recognizes the importance of natural buffer strips in protecting water quality and wildlife habitat. The Board also recognizes that buffer strips can serve as visual screens which can serve to lessen the visual impact of incompatible or undesirable land uses. The width and nature of buffer strips, if required, shall be determined by the Board on a case-by-case basis.

B. Scope of Review. In determining whether the developer has made adequate provision for buffer strips, when appropriate, the Board shall consider all relevant evidence to that effect, such as evidence that:

- (1) Water bodies within or adjacent to the development will be adequately protected from sedimentation and surface runoff by buffer strips.
- (2) Buffer strips will provide adequate space for movement of wildlife between important habitats.
- (3) Buffer strips will shield adjacent uses from unsightly developments and lighting.

NOTE: The following GUIDELINES should be considered in establishing visual buffer strips.

- (1) Plant materials used in the screen planting will be at least four feet high when planted and be of such evergreen species as will produce ultimately a dense visual screen at least eight feet high. Alternatively, a six-foot high wooden fence, without openings wider than 1", may be substituted.
 - (2) The screen will be maintained permanently, and any plant material which does not live will be replaced within one year.
 - (3) Screen planting will be so placed that at maturity it will be no closer than three feet away from any street or property line.
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- (4) The screen will be broken only at points of vehicular or pedestrian access.
 - (5) Fencing and screening will be so located within the developer's property line to allow access for maintenance on both sides without intruding upon abutting properties.
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- C. Excavations for Sand, Gravel, Clay, Silt, Topsoil, or Rock** -- Buffer strips associated with an excavation for sand, gravel, clay, silt, topsoil, or rock must meet the buffer strip standards specified in Performance Standards for Excavations, 38 M.R.S.A. § 490-D, and Performance Standards for Quarries, 38 M.R.S.A. § 490-Z. These standards apply in lieu of Section 9(B) (1)-(3).

A gravel pit previously licensed under the Site Location of Development Law, 38 M.R.S.A § 484, may apply for a modification of the buffer strip requirements in such a permit. The Department may approve such modification if the buffer strip at least meets the minimum standards of §§ 490-D and 490-Z and the proposed excavation will not result in an unreasonable adverse impact on the natural environment.

- D. Submissions.** Applications for approval of proposed developments shall include evidence that affirmatively demonstrates that adequate provision of buffer strips, when appropriate, will be made, including information such as the following:

- (1) The location and width of all natural buffer strips to be retained.
- (2) The nature, location, width, and height of all vegetative buffer strips or architectural screens to be established.
- (3) Legal provisions for the maintenance of all buffer strips and architectural screens.

- E. Terms and Conditions.** The Board may, as a term or condition of approval, establish any reasonable requirement to ensure that the developer has made adequate provision for the establishment of buffer strips, such as requiring:

- (1) The maintenance of existing vegetation as a natural buffer strip, which shall remain as a permanent feature of the landscape.
- (2) The incorporation of buffer strip maintenance into deed covenants in projects where deed transfers of property to the general public are contemplated.
- (3) Written permission of the Department of Environmental Protection for activities which may adversely affect a body of water or wildlife habitat protected by a natural buffer strip, such as: removal of live trees, stump and hot systems, and the displacement of rocks, topsoil and similar activities which would cause or allow increased soil erosion.
- (4) The establishment of particular species of vegetation.
- (5) The use of particular materials, colors, and styles in the construction of architectural screens.

→ 10. Control of Noise

A. Preamble. The Board recognizes that the construction, operation and maintenance of developments may cause excessive noise that could degrade the health and welfare of nearby neighbors. It is the intent of the Board to require adequate provision for the control of excessive environmental noise from developments proposed after the effective date of this regulation.

B. Applicability

- (1) This regulation applies to proposed developments within municipalities without a local quantifiable noise standard and in unorganized areas of the State. When a proposed development is located in a municipality which has duly enacted by ordinance an applicable quantifiable noise standard, which (1) contains limits that are not higher than the sound level limits contained in this regulation by more than 5 dBA, and (2) limits or addresses the various types of noises contained in this regulation or all the types of noises generated by the development, that local standard, rather than this regulation, shall be applied by the Board within that municipality for each of the types of sounds the ordinance regulates. This regulation applies to developments located within one municipality when the noise produced by the development is received in another municipality and, in these cases, the Board will also take into consideration the municipalities' quantifiable noise standards, if any.
- (2) This regulation applies to expansions and modifications of developments when such expansions and modifications are proposed after the effective date of this regulation and subject to site location approval, but only to the noise produced by the proposed expansion or modification of the development, unless (1) the existing development was constructed since 1-1-70 and (2) at the time of construction, the existing development was too small to require site location approval. In situations where conditions (1) and (2) above apply, then this regulation applies to the whole development (both existing facility and proposed expansion or modification). This regulation also applies to expansions and modifications of existing developments when such expansions and modifications require an amendment to the development's Site Law permit, but only to the noise produced by the expansion or modification.
- (3) This regulation does not apply to existing developments or portions of existing developments constructed prior to 1-1-70 or approved under the Site Law prior to the effective date of this regulation. This regulation does not apply to relicensing of existing solid waste facilities previously approved under the Site Law.
- (4) The sound level limits contained in this regulation apply only to areas that are defined as protected locations, and to property lines of the proposed development or contiguous property owned by the developer, whichever are farther from the proposed development's regulated sound sources.
- (5) The sound level limits contained in this regulation do not apply to noise received within the development boundary.

