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STATE OF MAINE

BUREAU OF ENVIRONMENTAL PROTECTION

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**IN RE: PUBLIC HEARING ON CHAPTER 373 FINANCIAL CAPACITY  
STANDARD OF THE SITE LOCATION LAW; CHAPTER 375 NO ADVERSE  
ENVIRONMENTAL EFFECT STANDARD OF THE SITE LOCATION LAW;  
CHAPTER 380 PLANNING PERMIT/LONG-TERM CONSTRUCTION PROJECTS**

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October 15, 2015

Augusta Civic Center  
Augusta, Maine

**CHAIRMAN JAMES PARKER**

**BOARD MEMBERS:**

Mark Draper  
Thomas Dobbins  
Alvin Ahlers  
Thomas Eastler

**STAFF:**

Mark Bergeron, Director, Bureau of Land Quality

**OTHERS PRESENT:**

Avery Day, Acting Commissioner  
Peggy A. Bensinger, Assistant Attorney General  
Cynthia Bertocci, BEP Executive Analyzer  
Ruth Ann Burke, BEP Clerk and Administrative Assistant

Deborah M. Bruns, CSR  
Alley & Morrisette Reporting Service  
1203 Augusta Road  
Bangor, ME 04917  
(207) 495-3900

1 Thursday, October 15, 2015 - 9:00 a.m.

2 P R O C E E D I N G S

3 CHAIRMAN PARKER: Good morning, my name is James  
4 Parker. I Chair the Board of Environmental Protection.  
5 We're holding a major substantial rulemaking hearing  
6 today on the Department's proposed changes to Chapter 373  
7 Financial Capacity Standard of the Site Location Law; the  
8 Chapter 375 No Adverse Environmental Effect Standard of  
9 the Site Location Law; and Chapter 380 Planning Permit  
10 rule which is proposed to be repealed and replaced by a  
11 new Chapter 380 Long-Term Construction Projects rule.

12 I'll be the presiding officer for today's  
13 hearing, and the other Board members that are present  
14 are, to my right, Mark Draper, Tom Dobbins, Alvin Ahlers,  
15 Tom Eastler, and that makes up the whole board.

16 Present at this public hearing is -- present at  
17 this public hearing as subject matter expert on the DEP's  
18 behalf is Mark Bergeron. Mr. Bergeron is the Director of  
19 the Bureau of Land Resources. Mr. Bergeron will briefly  
20 describe the three proposals at the conclusion of my  
21 opening remarks.

22 A written transcript of the hearing will be  
23 prepared, and the proceedings is being recorded for that  
24 purpose by Debbie Bruns of Alley & Morrisette Reporting  
25 Service of Augusta.

1           The hearing is being conducted in accordance with  
2           the rulemaking requirements of the Maine Administrative  
3           Procedures Act, Title 5, Maine Revised Statutes  
4           Annotated, Sections 8051 and 8074.

5           This is a major substantive rulemaking. Rules  
6           regarding the standards of the Site Location of  
7           Development Law are major substantive rules as defined in  
8           Title 5, Chapter 375, subchapter 2-A.

9           Notice of today's hearing was published on  
10          September 23rd, 2015 in the *Bangor Daily News*, the  
11          *Kennebec Journal*, *Lewiston Daily Sun*, *Waterville Morning*  
12          *Sentinel* and the *Portland Press Herald*. Notice also was  
13          sent to each person who previously had filed a written or  
14          electronic request for notice of DEP rulemaking.

15          Copies of the proposed rules and sign-in sheets  
16          are on the table to my left. If you plan to speak, and  
17          if you have not already done so, please sign in now on  
18          the appropriate sheet. There are separate sheets for  
19          those -- those supporting the proposed amendments, those  
20          opposed, and those testifying neither for nor against the  
21          amendment.

22          Following my opening statement, department staff  
23          will make a presentation. We will then hear testimony  
24          from the general public, beginning with proponents, then  
25          opponents, and then persons neither for nor against.

1 Oral testimony today can be followed up with written  
2 comments by the deadline, which I'll give you just below  
3 here.

4 To assist in recording of the testimony, I ask  
5 persons testifying to come to the microphone at the front  
6 table. When you're called forward, please state your  
7 name, address and the name of any organization you  
8 represent.

