

§ 481. Findings and purpose

The Legislature finds that the economic and social well-being of the citizens of the State of Maine depends upon the location of state, municipal, quasi-municipal, educational, charitable, commercial and industrial developments with respect to the natural environment of the State; that many developments because of their size and nature are capable of causing irreparable damage to the people and the environment on the development sites and in their surroundings; that the location of such developments is too important to be left only to the determination of the owners of such developments; and that discretion must be vested in state authority to regulate the location of developments which may substantially affect the environment and quality of life in Maine.

The Legislature further finds that certain geological formations particularly sand and gravel deposits, contain large amounts of high quality ground water. The ground water in these formations is an important public and private resource, for drinking water supplies and other industrial, commercial and agricultural uses. The ground water in these formations is particularly susceptible to injury from pollutants, and once polluted, may not recover for hundreds of years. It is the intent of the Legislature, that activities that discharge or may discharge pollutants to ground water may not be located on these formations.

The purpose of this subchapter is to provide a flexible and practical means by which the State, acting through the department, in consultation with appropriate state agencies, may exercise the police power of the State to control the location of those developments substantially affecting local environment in order to insure that such developments will be located in a manner which will have a minimal adverse impact on the natural environment within the development sites and of their surroundings and protect the health, safety and general welfare of the people.

The Legislature further finds that noise generated at development sites has primarily a geographically restricted and frequently transient impact that is best regulated at the municipal level pursuant to a municipality's economic development and land use plans. It is the intent of the Legislature that regulation of noise from developments be primarily the responsibility of local municipal governments.

§ 482. Definitions

As used in this article, unless the context otherwise indicates, the following terms have the following meanings.

1. Board. Repealed. Laws 1989, c. 890, § 85.

1-A. Borrow pit. "Borrow pit" means a mining operation undertaken primarily to extract and remove sand, fill or gravel. "Borrow pit" does not include any mining operation undertaken primarily to extract or remove rock or clay.

2.¹ Development of state or regional significance that may substantially affect the environment. "Development of state or regional significance that may substantially affect the environment," in this article also called "development," means any federal, state, municipal, quasi-municipal, educational, charitable, residential, commercial or industrial development that:

A Occupies a land or water area in excess of 20 acres;

B. Is a metallic mineral mining or advanced exploration activity as defined in this section or an oil or

¹ Subsection 2 was repealed and replaced effective September 19, 1997.

Additional information. The "hazardous activity", "conversion", and "multi-unit housing" thresholds were repealed by Laws 1993, c.383, § 3 (effective October 13, 1993).

Also, PL1997, ch 502 (effective September 19, 1997) included the following unallocated law provision:

"Sec. 15 Applicability of Site Law to existing oil terminal facilities. An oil terminal facility that is in existence on June 30, 1997 does not require review under the site location of development laws on or after that date unless it is or becomes a structure as defined in the Maine Revised Statutes, Title 38, section 482, subsection 6."

gas exploration or production activity that includes drilling or excavation under water;

C. Is a structure as defined in this section;

D. Is a subdivision as defined in this section; or

E. Repealed. Laws 1999, c. 468, § 7 (effective June 30, 1999).

F. Is an oil terminal facility as defined in this section.

F. Repealed. Laws 1993, c. 680, Pt. C, § 7.

G. Repealed. Laws 1993, c. 680, Pt. C, § 7.

H. Repealed. Laws 1993, c. 680, Pt. C, § 7.

I. Repealed. Laws 1993, c. 502, § 5.

2-A. Exploration. Repealed. Laws 1993, c. 383, § 4.

2-B. Metallic mineral mining or advanced exploration activity. "Metallic mineral mining or advanced exploration activity," in this article also called "mining," means an activity or process necessary for the extraction or removal of metallic minerals or overburden or for the preparation, washing, cleaning or other treatment of metallic minerals and includes the bulk sampling, extraction or beneficiation of metallic minerals, not including test sampling methods conducted in accordance with rules adopted by the department such as test boring, test drilling, hand sampling and digging of test pits with a limited maximum surface opening or methods determined by the department to cause minimal disturbance of soil or vegetative cover

A. Repealed. Laws 1995, c. 700, § 4.

B. Repealed. Laws 1995, c. 700, § 4.

C. Repealed. Laws 1995, c. 700, § 4.

2-C. Hazardous activity. Repealed. Laws 1993, c. 383, § 6.

2-D. Multi-unit housing. Repealed. Laws 1993, c. 383, § 7.

2-E. Coastal wetlands. "Coastal wetlands" has the same meaning as in section 480-B, subsection 2.²

2-F. Freshwater wetlands. "Freshwater wetlands" has the same meaning as in section 480-B, subsection 4.³

A to C. Deleted. Laws 1993, c. 383, § 9.

3. Natural environment of a locality. Repealed. Laws 1993, c. 383, § 10.

3-A. Overburden. "Overburden" means earth and other materials naturally lying over the product to be mined.

3-B. Normal high-water line. "Normal high-water line" has the same meaning as in section 480-B,

² Title 38 M. R. S. A. § 480-B defines "coastal wetlands" as "all tidal and subtidal lands; all areas with vegetation present that is tolerant of salt water and occurs primarily in a salt water or estuarine habitat; and any swamp, marsh, bog, beach, flat, or other contiguous lowland that is subject to tidal action during the highest tide level for the year in which an activity is proposed as identified in tide tables published by the National Ocean Service. Coastal wetlands may include portions of coastal sand dunes."