NOTE: The Board will reconsider the effect and operation of the regulation one year from its effective date.

C. Sound Level Limits

(1) Sound From Routine Operation of Developments.

(a) Except as noted in subsections (b) and (c) below, the hourly sound levels resulting from routine operation of the development and measured in accordance with the measurement procedures described in subsection H shall not exceed the following limits:

(i) At any property line of the development or contiguous property owned by the developer, whichever is farther from the proposed development's regulated sound sources:

75 dBA at any time of day.

(ii) At any protected location in an area for which the zoning, or, if unzoned, the existing use or use contemplated under a comprehensive plan, is not predominantly commercial, transportation, or industrial;

60 dBA between 7:00 a.m. and 7:00 p.m.
(the "daytime hourly limit"), and
50 dBA between 7:00 p.m. and 7:00 a.m.
(the "nighttime hourly limit").

(iii) At any protected location in an area for which the zoning, or, if unzoned, the existing use or use contemplated under a comprehensive plan, is predominantly commercial, transportation, or industrial:

70 dBA between 7:00 a.m. and 7:00 p.m.
(the "daytime hourly limit"), and
60 dBA between 7:00 p.m. and 7:00 a.m.
(the "nighttime hourly limit").

(iv) For the purpose of determining whether the use of an unzoned area is predominantly commercial, transportation, or industrial (e.g. non-residential in nature), the Department shall consider the municipality's comprehensive plan, if any. Furthermore, the usage of properties abutting each protected location shall be determined, and the limits applied for that protected location shall be based upon the usage occurring along the greater portion of the perimeter of that parcel; in the event the portions of the perimeter are equal in usage, the limits applied for that protected location shall be those for a protected location in an area for which the use is not predominantly commercial, transportation, or industrial.

(v) When a proposed development is to be located in an area where the daytime pre-development ambient hourly sound level at a protected location is equal to or less than 45 dBA and/or the nighttime pre-development ambient hourly sound level at a protected location is equal to or less than 35 dBA, the hourly sound levels resulting from routine operation of the development and measured in accordance with the measurement procedures described in subsection H shall not exceed the following limits at that protected location:

55 dBA between 7:00 a.m. and 7:00 p.m.

(the "daytime hourly limit"), and
45 dBA between 7:00 p.m. and 7:00 a.m.
(the "nighttime hourly limit").

For the purpose of determining whether a protected location has a daytime or nighttime pre-development ambient hourly sound level equal to or less than 45 dBA or 35 dBA, respectively, the developer may make sound level measurements in accordance with the procedures in subsection H or may estimate the sound-level based upon the population density and proximity to local highways. If the resident population within a circle of 3,000 feet radius around a protected location is greater than 300 persons, or the hourly sound level from highway traffic at a protected location is predicted to be greater than 45 dBA in the daytime or 35 dBA at night (as appropriate for the anticipated operating schedule of the development), then the developer may estimate the daytime or nighttime pre-development ambient hourly sound level to be greater than 45 dBA or 35 dBA, respectively.

NOTE: Highway traffic noise can be predicted using the nomograph method of FHWA Highway Traffic Noise Prediction Model, FHWA-RD-77-108, December, 1978.

- (vi) Notwithstanding the above, the developer need not measure or estimate the pre-development ambient hourly sound levels at a protected location if he demonstrates, by estimate or example, that the hourly sound levels resulting from routine operation of the development will not exceed 50 dBA in the daytime or 40 dBA at night.
- (b) If the developer chooses to demonstrate by measurement that the daytime and/or nighttime pre-development ambient sound environment at any protected location near the development site exceeds the daytime and/or nighttime limits in subsection 1(a)(ii) or 1(a)(iii) by at least 5 dBA, then the daytime and/or nighttime limits shall be 5 dBA less than the measured daytime and/or nighttime pre-development ambient hourly sound level at the location of the measurement for the corresponding time period.
- (c) For any protected location near an existing development, the hourly sound level limit for routine operation of the existing development and all future expansions of that development shall be the applicable hourly sound level limit of 1(a) or 1(b) above, or, at the developer's election, the existing hourly sound level from routine operation of the existing development plus 3 dBA.
- (d) For the purposes of determining compliance with the above sound level limits, 5 dBA shall be added to the observed levels of any tonal sounds that result from routine operation of the development.
- (e) When routine operation of a development produces short duration repetitive sound, the following limits shall apply:
- (i) For short duration repetitive sounds, 5 dBA shall be added to the observed levels of the short duration repetitive sounds that result from routine operation of the

development for the purposes of determining compliance with the above sound level limits.