9 Speakers are asked to remain at the microphone  
10 for questions, if any, following their presentation. I  
11 will invite questions from the Board and then staff.

12 Written comments on the proposed rule amendments  
13 may be submitted at today's hearing or following the  
14 hearing until 5:00 p.m., Monday, October 26, 2015. All  
15 written comments or testimony submitted subsequent to the  
16 hearing should be addressed to Mark Margerum at the DEP,  
17 17 State House Station, Augusta, Maine.

18 Based on today's testimony and written comments  
19 submitted before the October 26th comment deadline, DEP  
20 staff will prepare a recommendation for consideration by  
21 the Board at a future meeting to be announced.

22 Copies of the staff recommendations will be  
23 available upon request before the rule is presented to  
24 the Board for decision. If you wish to receive a copy,  
25 please contact Mark Margerum.

1           At this time I'll ask all persons intending to  
2 testify to stand and be sworn in. Who do we have that's  
3 going to testify?

4           (No response)

5           CHAIRMAN PARKER: Thank you. Are there any  
6 questions on the procedures that I've outlined?

7           If not, Mark Bergeron.

8           MR. BERGERON: Good morning, Chairman Parker,  
9 Members of the Board. My name is Mark Bergeron. I'm the  
10 Director of the Bureau of Land Resources --

11          CHAIRMAN PARKER: Was that me?

12          MS. BERTOCCI: I think this microphone is super  
13 sensitive.

14          (Off-the-record discussion)

15          MR. BERGERON: -- at the Maine Department of  
16 Environmental Protection.

17                 Before us this morning we have three rule changes  
18 to the Site Location of Development Law, Chapters 373,  
19 375 and 380. In Chapter 373, that establishes the  
20 financial capacity and technical ability standards for  
21 projects under the Site Location of Development Law or  
22 Site Law.

23                 We are proposing to update the requirements for  
24 financial capacity and technical ability to reflect  
25 changes in nomenclature and department practices since

1 the rule was adopted in 1979, remove surplus language and  
2 provide greater clarity as to how an applicant may  
3 satisfy the requirements of this Chapter.

4 The department is also proposing to relocate  
5 sections currently in Chapter 373 addressing  
6 environmental matters from the existing Chapter 373 to  
7 Chapter 375, which deals with environmental standards  
8 under the Site Location Law. So, again, under Chapter  
9 375 we're not making any other changes other than  
10 relocating those three sections that were in 373. Those  
11 three sections are solid waste, the control of odors and  
12 the procurement and maintenance of sufficient and  
13 healthful water supplies.

14 Chapter 380 is proposed to be a repeal and  
15 replace of the existing Chapter 380, which is a planning  
16 permit rule, with a new rule describing requirements  
17 associated with long-term construction projects permitted  
18 under the Site Law. The proposal also provides a process  
19 for a development issued a planning permit under the  
20 original Chapter 380 rule to receive approval under the  
21 new Chapter 380 long-term construction projects rule.

22 And as noted before, these proposals are major  
23 substantive rulemaking proceedings before the Board.

24 I'm happy to take any questions the Board may  
25 have.

1 CHAIRMAN PARKER: Thank you, Mark.

2 Any questions from the Board?

3 MR. AHLERS: I have --

4 CHAIRMAN PARKER: Excuse me. First of all, is there  
5 anyone -- still no one to testify?

6 Now questions from the Board.

7 MR. AHLERS: Yeah, I have one question.

8 MS. BERTOCCI: You need to use the --

9 MR. AHLERS: Thank you. I have one question with  
10 regard to -- I guess it's both the 373 and 375. There's  
11 a -- in 373 the reference to the Board is crossed out, in  
12 375 it seems like the Board is -- this is the  
13 responsibility of the Board, so help me understand what  
14 the -- what the difference is and why that is. It would  
15 seem to me that the department would take responsibility  
16 for both of these, but maybe I'm missing something.

17 MR. BERGERON: And I may defer some of the -- the  
18 legal piece of it to Peggy, but my understanding for the  
19 changes that we've made to the rule under Chapter 373,  
20 because we were making some changes to that, we went  
21 through and changed Board to department, but under  
22 Chapter 375, because all we're doing was moving sections,  
23 we didn't go through and make lots of other little, you  
24 know, housekeeping type changes to 375. I believe the  
25 process and the legality of everything is still -- is

1 still okay between 373 and 375.