³ Title 38 M.R.S.A. § 480-B(4) defines "freshwater wetlands" as freshwater swamps, marshes, bogs and similar areas which are:

B. Inundated or saturated by surface or ground water at a frequency and for a duration sufficient to support, and which under normal circumstances do support, a prevalence of wetland vegetation typically adapted for life in saturated soils; and

C. Not considered part of a great pond, coastal wetland, river, stream or brook."

subsection 6.⁴

3-C. Passenger car equivalents at peak hour. Repealed. Laws 1999, c. 468, § 8.

3-D. Oil terminal facility. "Oil terminal facility" means a facility and related appurtenances located in, on, over or under the surface of any land or water that is used or capable of being used to transfer, process, refine or store oil as defined in section 542, subsection 6. "Oil terminal facility" does not include:

- A. A facility used or capable of being used to store less than 1,500 barrels or 63,000 gallons of oil;
- B. A facility not engaged in the transfer of oil to or from the waters of the State; or
- C. A facility consisting only of a vessel or vessels as defined in section 542, subsection 11.

4. Person. "Person" means any person, firm, association, partnership, corporation, municipal or other local governmental entity, quasi-municipal entity, state agency, federal agency, educational or charitable organization or institution or other legal entity.

4-A. Product. Repealed. Laws 1995, c. 700, § 5.

4-B. Reclamation. "Reclamation" means the rehabilitation of the area of land affected by mining under a plan approved by the department, including, but not limited to, the stabilization of slopes and creation of safety benches, the planting of forests, the seeding of grasses and legumes for grazing purposes, the planting of crops for harvest and the enhancement of wildlife and aquatic resources, but not including the filling in of pits and the filling or sealing of shafts and underground workings with solid materials unless necessary for protection of ground water or safety.

4-C. Primary sand and gravel recharge areas. Repealed. Laws 1993, c. 383, § 14.

4-D. Significant ground water aquifer. "Significant ground water aquifer" means a porous formation of ice-contact and glacial outwash sand and gravel or fractured bedrock that contains significant recoverable quantities of water which is likely to provide drinking water supplies.

4-E. River, stream or brook. "River, stream or brook" has the same meaning as in section 480-B, subsection 9.⁵

4-F. Shoreland zone. "Shoreland zone" has the same meaning as "shoreland areas" in section 435.⁶

⁴ Title 38 M.R.S.A. § 480-B(6) defines "normal high water line" as "that line along the shore of a great pond, river, stream, brook or other nontidal body of water which is apparent from visible markings, changes in the character of soils due to prolonged action of the water or from changes in vegetation and which distinguishes between predominantly aquatic and predominately terrestrial land. In the case of great ponds, all land below the normal high water line shall be considered the bottom of the great pond for the purposes of this article."

⁵ Title 38 M.R.S.A. § 480—B(9) defines "river, stream or brook" as: a channel between defined banks. A channel is created by the action of surface water and has 2 or more of the following characteristics.

- A. It is depicted as a solid or broken blue line on the most recent edition of the U.S. Geological Survey 7.5-minute series topographic map or, if that is not available, a 15-minute series topographic map.
- B. It contains or is known to contain flowing waters continuously for a period of at least 3 months of the year in most years.
- C. The channel bed is primarily composed of mineral material such as sand and gravel, parent material or bedrock that has been deposited or scoured by water.
- D. The channel contains aquatic animals such as fish, aquatic insects or mollusks in the water or, if no surface water is present, within the stream bed.
- E. The channel contains aquatic vegetation and is essentially devoid of upland vegetation.

"River, stream or brook" does not mean a ditch or other drainage way constructed, or constructed and maintained, solely for the purpose of draining storm water or a grassy swale.

⁶ Title 38 M.R.S.A. § 435 (in part) defines "shoreland areas" as including those areas within 250 feet of the normal high water line of any great pond, river or saltwater body, within 250 feet of the upland edge of a coastal wetland, within 250 feet of the

Terms used within this definition have the same meanings as in section 436-A.

5. Subdivision. A "subdivision" is the division of a parcel of land into 5 or more lots to be offered for sale or lease to the general public during any 5-year period, if the aggregate land area includes more than 20 acres; except that when all lots are for single-family, detached, residential housing, common areas or open space a "subdivision" is the division of a parcel of land into 15 or more lots to be offered for sale or lease to the general public within any 5-year period, if the aggregate land area includes more than 30 acres. The aggregate land area includes lots to be offered together with the roads, common areas, easement areas and all portions of the parcel of land in which rights or interests, whether express or implied, are to be offered. This definition of "subdivision" is subject to the following exceptions:

A. Repealed. Laws 1989, c. 769, § 2.

B. Repealed. Laws 1989, c. 769, § 3.

C. Lots of 40 or more acres but not more than 500 acres may not be counted as lots except where:

(1) The proposed subdivision is located wholly or partly within the shoreland zone;

C-1. Lots of more than 500 acres in size may not be counted as lots;