- (ii) For short duration repetitive sounds resulting from scrap metal, drop forge and metal fabrication operations or developments which the Board determines, due to their character and/or duration, are particularly annoying or pose a threat to the health and welfare of nearby neighbors, 5 dBA shall be added to the observed levels of the short duration repetitive sounds that result from routine operation of the development for the purposes of determining compliance with the above sound level limits, and the maximum sound level of the short duration repetitive sounds shall not exceed the following limits:
 - (a) At any protected location in an area for which the zoning, or, if unzoned, the existing use or use contemplated under a comprehensive plan, is not predominantly commercial, transportation, or industrial:

65 dBA between 7:00 a.m. and 7:00 p.m., and
55 dBA between 7:00 p.m. and 7:00 a.m.
 - (b) At any protected location in an area for which the zoning, or, if unzoned, the existing use or use contemplated under a comprehensive plan, is predominantly commercial, transportation, or industrial:

75 dBA between 7:00 a.m. and 7:00 p.m., and
65 dBA between 7:00 p.m. and 7:00 a.m.
 - (c) The methodology described in subsection 1(a)(iv) shall be used to determine whether the use of an unzoned area is predominantly commercial, transportation, or industrial.
 - (d) If the developer chooses to demonstrate by measurement that the pre-development ambient hourly sound level at any protected location near the development site exceeds 60 dBA between 7:00 a.m. and 7:00 p.m., and/or 50 dBA between 7:00 p.m. and 7:00 a.m., then the maximum sound level limit for short duration repetitive sound shall be 5 dBA greater than the measured pre-development ambient hourly sound level at the location of the measurement for the corresponding time period.
 - (e) For any protected location near an existing development, the maximum sound level limit for short duration repetitive sound resulting from routine operation of the existing development and all future expansions and modifications of that development shall be the applicable maximum sound level limit of (e)(ii)(a) or (e)(ii)(b) above, or, at the developer's election, the existing maximum sound level of the short duration repetitive sound resulting from routine operation of the existing development plus 3 dBA.

NOTE: The maximum sound level of the short duration repetitive sound shall be measured using the fast response $[L_{AFmax}]$. See the definition of maximum sound level.

(2) Sound From Construction of Developments

- (a) The sound from construction activities between 7:00 p.m. and 7:00 a.m. is subject to the following limits:
 - (i) Sound from nighttime construction activities shall be subject to the nighttime routine operation sound level limits contained in subsections 1(a) and 1(b).
 - (ii) If construction activities are conducted concurrently with routine operation, then the combined total of construction and routine operation sound shall be subject to the nighttime routine operation sound level limits contained in subsections 1(a) and 1(b).
 - (iii) Higher levels of nighttime construction sound are permitted when a duly issued permit authorizing nighttime construction sound in excess of these limits has been granted by:
 - 1. the local municipality when the duration of the nighttime construction activity is less than or equal to 90 days,
 - 2. the local municipality and the Board when the duration of the nighttime construction activity is greater than 90 days.
- (b) Sound from construction activities between 7:00 a.m. and 7:00 p.m. shall not exceed the following limits at any protected location:

Duration of Activity	Hourly Sound Level Limit
12 hours	87 dBA
8 hours	90 dBA
6 hours	92 dBA
4 hours	95 dBA
3 hours	97 dBA
2 hours	100 dBA
1 hour or less	105 dBA

- (c) All equipment used in construction on development sites shall comply with applicable federal noise regulations and shall include environmental noise control devices in proper working condition, as originally provided with the equipment by its manufacturer.

(3) Sound From Maintenance Activities

- (a) Sound from routine, ongoing maintenance activities shall be considered part of the routine operation of the development and the combined total of the routine maintenance and operation sound shall be subject to the routine operation sound level limits contained in subsection 1.
- (b) Sound from occasional, major, scheduled overhaul activities shall be subject to the construction sound level limits contained in subsection 2. If overhaul activities are conducted concurrently with routine operation and/or construction activities, the combined total of the overhaul, routine operation and construction sound shall be subject to the construction sound level limits contained in subsection 2.

(4) Sound From Production Blasting

Sound exceeding the limits of subsection 1 and resulting from production blasting at a mine or quarry shall be limited as follows:

- (a) Blasting shall not occur in the period between sundown and sunrise the following day or in the period between the hours of 7:00 p.m. and 7:00 a.m., whichever is greater. In addition, no routine production blasting shall be allowed in the daytime on Sundays.
- (b) Blasting shall not occur more frequently than four times per day.
- (c) Sound from blasting shall not exceed the following limits at any protected location:

Number of Blasts Per Day	Sound Level Limit
1	129 dBL
2	126 dBL
3	124 dBL
4	123 dBL.

Blast sound shall be measured in peak linear sound level (dBL) with a linear response down to 5 Hz.

NOTE: See Bureau of Mines Report of Investigations 8485 for information on airblast sound levels and pertinent scaled distances.

(5) Exemptions

Sound associated with the following shall be exempt from regulation by the Board:

- (a) Railroad equipment which is subject to federal noise regulations.
- (b) Aircraft operations which are subject to federal noise regulations.
- (c) Registered and inspected vehicles:
 - (i) while operating on public ways, or
 - (ii) which enter the development to make a delivery or pickup and which are moving, starting or stopping, but not when they are parked for over 60 minutes in the development.
- (d) Watercraft while underway.
- (e) Residential developments, except during construction of such developments.
- (f) Bells, chimes and carillons.
- (g) occasional sporting, cultural, religious or public events allowed by the local municipality where the only affected protected locations are contained within that municipality.