2 MS. BENSINGER: Could I address that? Yeah, it  
3 looks like the portions that were updated and amended,  
4 they changed from Board to department, but it would be  
5 easy enough to make that change universal in 375 and just  
6 make it all department because the Board is a part of the  
7 department, as you know, so for consistency's sake that's  
8 not a bad suggestion to make it consistent since you're  
9 already in 375, but that's -- that's something that they  
10 could take into consideration. That's a good question.

11 MR. BERGERON: Sure. Yeah, one of the concerns we  
12 had is Chapter 375 covers a lot of the environmental  
13 effect standards, you know, no adverse effect on wildlife  
14 and scenic and those sort of things, so I know there's  
15 some concern in the regulative community that if we start  
16 making changes to that -- what's changing, what's not  
17 changing, how come you're changing it, so that's why we  
18 wanted to limit our changes to just what we needed.

19 But I think your point, Mr. Ahlers, is a good  
20 point, changing Board to department, we can take a look  
21 at that.

22 MR. AHLERS: (Nods head.)

23 CHAIRMAN PARKER: I think his problem is it could be  
24 confusing if the two chapters were set beside each other.  
25 If you find department in one, does the Board or

1 department deal with it.

2 MR. BERGERON: Sure.

3 CHAIRMAN PARKER: I'd recommend you do that.

4 MR. BERGERON: Okay.

5 MS. BERTOCCI: Mark, I have a question. On page 165  
6 of the packet, which is on Chapter 375, Section 16,  
7 Adequate Provision for Solid Waste Disposal, and this is,  
8 I guess, just a general inquiry. I'm wondering if the  
9 term "disposal" is the term that you continue to prefer  
10 as opposed to management, because some types of waste may  
11 not be, as they do this, you know, being disposed of.  
12 They may be proposing them for beneficial reuse or  
13 something else. So I think it's really just your call as  
14 what you intend here, but I was just noticing the header,  
15 and that historically is the term that's been used, but  
16 it also appears in the standards in A and in B under  
17 submissions, you know, so it's all proposed methods of  
18 disposal, and I didn't know whether proposed methods of  
19 solid waste management is something that you would want  
20 them to sort of explain to you if you're proposing to use  
21 some of these materials.

22 A lot of it may be just disposal, but depending  
23 upon the nature of the proposed project, they may be  
24 suggesting something other than disposal, so you might  
25 just want to think about that as you consider the rule.

1 MR. BERGERON: Okay, yeah, we can take a look at  
2 that to see if -- if -- if that would make any changes  
3 but, yeah, we can take a look at that.

4 CHAIRMAN PARKER: Any other comments from the Board?  
5 Being none, I notice we have one late arrival. I'm not  
6 sure, Mark, were you intending to testify? I mean Nick.  
7 I would give you the opportunity if you want.

8 UNIDENTIFIED PERSON: (Shakes head.)

9 CHAIRMAN PARKER: If there's no other from the  
10 Board, I think that concludes the public hearing.

11 MR. BERGERON: Thank you.

12 CHAIRMAN PARKER: Thank you, Mark.

13 Thank you.

14 (Proceedings concluded at 9:14 a.m.)

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## C E R T I F I C A T E

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I, Deborah M. Bruns, CSR, Notary Public in and for  
the State of Maine, hereby certify that on the 15th day of  
October, 2015, the foregoing public hearing was held at the  
Augusta Civic Center, Augusta, Maine, in re: BEP PUBLIC  
HEARING ON RULE CHANGES.

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I further testify that this hearing was  
stenographically reported by me personally and later reduced  
to computerized transcription, and that the foregoing is a  
full and true record of the hearing.

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I further certify that I am a disinterested person  
in the event or outcome of the above-named cause of action.

IN WITNESS WHEREOF, I subscribe my hand and affix my  
seal this 27th day of October, 2015.

*Deborah M Bruns*

DEBORAH M. BRUNS, CSR,  
NOTARY PUBLIC

My commission expires:  
January 25, 2020

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