D. Five years after a subdivider establishes a single-family residence for that subdivider's own use on a parcel and actually uses all or part of the parcel for that purpose during that period, a lot containing that residence may not be counted as a lot;

E. Unless intended to circumvent this article, the following transactions may not be considered lots offered for sale or lease to the general public:

(1) Sale or lease of lots to an abutting owner or to a spouse, child, parent, grandparent or sibling of the developer if those lots are not further divided or transferred to a person not so related to the developer within a 5-year period, except as provided in this subsection;

(2) Personal, nonprofit transactions, such as the transfer of lots by gift, if those lots are not further divided or transferred within a 5-year period or the transfer of lots by devise or inheritance; or

(3) Grant of a bona fide security interest in the whole lot or subsequent transfer of the whole lot by the original holder of the bona fide security interest or that person's successor in interest;

F. In those subdivisions that would otherwise not require site location approval, unless intended to circumvent this article, the following transactions may not, except as provided, be considered lots offered for sale or lease to the general public:

(1) Sale or lease of common lots created with a conservation easement as defined in Title 33, section 476, provided that the department is made a party; and

G. Repealed. Laws 1987, c. 864, § 1.

G-1. Repealed. Laws 1987, c. 864, § 2.

H. The transfer of contiguous land by a permit holder to the owner of a lot within a permitted subdivision is exempt from review under this article, provided that the land was not owned by the permit holder at the time the department approved the subdivision. Further division of the transferred land must be reviewed under this article.

The exception described in paragraph F does not apply, and the subdivision requires site location approval, whenever the use of a lot described in paragraph F changes or the lot is offered for sale or lease to the general public without the limitations set forth in paragraph F. For the purposes of this subsection

upland edge of a freshwater wetland except as otherwise provided in 38 M.R.S.A. § 438-A(2), or within 75 feet of the high-water line of a stream.

only, a parcel of land is defined as all contiguous land in the same ownership provided that lands located on opposite sides of a public or private road are considered each a separate parcel of land unless that road was established by the owner of land on both sides of the road subsequent to January 1, 1970. A lot to be offered for sale or lease to the general public is counted, for purposes of determining jurisdiction, from the time a municipal subdivision plan showing that lot is recorded or the lot is sold or leased, whichever occurs first, until 5 years after that recording, sale or lease.⁷[1997, c. 603, §2 (amd).]

6. Structure. A "structure" means:

A. Deleted. Laws 1993, c. 383, § 18.⁸

B. Buildings, parking lots, roads, paved areas, wharves or areas to be stripped or graded and not to be revegetated that cause a total project to occupy a ground area in excess of 3 acres. Stripped or graded areas that are not revegetated within a calendar year are included in calculating the 3-acre threshold.

7. Storage facility. Repealed. Laws 1995, c. 704, Pt. A, § 6.

§ 482-A. Noise effect. Repealed. Laws 1993, c. 383, § 19.

§ 483. Notification required; board action; administrative appeals. Repealed. Laws 1989, c. 546, § 8 (effective July 10, 1989).

§ 483-A. Prohibition

1. Approval required. A person may not construct or cause to be constructed or operate or cause to be operated or, in the case of a subdivision, sell or lease, offer for sale or lease or cause to be sold or leased any development of state or regional significance that may substantially affect the environment without first having obtained approval for this construction, operation, lease or sale from the department.

2. Compliance with order or permit required. A person having an interest in, or undertaking an activity on, a parcel of land affected by an order or permit issued by the department may not act contrary to that order or permit.

§ 484. Standards for development

The department shall approve a development proposal whenever it finds the following.

1. Financial capacity. The developer has the financial capacity and technical ability to develop the project in a manner consistent with state environmental standards and with the provisions of this article. The commissioner may issue a permit under this article that conditions any site alterations upon a developer providing the commissioner with evidence that the developer has been granted a line of credit

⁷ The last sentence of this paragraph is affected by transition language. It provides that the provision, among others enacted by Laws 1993, ch. 383, does not apply to a development for which a permit was required under the Site Law prior to October 13, 1993. See Laws 1993, ch. 383, § 42. The transition language also provides, in part, that "Unless a subdivision has been proposed or created prior to the effective date of this Act:

- A. A lot that is offered for sale or lease to the general public 5 years or more prior to the effective date of this Act, and still offered on that date, is no longer counted for purposes of determining jurisdiction as of that date;
- B. A lot that is first offered for sale or lease to the general public within 5 years prior to the effective date of this Act, and still offered on that date, is no longer counted for purposes of determining jurisdiction more than 5 years after the date of the first offering;...". Laws 1993, ch. 383, § 42.

The "effective date of this Act" referred to is October 13, 1993.

⁸ Deletion effective October 13, 1993. Deleted paragraph "A" read: "A building or buildings on a single parcel constructed or erected with a fixed location on or in the ground or attached to something on or in the ground which occupies a ground area in excess of 60,000 square feet or contains a total floor area of 100,000 square feet or more; or "... Laws 1993, ch. 383, § 18.

or a loan by a financial institution authorized to do business in this State as defined in Title 9-B, section 131, subsection 17-A or with evidence of any other form of financial assurance the board determines by rule to be adequate.