- (h) The unamplified human voice and other sounds of natural origin.
 - (i) Firing, fishing and aquacultural activity.
 - (j) Forest management, harvesting and transportation activities.
 - (k) Making, maintaining and grooming snow where the only affected protected locations are contained within the general boundaries of a ski area development.
 - (l) Snow removal, landscaping and street sweeping activities.
 - (m) Emergency maintenance and repairs.
 - (n) Warning signals and alarms.
 - (o) Safety and protective devices installed in accordance with code requirements.
 - (p) Test operations of emergency equipment occurring in the daytime and no more frequently than once per week.
 - (q) Boiler start-up, testing and maintenance operations occurring no more frequently than once per month.
 - (r) Major concrete pours that must extend after 7:00 p.m., when started before 3:00 p.m.
 - (s) Sounds from a regulated development received at a protected location when the generator of the sound has been conveyed a noise easement for that location. This exemption shall only be for the specific noise, land and term covered by the easement.
 - (t) A force majeure event and other causes not reasonably within the control of the owners or operators of the development.
- (6) Noise Abatement Structures.

Noise abatement structures of a non-permanent nature in any one location for a duration of less than one year and erected for the sole purpose of noise control shall not be considered structures as defined in 38 MRSA subsection 482(6).

D. Submissions

- (1) Developments with Minor Sound Impact.

An applicant for a proposed development with minor sound impact may choose to file as part of the site location application a statement attesting to the minor nature of the anticipated sound impact of their development. An applicant proposing an expansion or modification of an existing development with minor sound impact may follow the same procedure as described above. For the purpose of this regulation, a development or an expansion or modification of an existing development with minor sound impact means a development where the developer demonstrates, by estimate or example, that the regulated sound from routine operation of the development will not exceed 5 dBA less than the applicable limits

established under subsection C. It is the intent of this subsection that an applicant need not conduct sound level measurements to demonstrate that the development or an expansion or modification of an existing development will have a minor sound impact.

NOTE: Examples include subdivisions without structures, office buildings, storage buildings which will not normally be accessed at night, and golf courses.

(2) Other Developments

Technical information shall be submitted describing the applicant's plan and intent to make adequate provision for the control of sound. The applicant's plan shall contain information such as the following, when appropriate:

- (a) Maps and descriptions of the land uses, local zoning and comprehensive plans for the area potentially affected by sounds from the development.
- (b) A description of major sound sources, including tonal sound sources and sources of short duration repetitive sounds, associated with the construction, operation and maintenance of the proposed development, including their locations within the proposed development.
- (c) A description of the daytime and nighttime hourly sound levels and, for short duration repetitive sounds, the maximum sound levels expected to be produced by these sound sources at protected locations near the proposed development.
- (d) A description of the protected locations near the proposed development.
- (e) A description of proposed major sound control measures, including their locations and expected performance.
- (f) A comparison of the expected sound levels from the proposed development with the sound level limits of this regulation.
- (g) A comparison of the expected sound levels from the proposed development with any quantifiable noise standards of the municipality in which the proposed development will be located and of any municipality which may be affected by the noise.

E. Terms and Conditions

The Board may, as a term or condition of approval, establish any reasonable requirement to ensure that the developer has made adequate provision for the control of noise from the development and to reduce the impact of noise on protected locations. Such conditions may include, but are not limited to, enclosing equipment or operations, imposing limits on hours of operation, or requiring the employment of specific design technologies, site design, modes of operation, or traffic patterns.

The sound level limits prescribed in this regulation shall not preclude the Board under Chapter 375.15 from requiring a developer to demonstrate that sound levels from a development will not unreasonably disturb wildlife or adversely affect wildlife populations. In addition, the sound level limits shall not preclude the Board, as a term or condition of approval, from requiring that

lower sound level limits be met to ensure that the developer has made adequate provision for the protection of wildlife.

F. Variance From Sound Level Limits

The Board recognizes that there are certain developments or activities associated with development for which noise control measures are not reasonably available. Therefore, the Board or Commissioner may grant a variance from any of the sound level limits contained in this rule upon (1) a showing by the applicant that he or she has made a comprehensive assessment of the available technologies for the development and that the sound level limits cannot practicably be met with any of these available technologies, and (2) a finding by the Board that the proposed development will not have an unreasonable impact on protected locations. In addition, a variance may be granted by the Board or Commissioner if (1) a development is deemed necessary in the interest of national defense or public safety and the applicant has shown that the sound level limits cannot practicably be met without unduly limiting the development's intended function, and (2) a finding is made by the Board or Commissioner that the proposed development will not have an unreasonable impact on protected locations. The Board or Commissioner shall consider the request for a variance as part of the review of a completed Site Location of Development Law application. In granting a variance, the Board or Commissioner may, as a condition of approval, impose terms and conditions to ensure that no unreasonable sound impacts will occur.

G. Definitions

Terms used herein are defined below for the purpose of this noise regulation.

- (1) **AMBIENT SOUND:** At a specified time, the all-encompassing sound associated with a given environment, being usually a composite of sounds from many sources at many directions, near and far, including the specific development of interest.
- (2) **CONSTRUCTION:** Activity and operations associated with the development or expansion of a project or its site.
- (3) **EMERGENCY:** An unforeseen combination of circumstances which calls for immediate action.
- (4) **EMERGENCY MAINTENANCE AND REPAIRS:** Work done in response to an emergency.
- (5) **ENERGY SUM OF A SERIES OF LEVELS:** Ten times the logarithm of the arithmetic sum of the antilogarithms of one-tenth of the levels. [Note: See Section H(4.2).]
- (6) **EXISTING DEVELOPMENT:** A development constructed before 1-1-70 or a development approved under the Site Law prior to the effective date of this regulation or a proposed development for which the site location application is complete for processing on or before the effective date of this regulation. Any development with a site location approval which has been remanded to the Board by a court of competent jurisdiction for further proceedings relating to noise limits or noise levels prior to the effective date of these regulations shall not be deemed an existing development and these regulations shall apply to the existing noise sources at that development.

- (7) EXISTING HOURLY SOUND LEVEL: The hourly sound level resulting from routine operation of an existing development prior to the first expansion that is subject to this regulation.
- (8) EQUIVALENT SOUND LEVEL: The level of the mean-square A-weighted sound pressure during a stated time period, or equivalently the level of the sound exposure during a stated time period divided by the duration of the period.

NOTE: For convenience, a one hour equivalent sound level should begin approximately on the hour.

- (9) HISTORIC AREAS: Historic sites administered by the Bureau of Parks and Recreation of the Maine Department of Conservation, with the exception of the Arnold Trail.
- (10) HOURLY SOUND LEVEL: The equivalent sound level for one hour measured or computed in accordance with this regulation.
- (11) LOCALLY-DESIGNATED PASSIVE RECREATION AREA: Any site or area designated by a municipality for passive recreation that is open and maintained for public use and which:
- (a) has fixed boundaries,
 - (b) is owned in fee simple by a municipality or is accessible by virtue of public easement,
 - (c) is identified and described in a local comprehensive plan, and
 - (d) has been identified and designated at least nine months prior to the filing of the applicant's Site Location of Development application.
- (12) MAXIMUM SOUND LEVEL: Ten times the common logarithm of the square of the ratio of the maximum sound to the reference sound of 20 micropascals. Symbol: L_{AFmax} .
- (13) MAXIMUM SOUND: Largest A-weighted and fast exponential-time-weighted sound during a specified time interval. Unit: pascal (Pa).
- (14) RESIDENCE: A building or structure, including manufactured housing, maintained for permanent or seasonal residential occupancy providing living, cooking and sleeping facilities and having permanent indoor or outdoor sanitary facilities, excluding recreational vehicles, tents and watercraft.
- (15) PRE-DEVELOPMENT AMBIENT: The ambient sound at a specified location in the vicinity of a development site prior to the construction and operation of the proposed development or expansion.
- (16) PROTECTED LOCATION: Any location, accessible by foot, on a parcel of land containing a residence or planned residence or approved residential subdivision, house of worship, academic school, college, library, duly licensed hospital or nursing home near the

development site at the time a Site Location of Development application is submitted; or any location within a State Park, Baxter State Park, National Park, Historic Area, a nature preserve owned by the Maine or National Audubon Society or the Maine Chapter of the Nature Conservancy, The Appalachian Trail, the Moosehorn National Wildlife Refuge, federally-designated wilderness area, state wilderness area designated by statute (such as the Allagash Wilderness Waterway), or locally-designated passive recreation area; or any location within consolidated public reserve lands designated by rule by the Bureau of Public Lands as a protected location.

At protected locations more than 500 feet from living and sleeping quarters within the above noted buildings or areas, the daytime hourly sound level limits shall apply regardless of the time of day.

Houses of worship, academic schools, libraries, State and National Parks without camping areas, Historic Areas, nature preserves, the Moosehorn National Wildlife Refuge, federally-designated wilderness areas without camping areas, state wilderness areas designated by statute without camping areas, and locally-designated passive recreation areas without camping areas are considered protected locations only during their regular hours of operation and the daytime hourly sound level limits shall apply regardless of the time of day.

Transient living accommodations are generally not considered protected locations; however, in certain special situations where it is determined by the Board that the health and welfare of the guests and/or the economic viability of the establishment will be unreasonably impacted, the Board may designate certain hotels, motels, campsites and duly licensed campgrounds as protected locations.

This term does not include buildings and structures located on leased camp lots, owned by the applicant, used for seasonal purposes.

For purposes of this definition, (1) a residence is considered planned when the owner of the parcel of land on which the residence is to be located has received all applicable building and land use permits and the time for beginning construction under such permits has not expired, and (2) a residential subdivision is considered approved when the developer has received all applicable land use permits for the subdivision and the time for beginning construction under such permits has not expired.

(17)QUANTIFIABLE NOISE STANDARD: A numerical limit governing noise from developments that has been duly enacted by ordinance by a local municipality.

(18)ROUTINE OPERATION: Regular and recurrent operation of regulated sound sources associated with the purpose of the development and operating on the development site.

(19)SHORT DURATION REPETITIVE SOUNDS: A sequence of repetitive sounds which occur more than once within an hour, each clearly discernible as an event and causing an increase in the sound level of at least 6 dBA on the fast meter response above the sound level observed immediately before and after the event, each typically less than ten seconds in duration, and which are inherent to the process or operation of the development and are foreseeable.