2. Traffic movement. Repealed. Laws 1999, c. 468, § 9 (effective June 30, 1999).

3. No adverse effect on the natural environment. 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, air quality, water quality or other natural resources in the municipality or in neighboring municipalities.

A. In making a determination under this subsection, the department may consider the effect of noise from a commercial or industrial development. Noise from a residential development approved under this article may not be regulated under this subsection, and noise generated between the hours of 7 a.m. and 7 p.m. or during daylight hours, whichever is longer, by construction of a development approved under this article may not be regulated under this subsection.

B. In determining whether a developer has made adequate provision for the control of noise generated by a commercial or industrial development, the department shall consider board rules relating to noise and the quantifiable noise standards of the municipality in which the development is located and of any municipality that may be affected by the noise.

C. Nothing in this subsection may be construed to prohibit a municipality from adopting noise regulations stricter than those adopted by the board.

D and E. Repealed. Laws 1995, c. 700, § 6.

F. In making a determination under this subsection regarding a structure to facilitate withdrawal of groundwater, the department shall consider the effects of the proposed withdrawal on waters of the State, as defined by section 361-A, subsection 7; water-related natural resources; and existing uses, including, but not limited to, public or private wells, within the anticipated zone of contribution to the withdrawal. In making findings under this paragraph, the department shall consider both the direct effects of the proposed water withdrawal and its effects in combination with existing water withdrawals.

G. In making a determination under this subsection regarding an expedited wind energy development, as defined in Title 35-A, section 3451, subsection 4, the department shall consider the development's effects on scenic character and existing uses related to scenic character in accordance with Title 35-A, section 3452.⁹

4. Soil types. The proposed development will be built on soil types that are suitable to the nature of the undertaking.

4-A. Storm water management and erosion and sedimentation control. The proposed development, other than a metallic mineral or advanced exploration activity, meets the standards for storm water management in section 420-D and the standard for erosion and sedimentation control in section 420-C. A proposed metallic mineral mining or advanced exploration activity must meet storm water standards in department rules adopted to implement subsections 3 and 7. If exempt under section 420-D, subsection 7, a proposed development must satisfy the applicable storm water quantity standard and, if the development is located in the direct watershed of a lake included in the list adopted pursuant to section 420-D, subsection 3, any applicable storm water quality standards adopted pursuant to section 420-D.

5. Ground water. The proposed development will not pose an unreasonable risk that a discharge to

⁹ Section 484(3)(G) is effective April 18, 2008. See PL 2007, ch. 661. The text of Title 35-A, section 3452 is contained in Appendix B of this handout.

a significant ground water aquifer will occur.

6. Infrastructure. The developer has made adequate provision of utilities, including water supplies, sewerage facilities and solid waste disposal, required for the development, and the development will not have an unreasonable adverse effect on the existing or proposed utilities in the municipality or area served by those services.

7. Flooding. The activity will not unreasonably cause or increase the flooding of the alteration area or adjacent properties nor create an unreasonable flood hazard to any structure.

8. Sand supply. Repealed. Laws 1993, c. 383, § 23.¹⁰

9. Blasting. Blasting will be conducted in accordance with the standards in section 490-Z, subsection 14 unless otherwise approved by the department.

10. Special provisions; grid-scale wind energy development.¹¹ In the case of a grid-scale wind energy development, the proposed generating facilities, as defined in Title 35-A, section 3451, subsection 5:

A. Will be designed and sited to avoid unreasonable adverse shadow flicker effects;

B. Will be constructed with setbacks adequate to protect public safety. In making a finding pursuant to this paragraph, the department shall consider the recommendation of a professional, licensed civil engineer as well as any applicable setback recommended by a manufacturer of the generating facilities; and

C. Will provide significant tangible benefits as determined pursuant to Title 35-A, section 3454, if the development is an expedited wind energy development.

The Department of Labor, the Executive Department, State Planning Office and the Public Utilities Commission shall provide review comments if requested by the primary siting authority.

For purposes of this subsection, "grid-scale wind energy development," "primary siting authority," "significant tangible benefits" and "expedited wind energy development" have the same meanings as in Title 35-A, section 3451.

§ 484-A. Unlicensed pits; temporary licensing exemption

If a borrow pit was between 5 and 30 acres on October 1, 1993 and was not licensed as required under this article, its owner or operator is not required to obtain a license under this article if:

1. Notice of intent to comply. Pursuant to section 490-C, the owner or operator of the pit files a notice of intent to comply no later than:

A. April 1, 1995, for pits having reclaimed or unreclaimed areas that drain externally or having reclaimed or unreclaimed areas where internal drainage is achieved with berms or other structures; or

B. October 1, 1995, for pits where all reclaimed and unreclaimed lands are naturally internally drained; and

2. Adherence to compliance schedule. By October 1, 1996:

A. All reclaimed and unreclaimed areas that were not naturally internally drained on October 1, 1993 are stabilized or reclaimed;

B. All other conditions existing on October 1, 1993 comply with the performance standards under article 7; and

C. All activities conducted after filing a notice of intent to comply are conducted in compliance with article 7.

¹⁰ Repealed subsection read: "If the activity is on or adjacent to a sand dune, it will not unreasonably interfere with the natural supply or movement of sand within or to the sand dune system."

¹¹ Section 484(10) is effective April 18, 2008. See PL 2007, ch. 661.