- (20)SOUND COMPONENT: The measurable sound from an audibly identifiable source or group of sources.
- (21)SOUND LEVEL: Ten times the common logarithm of the square of the ratio of the frequency-weighted and time-exponentially averaged sound pressure to the reference sound of 20 micropascals. For the purpose of this regulation, sound level measurements are obtained using the A-weighted frequency response and fast dynamic response of the measuring system, unless otherwise noted.
- (22)SOUND PRESSURE: Root-mean-square of the instantaneous sound pressures in a stated frequency band and during a specified time interval. Unit: pascal (Pa).
- (23)SOUND PRESSURE LEVEL: Ten times the common logarithm of the square of the ratio of the sound pressure to the reference sound pressure of 20 micropascals.
- (24)TONAL SOUND: for the purpose of this regulation, a tonal sound exists if, at a protected location, the one-third octave band sound pressure level in the band containing the tonal sound exceeds the arithmetic average of the sound pressure levels of the two contiguous one-third octave bands by 5 dB for center frequencies at or between 500 Hz and 10,000 Hz, by 8 dB for center frequencies at or between 160 and 400 Hz, and by 15 dB for center frequencies at or between 25 Hz and 125 Hz.

Additional acoustical terms used in work associated with this regulation shall be used in accordance with the following American National Standards Institute (ANSI) standards:

ANSI S12.9-1988 - American National Standard Quantities and Procedures for Description and Measurements of Environmental Sound, Part 1;

ANSI S3.20-1973 - American National Standard Psychoacoustical Terminology;

ANSI S1.1-1960 - American National Standard Acoustical Terminology.

H. Measurement Procedures

- (1) Scope. These procedures specify measurement criteria and methodology for use, with applications, compliance testing and enforcement. They provide methods for measuring the ambient sound and the sound from routine operation of the development, and define the information to be reported. The same methods shall be used for measuring the sound of construction, maintenance and production blasting activities. For measurement of the sound of production blasting activities for comparison with the limits of subsection C(4)(c), these same methods shall be used with the substitution of the linear sound level for the A-weighted sound level.

(2) Measurement Criteria

2.1 Measurement Personnel

Measurements shall be supervised by personnel who are well qualified by training and experience in measurement and evaluation of environmental sound, or by personnel trained to operate under a specific measurement plan approved by the Board or Commissioner.

2.2 Measurement Instrumentation

- (a) A sound level meter or alternative sound level measurement system used shall meet all of the Type 1 or 2 performance requirements of American National Standard Specifications for Sound Level Meters, ANSI S1.4-1983.
- (b) An integrating sound level meter (or measurement system) shall also meet the Type 1 or 2 performance requirements for integrating/averaging in the International Electrotechnical Commission Standard on Integrating-Averaging Sound Level Meters, IEC Publication 804 (1985).
- (c) A filter for determining the existence of tonal sounds shall meet all the requirements of American National Standard Specification for Octave-Band and Fractional Octave-Band Analog and Digital Filters, ANSI S1.11-1986 for Order 3, Type 3-D performance.
- (d) An acoustical calibrator shall be used of a type recommended by the manufacturer of the sound level meter and that meets the requirements of American National Standard Specification for Acoustical Calibrators, ANSI S1.40-1984.
- (e) A microphone windscreen shall be used of a type recommended by the manufacturer of the sound level meter.

2.3 Calibration

- (a) The sound level meter shall have been calibrated by a laboratory within 12 months of the measurement, and the microphone's response shall be traceable to the National Bureau of Standards.
- (b) Field calibrations shall be recorded before and after each measurement period and at shorter intervals if recommended by the manufacturer.

2.4 Measurement Location, Configuration and Environment

- (a) Except as noted in subsection (b) below, measurement locations shall be at nearby protected locations that are most likely affected by the sound from routine operation of the development.
- (b) For determining compliance with the 75 dBA property line hourly sound level limit described in subsection C(I)(a)(i), measurement locations shall be selected at the property lines of the proposed development or contiguous property owned by the developer, as appropriate.
- (c) The microphone shall be positioned at a height of approximately 4 to 5 feet above the ground, and oriented in accordance with the manufacturer's recommendations.
- (d) Measurement locations should be selected so that no vertical reflective surface exceeding the microphone height is located within 30 feet. When this is not possible, the measurement location may be closer than 30 feet to the reflective surface, but under no circumstances shall it be closer than 6 feet.

- (e) When possible, measurement locations should be at least 50 feet from any regulated sound source on the development.
- (f) Measurement periods shall be avoided when the local wind speed exceeds 12 mph and/or precipitation would affect the measurement results.

2.5 Measurement Plans. Plans for measurement of pre-development ambient sound or post-development sound may be discussed with the Department staff.

(3) Measurement of Ambient Sound

3.1 Pre-Development Ambient Sound

Measurements of the pre-development ambient sound are required only when the developer elects to establish the sound level limit in accordance with subsections C(1)(b) and C(1)(e)(ii)(d) for a development in an area with high ambient sound levels, such as near highways, airports, or pre-existing developments; or when the developer elects to establish that the daytime and nighttime ambient hourly sound levels at representative protected locations exceed 45 dBA and 35 dBA, respectively.

- (a) Measurements shall be made at representative protected locations for periods of time sufficient to adequately characterize the ambient sound. At a minimum, measurements shall be made on three different weekdays (Monday through Friday) during all hours that the development will operate. If the proposed development will operate on Saturdays and/or Sundays, measurements shall also be made during all hours that the development will operate.
- (b) Measurement periods with particularly high ambient sounds, such as during holiday traffic activity, significant insect activity or high coastline waves, should generally be avoided.
- (c) At any measurement location the daytime and nighttime ambient hourly sound level shall be computed by arithmetically averaging the daytime and nighttime values of the measured one hour equivalent sound levels. Multiple values, if they exist, for any specific hour on any specific day shall first be averaged before the computation described above.