An unlicensed borrow pit of 5 or more acres is in violation of this article if the owner or operator of that pit does not file a notice of intent to comply under subsection 1. The written enforcement policy for responding to violations referred to in section 343-C, subsection 1 does not apply to the owner or operator of an excavation regulated under article 7.

§ 484-B. Additional standards for quarries and excavations

In addition to other standards required by or pursuant to this article, a quarry or an excavation for borrow, clay, topsoil or silt that is licensed pursuant to this article, regardless of the date of licensing, must meet the following minimum standards concerning dust control and spill prevention.

1. Spill prevention. Refueling operations, oil changes and other maintenance activities requiring the handling of fuels, petroleum products, hydraulic fluids and other on-site activity involving the storage or use of products that, if spilled, may contaminate groundwater, must be conducted in accordance with the department's spill prevention, control and countermeasures plan. Petroleum products and other substances that may contaminate groundwater must be stored and handled over impervious surfaces that are designed to contain spills. The spill prevention, control and countermeasures plan must be posted at the site.

2. Dust control. Dust generated by activities at an excavation site, including dust associated with traffic to and from the excavation site, must be controlled by sweeping, paving, watering or other best management practices for control of fugitive emissions. Dust control methods may include the application of calcium chloride, as long as the manufacturer's guidelines are followed. Visible emissions from a fugitive emission source may not exceed an opacity of 20% for more than 5 minutes in any one-hour period.

The department may require that a quarry or excavation take additional measures or provide additional information when necessary to meet the standards for development set forth in section 484.

§ 485. Failure to notify board; hearing; injunctions; orders. Repealed. Laws 1989, c. 878, c. 878, § A114 (effective April 20, 1990).

§ 485-A. Notification required; board action; administrative appeals

1. Application. Any person intending to construct or operate a development shall, before commencing construction or operation, notify the commissioner in writing of the intent, nature and location of the development, together with such other information as the board may by rule require. The department shall approve the proposed development, setting forth such terms and conditions as are appropriate and reasonable, disapprove the proposed development, setting forth the reasons for the disapproval, or schedule a hearing in the manner described in section 486-A.

1-A. Wood supply. For a new or expanded development requiring an annual supply of wood or wood-derived materials in excess of 150,000 tons green weight, the applicant shall submit a wood supply plan for informational purposes to the Maine Forest Service concurrent with the application required in subsection 1. The wood supply plan must include, but is not limited to, the following information:

- A. The expected operational life of the development;
- B. The projected annual wood consumption of wood mill residue, wood fiber and recycled materials from forest products during the entire operational life of the development;
- C. The expected market area for wood supply necessary to supply the development; and
- D. Other relevant wood supply information.

1-B. Advance ruling. Repealed. Laws 1999, c. 468, § 11.

1-C. Approval of future development sites. The department shall adopt rules allowing the option of, and identifying requirements for, a planning permit that allows approval of development within a

specified area and within specified parameters such as maximum area, groundwater usage and traffic generation, although the specific nature and extent of the development or timing of construction may not be known at the time the permit is issued. The location and parameters of the development must meet the standards of this article. This alternative is not available for metallic mineral mining or advanced exploration activities. Rules adopted pursuant to this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter II-A.

2. Hearing request. If the department has issued an order without a hearing regarding any person's development, that person may request, in writing, a hearing before the board within 30 days after notice of the department's decision. This request must set forth, in detail, the findings and conclusions of the department to which that person objects, the basis of the objections and the nature of the relief requested. Upon receipt of the request, the board shall schedule and hold a hearing limited to the matters set forth in the request. Hearings must be scheduled in accordance with section 486-A.

3. Failure to notify commissioner. The commissioner may, at any time with respect to any person who has commenced construction or operation of any development without having first notified the commissioner pursuant to this section, schedule and conduct a public hearing with respect to that development.

4. Permit display. A person issued a permit pursuant to this article for activities in a great pond watershed shall have a copy of the permit on site while work authorized by that permit is being conducted.

§ 486. Enforcement. Laws 1977, c. 300, § 33.

§ 486-A. Hearings; orders; construction suspended

1. Hearings. If the department determines to hold a hearing on a notification submitted pursuant to section 485-A, the department shall solicit and receive testimony to determine whether that development will in fact substantially affect the environment or pose a threat to the public's health, safety or general welfare. The department shall permit the applicant to provide evidence on the economic benefits of the proposal as well as the impact of the proposal on energy resources.

2. Developer; burden of proof. At the hearings held under this section, the burden is upon the person proposing the development to demonstrate affirmatively to the department that each of the criteria for approval listed in this article has been met, and that the public's health, safety and general welfare will be adequately protected.

3. Findings of fact; order. After the department adjourns any hearing held under this section, the department shall make findings of fact and issue an order granting or denying permission to the person proposing the development to construct or operate the development, as proposed, or granting that permission upon such terms and conditions as the department considers advisable to protect and preserve the environment and the public's health, safety and general welfare.

4. No construction pending order. Any person who has notified the commissioner, pursuant to section 485-A, of intent to construct or operate a development shall immediately defer or suspend construction or operation of that development until the department has issued an order.