3.2 Post-Development Ambient Sound

- (a) Measurements of the post-development ambient one hour equivalent sound levels and, if short duration repetitive sounds are produced by the development, the maximum sound levels made at nearby protected locations and during representative routine operation of the development that are not greater than the applicable limits of subsection C clearly indicate compliance with those limits.
- (b) Compliance with the limits of subsection C(1)(b) may also be demonstrated by showing that the post-development ambient hourly sound level, measured in accordance with the procedures of subsection 3.1 above during routine operation of the development, does not exceed the pre-development ambient hourly sound level by more than one decibel,

and that the sound from routine operation of the development is not characterized by either tonal sounds or short duration repetitive sounds.

- (c) Compliance with the limits of subsection C(1)(e)(ii)(d) may also be demonstrated by showing that the post development maximum sound level of any short duration repetitive sound, measured in accordance with the procedures of subsection 3.1 above, during routine operation of the development, does not exceed the pre-development ambient hourly sound level by more than five decibels.
 - (d) If any of the conditions in (a), (b) or (c) above are not met, compliance with respect to the applicable limits must be determined by measuring the sound from routine operation of the development in accordance with the procedures described in subsection 4.
- (4) Measurement of the Sound from Routine Operation of Developments.

4.1 General

- (a) Measurements of the sound from routine operation of developments are generally necessary only for specific compliance testing purposes in the event that community complaints result from operation of the development, for validation of an applicant's calculated sound levels when requested by the Board or Commissioner, for determination of existing hourly sound levels for an existing development or for enforcement by the Department.
- (b) Measurements shall be obtained during representative weather conditions when the development sound is most clearly noticeable. Preferable weather conditions for sound measurements at distances greater than about 500 feet from the sound source include overcast days when the measurement location is downwind of the development and inversion periods (which most commonly occur at night).
- (c) Measurements of the development sound shall be made so as to exclude the contribution of sound from development equipment that is exempt from this regulation.

4.2 Measurement of the Sound Levels Resulting from Routine Operation of the Development.

- (a) When the ambient sound levels are greater than the sound level limits, additional measurements can be used to determine the hourly sound level that results from routine operation of the development. These additional measurements may include diagnostic measurements such as measurements made close to the development and extrapolated to the protected location, special checkmark measurement techniques that include the separate identification of audible sound sources, or the use of sound level meters with pause capabilities that allow the operator to exclude non-development sounds.
- (b) For the purposes of computing the hourly sound level resulting from routine operation of the development, sample diagnostic measurements may be made to obtain the one hour equivalent sound levels for each sound component.
- (c) Identification of tonal sounds produced by the routine operation of a development for the purpose of adding the 5 dBA penalty in accordance with subsection C(1)(d) requires

aural perception by the measurer, followed by use of one-third octave band spectrum analysis instrumentation. If one or more of the sounds of routine operation of the development are found to be tonal sounds, the hourly sound level component for tonal sounds shall be computed by adding 5 dBA to the one hour equivalent sound level for those sounds.

- (d) Identification of short duration repetitive sounds produced by routine operation of a development requires careful observations. For the sound to be classified as short duration repetitive sound, the source(s) must be inherent to the process or operation of the development and not the result of an unforeseeable occurrence. If one or more of the sounds of routine operation of the development are found to be short duration repetitive sounds, the hourly sound level component for short duration repetitive sounds shall be computed by adding 5 dBA to the one hour equivalent sound level for those sounds. If required, the maximum sound levels of short duration repetitive sounds shall be measured using the fast response $[L_{AFmax}]$. The duration and the frequency of occurrence of the events shall also be measured. In some cases, the sound exposure levels of the events may be measured. The one hour equivalent sound level of a short duration repetitive sound may be determined from measurements of the maximum sound level during the events, the duration and frequency of occurrence of the events, and their sound exposure levels.
 - (e) The daytime or nighttime hourly sound level resulting from routine operation of a development is the energy sum of the hourly sound level components from the development, including appropriate penalties, (see (c) and (d) above). If the energy sum does not exceed the appropriate daytime or nighttime sound level limit, then the development is in compliance with that sound level limit at that protected location.
- (5) Reporting Sound Measurement Data. The sound measurement data report should include the following:
- (a) The dates, days of the week and hours of the day when measurements were made.
 - (b) The wind direction and speed, temperature, humidity and sky condition.
 - (c) Identification of all measurement equipment by make, model and serial number.
 - (d) The most recent dates of laboratory calibration of sound level measuring equipment.
 - (e) The dates, times and results of all field calibrations during the measurements.
 - (f) The applicable sound level limits, together with the appropriate hourly sound levels and the measurement data from which they were computed, including data relevant to either tonal or short duration repetitive sounds.
 - (g) A sketch of the site, not necessarily to scale, orienting the development, the measurement locations, topographic features and relevant distances, and containing sufficient information for another investigator to repeat the measurements under similar conditions.
 - (h) A description of the sound from the development and the existing environment by character and location.

- (1) Structures within the proposed development will not block access to direct sunlight to structures utilizing solar energy through active or passive systems.

C. Terms and Conditions. The Board may, as a term or condition of approval, establish any reasonable requirement to ensure that a proposed development will not block access to direct sunlight.