5. Continuing compliance; air and water pollution. Any person securing approval of the department, pursuant to this article, shall maintain the financial capacity and technical ability to meet the state air and water pollution control standards until that person has complied with those standards.

6. Transcripts. A complete verbatim transcript shall be made of all hearings held pursuant to this section.

7. Minor revisions. An application for an order addressing a minor revision must be processed

within a period specified by the department if the applicant meets requirements adopted by the department.

§ 487. Judicial review. Repealed. Laws 1977, c. 300, § 34.

§ 487-A. Hazardous activities; transmission lines

1. Preliminary notice required for hazardous activities. Repealed. Laws 1993, c. 383, § 25.

2. Power generating facilities. In case of a permanently installed transmission line carrying 100 kilovolts, or more, proposed to be erected within this State by a transmission and distribution utility or utilities, the proposed development, in addition to meeting the requirements of section 484, must also have been approved by the Public Utilities Commission under Title 35-A, section 3132.

In the event that a transmission and distribution utility or utilities file a notification pursuant to section 485-A before they are issued a certificate of public convenience and necessity by the Public Utilities Commission, they shall file a bond or, in lieu of that bond, satisfactory evidence of financial capacity to make that reimbursement with the department, payable to the department, in a sum satisfactory to the commissioner and in an amount not to exceed \$50,000. This bond or evidence of financial capacity must be conditioned to require the applicant to reimburse the department for its cost incurred in processing any application in the event that the applicant does not receive a certificate of public convenience and necessity.

3. Easement required; transmission line or gas pipeline. In the case of a gas pipeline or a transmission line carrying 100 kilovolts or more, a permit under this chapter may be obtained prior to any acquisition of lands or easements to be acquired by purchase. The permit must be obtained prior to any acquisition of land by eminent domain.

4. Notice to landowners; transmission line or gas pipeline. Any person making application under this article, for approval for a transmission line or gas pipeline shall, prior to filing a notification pursuant to this article, provide notice to each owner of real property upon whose land the applicant proposes to locate a gas pipeline or transmission line. Notice must be sent by certified mail, postage prepaid, to the landowner's last known address contained in the applicable tax assessor's records. The applicant shall file a map with the town clerk of each municipality through which the pipeline or transmission line is proposed to be located, indicating the intended approximate location of the pipeline or transmission line within the municipality. The applicant is not required to provide notice of intent to construct a gas pipeline or transmission line other than as set forth in this subsection. The department shall receive evidence regarding the location, character and impact on the environment of the proposed transmission line or pipeline. In addition to finding that the requirements of section 484 have been met, the department, in the case of the transmission line or pipeline, shall consider whether any proposed alternatives to the proposed location and character of the transmission line or pipeline may lessen its impact on the environment or the risks it would engender to the public health or safety, without unreasonably increasing its cost. The department may approve or disapprove all or portions of the proposed transmission line or pipeline and shall make such orders regarding its location, character, width and appearance as will lessen its impact on the environment, having regard for any increased costs to the applicant.

§ 488. Applicability

This article does not apply to any development in existence or in possession of applicable state or local licenses to operate or under construction on January 1, 1970, or to any development the construction and operation of which has been specifically authorized by the Legislature prior to May 9, 1970, or to public service corporation transmission lines, except transmission lines carrying 100 kilovolts or more, nor does it apply to the renewal or revision of leases of parcels of land upon which a structure or structures have been located as of March 15, 1972, nor to the rebuilding or reconstruction of natural gas

pipelines or transmission lines within the same right-of-way.

1. **Unorganized areas.** Deleted. Laws 1993, c. 383, § 26.
2. **Organized areas.** Deleted. Laws 1993, c. 383, § 26.
3. **Standards, guidelines, definitions and revisions.** Repealed. Laws 1995, c. 704, Pt. A, §16.¹²
4. **Exemption.** Repealed. Laws 1989, c. 769, § 5.
5. **Subdivision exemptions.** The following development is exempt from this article:
 - A. Deleted. Laws 1993, c. 383, § 26.
 - B. A development that consists only of a subdivision if:
 - (1) The average density of the subdivision is not higher than one lot for every 5 acres of developable land in the parcel;
 - (2) At least 50% of the developable land in the parcel is preserved in perpetuity through conservation easements pursuant to Title 33, chapter 7, subchapter VIII-A, in common areas no smaller than 10 acres in size and of dimensions that accommodate within each common area boundary a rectangle measuring 250 feet by 500 feet;
 - (3) The conservation easements preserve the land in an essentially undeveloped natural state including the preservation of farmland having a history of agricultural use and the preservation of forest land for harvesting by uneven-aged selection methods designed to retain the natural character of the area, except that other methods of harvesting are permissible following a natural disaster;
 - (4) The conservation easements grant a 3rd-party right of enforcement, as defined in Title 33, section 476, to the department. The conservation easements granting a 3rd-party right of enforcement must be submitted to and accepted by the commissioner;
 - (5) All significant wildlife habitat that is mapped or that qualifies for mapping under section 480-B, subsection 10 is included in the preserved land area under subparagraph (3);
 - (6) No clearing, grading, filling or other development activity occurs on sustained slopes in excess of 30%;
 - (7) If the developable land in the parcel not subject to the requirements of subparagraphs (3) and (5) is located wholly or in part in the watershed of any lake or pond classified GPA under section 465-A, long-term measures to control phosphorus transport are taken in accordance with a phosphorus control plan that is consistent with standards for phosphorus control adopted by the board;
 - (8) Soil erosion and sedimentation during development of the subdivision are controlled in accordance with a plan approved by the municipality in which the subdivision is located or by the soil and water conservation district for the county in which the subdivision is located;
 - (9) The nonpreserved, developable land in the parcel is not located wholly or partly within the shoreland zone of a lake or pond classified GPA under section 465-A; and
 - (10) At the time all necessary conservation easements are filed with the department and at least 30 days prior to the commencement of clearing and construction activity, the person creating the subdivision notifies the commissioner in writing on a form supplied by the commissioner that the exemption afforded by this paragraph is being used. The person creating the subdivision shall file with that form a set of site plans, including the plans required under subparagraphs (7) and (8), and other evidence sufficient to demonstrate that the requirements of this paragraph have

¹² Repeal effective July 1, 1997 applies retroactively to July 3, 1980: See Laws 1995, 704, § C-3.

been met. The commissioner shall forward a copy of the form to the municipality in which the subdivision is located.

For purposes of this paragraph, "developable land in the parcel" means all contiguous land in the same ownership except for coastal wetlands, freshwater wetlands, rivers, streams and brooks as defined in section 480-B and except for any surface water classified GPA under section 465-A.

C and D. Deleted. Laws 1995, c. 704, Pt. A, § 17.

6. Multi-unit housing exemption. Deleted. Laws 1993, c. 383, § 26.

7. Exemption for expansion at existing manufacturing facility. New construction at a licensed manufacturing facility is exempt from review under this article provided that the additional disturbed area not to be revegetated does not exceed 30,000 square feet ground area in any calendar year and does not exceed 60,000 square feet ground area in total. When review under this article is required at a licensed manufacturing facility, the applicant shall provide plans for the new development, as well as for those activities that have been undertaken pursuant to this subsection. The permittee shall annually notify the department of new construction conducted during the previous 12 months pursuant to this exemption. The notice must identify the type, location and ground area of the new construction.

8. Exemption for storage facility. Repealed. 1995, c. 704, Pt. A, § 18.¹³

9. Development within unorganized areas.¹⁴ A development located entirely within an area subject to the jurisdiction of the Maine Land Use Regulation Commission, other than a metallic mineral mining or advanced exploration activity or an oil terminal facility, is exempt from the requirements of this article.

A. If a development is located in part within an organized area and in part within an area subject to the jurisdiction of the Maine Land Use Regulation Commission, that portion of the development within the organized area is subject to review under this article if that portion is a development pursuant to this article. That portion of the development within the jurisdiction of the commission is exempt from the requirements of this article except as provided in paragraph B.

B. If a development is located as described in paragraph A, the department may review those aspects of a development within the jurisdiction of the Maine Land Use Regulation Commission if the commission determines that the development is an allowed use within the subdistrict or subdistricts for which it is proposed pursuant to Title 12, section 685-B. A permit from the Maine Land Use Regulation Commission is not required for those aspects of a development approved by the department under this paragraph.

Review by the department of subsequent modifications to a development approved by the department is required. For a development or part of a development within the jurisdiction of the Maine Land Use Regulation Commission, the director of the commission may request and obtain technical assistance and recommendations from the department. The commissioner shall respond to the requests in a timely manner. The recommendations of the department must be considered by the Maine Land Use Regulation Commission in acting upon a development application.

10. Roads and railroad tracks. A structure consisting only of a road or a road together with the structure area within a residential lot, as described in subsection 17 is exempt from the requirements of this article. Railroad tracks other than tracks within yards or stations are exempt from review under this

¹³ Repeal effective July 1, 1997.

¹⁴ A permit issued by the department for a development within unorganized territory, other than a permit for a metallic mineral mining or advanced exploration activity, may be modified by the Maine Land Use Regulation Commission (LURC). The modification of a permit for a metallic mineral mining or advanced exploration activity requires approval by both the department and LURC. See Laws 1993, ch. 383, § 42.

article.¹⁵

11.¹⁶ Farm and fire ponds. A pond that is used for irrigation of field crops, water storage for cranberry operations or fire protection determined to be necessary in that location by the municipal fire department is exempt from review under this article. This provision does not provide an exemption for mining or advanced exploration activity or excavation for borrow, clay, topsoil or silt.

12. Structures within permitted commercial and industrial subdivisions. A person may construct or cause to be constructed, or operate or cause to be operated, a structure on a lot in a commercial or industrial subdivision approved pursuant to this article without obtaining approval under this article for that structure, as long as all terms and conditions of the subdivision permit are met. This subsection applies to commercial or industrial subdivisions approved pursuant to this article on or after the effective date of this subsection.

13. Research and aquaculture leases. Activities regulated by the Department of Marine Resources under Title 12, section 6072, 6072-A, 6072-B or 6072-C are exempt from the requirements of this article.

14. Developments within designated growth areas. The following provisions apply to developments within a designated growth area.

A. A development is exempt from review under flood plain, noise and infrastructure standards under section 484 if that development is located entirely within:

- (1) A municipality that has adopted a local growth management program that the State Planning Office has certified under Title 30-A, section 4347-A; and
- (2) An area designated in that municipality's local growth management program as a growth area.