→ **14. No Unreasonable Effect on Scenic Character**

A. Preamble. The Board considers scenic character to be one of Maine's most important assets. The Board also feels that visual surroundings strongly influence people's behavior.

B. Scope of Review. In determining whether the proposed development will have an unreasonable adverse effect on the scenic character of the surrounding area, the Board shall consider all relevant evidence to that effect, such as evidence that:

- (1) The design of the proposed development takes into account the scenic character of the surrounding area.
- (2) A development which is not in keeping with the surrounding scenic character will be located, designed and landscaped to minimize its visual impact to the fullest extent possible.
- (3) Structures will be designed and landscaped to minimize their visual impact on the surrounding area.

NOTE: The following are GUIDELINES for the landscaping of parking lots, which are structures pursuant to 38 M.R.S.A. Section 482(6) (B).

- (a) Lighting will be shielded from adjacent highways and residential areas.
- (b) Curbed planting strips will be utilized in parking areas of 2 acres or more. Planting strips will be a minimum of ten (10) feet wide and spaced between every second double bay parking aisle or 200 feet, whichever is less.
- (c) When the parking lots are adjacent to a residential use, landscaping and/or architectural screens will be utilized to provide an effective perimeter separation area between property lines and the edge of the pavement and/or structures. There will be a minimum setback of fifteen (15) feet from the property line. The Board may require a similar provision when the parking lot is adjacent to other land uses.
- (d) Planting and maintenance program specifications will be developed to provide the earliest establishment of landscape materials and their maintenance.
- (e) Planting specifications:
 - (i) Shrubs will be planted with a 24" minimum size for those specified by spread.
 - (ii) Shrubs will be planted with a 36" minimum size for those specified by height.

- (iii) Shade trees will be highcrowned species with ascending or lateral branching habit indigenous to the area, tolerant to existing soils and urbanized conditions, two-inch minimum caliper measured six inches up from the base, and planted a maximum of 30' on center.
 - (iv) Flowering and evergreen trees will be a minimum of 7' tall and planted a maximum of 20' on center.
 - (v) Selections for ground cover will reflect the project's function, expected foot traffic, exposure, and maintenance program.
 - (f) Provisions will be made to supply water to planted islands and other vegetated areas.
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- (4) The plans for the proposed development provide for the preservation of existing elements of the development site which contribute to the maintenance of scenic character.

C. Submissions. Applications for approval of proposed developments shall include evidence that affirmatively demonstrates that there will be no unreasonable adverse effect on the scenic character of the surrounding area, including information such as the following, when appropriate:

- (1) Sketches of the proposed development indicating how the development fits into the scenic character of the area.
- (2) Landscaping plans for minimizing the visual impact of the parking lots, mining operations and other types of developments.

D. Terms and Conditions. The Board may, as a term or condition of approval, establish any reasonable requirement to ensure that the proposed development will have no unreasonable adverse effect on scenic character, such as requiring that:

- (1) Illumination of the development be limited.
- (2) Vegetative or architectural screens be established.

→ 15. Protection of Wildlife and Fisheries

A. Preamble. The Board recognizes the need to protect wildlife and fisheries by maintaining suitable and sufficient habitat and the susceptibility of certain species to disruption and interference of lifecycles by construction activities.

B. Scope of Review. In determining whether the developer has made adequate provision for the protection of wildlife and fisheries, the Board shall consider all relevant evidence to that effect, such as evidence that:

- (1) A buffer strip of sufficient area will be established to provide wildlife with travel lanes between areas of available habitat.

(2) Proposed alterations and activities will not adversely affect wildlife and fisheries lifecycles.

(3) There will be no unreasonable disturbance to:

(a) High and moderate value deer wintering areas;

(b) Habitat of any species declared threatened or endangered by the Commissioner, Maine Department of Inland Fisheries and Wildlife or the Director of the U.S. Fish and Wildlife Service;

(c) Seabird nesting islands;

(d) Significant vernal pools;

(e) High and moderate value waterfowl and wading bird habitat; and

(f) Shorebird nesting, feeding, and staging areas.

C. Submissions. Applications for approval of proposed developments shall include evidence that affirmatively demonstrates that the developer has made adequate provision for the protection of wildlife and fisheries, including information such as the following, when appropriate:

(1) The location of natural buffer strips and adequate provision for their maintenance.

(2) Plans to mitigate adverse effects on wildlife and fisheries through means that at a minimum include, but are not limited to, design considerations, pollution-abatement practices, the timing of construction activities, and on-site or off-site habitat improvements or preservation.

D. Terms and Conditions. The Board may, as a term or condition of approval, establish any reasonable requirement to ensure that a developer has made adequate provision for the protection of wildlife and fisheries.

After public notice and public hearings held on June 14 and 15, 1979, the above regulations are hereby adopted this 8th day of August, 1979.

AUTHORITY: 38 M.R.S.A., Section 343

EFFECTIVE DATE: November 1, 1979
Section 10 Amended: November 21, 1989
Section 9 Amended: June 12, 1991
Section 9 Amended: September 22, 2001
Section 15 Amended: January 18, 2006

BASIS STATEMENT

These regulations are intended to explain and clarify the meaning of the No Adverse Environmental Effect Standard of the Site Location Law (38 M.R.S.A., Section 484(3)) and to set out the duties, powers,