An applicant claiming an exemption under this paragraph shall include with the application a statement from the State Planning Office affirming that the location of the proposed development meets the provisions of subparagraphs (1) and (2).

An applicant claiming an exemption under this paragraph shall publish a notice of that application in a newspaper of general circulation in the region that includes the municipality in which the development is proposed to occur. That notice must include a statement indicating the standard or standards for which the applicant is claiming an exemption.

B. The commissioner may require application of the noise, flood plain or infrastructure standards to a proposed development if the commissioner determines, after receipt of a petition under subparagraph (1) or on the commissioner's own initiative under subparagraph (2), that a reasonable likelihood exists that the development will have a significant and unreasonable impact on flood plains, infrastructure or noise beyond the boundaries of the municipality within which the development is to be located.

- (1) Within 15 working days after the publication of the notice required under paragraph A, municipal officers or residents of the municipality in which the development is proposed to occur or municipal officers or residents of an abutting municipality may petition the

¹⁵ Laws 1995, ch. 493, § 21 (effective July 3, 1995) (in part): “Those sections of this Act that amend Title 38, section 488, subsection 10 and enact Title 38, section 17 apply retroactively to any residential subdivision approved by the Environmental Improvement Commission, the Commissioner of Environmental Protection, the Board of Environmental Protection, the Department of Environmental Protection, the Maine Land Use Regulation Commission or any municipal planning board on or after May 9, 1970.”

¹⁶ 38 M. R.S.A. 488(11) as amended by PL 1995, c. 659, § 2 and c. 700, §8 was repealed and the text shown was enacted in its place, effective September 19, 1997. This change applies retroactively to April 10, 1996. See PL 1997, c. 502, §§ 10 and 18.

commissioner to apply one or more of the standards for which an exemption is claimed under this subsection. A petition must be signed either by the municipal officers of the petitioning municipality or by 10% of that number of registered voters of the petitioning municipality casting ballots in the most recent gubernatorial election or 150 registered voters of the petitioning municipality, whichever is less. The petition must include the name and legal address of each signatory and must designate one signatory as the contact person. The commissioner shall notify the contact person and the applicant of the commissioner's decision within 10 working days after receipt of a petition meeting the requirements of this subsection. A decision by the commissioner under this subparagraph is appealable to the board.

(2) A decision to require the application of one or more standards made on the commissioner's own initiative must be made within 15 working days after the application is filed with the department.

Nothing in this subsection may be construed to exempt a proposed development from review for flooding potential due to increases in storm water runoff caused by the development.

15. Exemption for former military bases.¹⁷ Development on a military base at the time ownership of the military base is acquired by a state or local development authority is exempt from review under this article. Subsequent transfer of ownership of a former military base or any portion of a former military base by a state or local development authority to another entity does not affect the exemption granted under this subsection. Development proposed or occurring on a former military base after ownership of the military base is acquired by a state or local development authority is subject to review under this article, except that section 482, subsection 2, paragraph E does not apply to the development to the extent that the development reuses a building and associated facilities in existence on September 29, 1995.

For purposes of this subsection, "military base" means all property under the ownership or control of a federal military authority prior to the acquisition of ownership by a state or local development authority, the ownership of which is subsequently acquired by a state or local development authority. For purposes of this subsection, "ownership" means a fee interest or leasehold interest in property.

16. Small road quarry.¹⁸ Repealed. Laws 1997, c. 502, § 11.

17. Structure area within residential lots. Buildings, roads, paved areas or areas to be stripped or graded and not revegetated that are located within lots used solely for single-family residential housing are not counted toward the 3-acre threshold described in section 482, subsection 6, paragraph B for purposes of determining jurisdiction. A road associated only with such lots is also not counted toward the 3-acre threshold. For purposes of this subsection, "single-family residential housing" does not include multi-unit housing such as condominiums and apartment buildings.¹⁹

18. Roundwood and lumber storage yards. A roundwood or lumber storage yard and any road associated with the yard is exempt from review under this article, as provided in this subsection.

A roundwood or lumber storage yard and any road associated solely with the yard, constructed on or after the effective date of this subsection, is exempt from review under this article provided it is constructed and operated in accordance with the erosion and sedimentation control standards and

¹⁷ 38 M.R.S.A. 488(15) was enacted by Laws 1995, c. 90, § 1 (effective September 29, 1995), and amended by Laws 1997, c. 748, § 4 (effective July 9, 1998).

¹⁸ 38 M.R.S.A. 488(16) as repealed and replaced by PL 1995, c. 625, Pt A, §53 and repealed by PL 1995, ch. 700, § 9, is repealed effective September 19, 1997. This change applies retroactively to July 4, 1996. See PL 1997, c. 502, §§ 11 and 18.

¹⁹ Laws 1995, ch. 493, § 21 (effective July 3, 1995) (in part): Those sections of this Act that amend Title 38, section 488, subsection 10 and enact Title 38, section 488, subsection 17 apply retroactively to any residential subdivision approved by the Environmental Improvement Commission, the Commissioner of Environmental Protection, the Board of Environmental Protection, the Department of Environmental Protection, the Maine Land Use Regulation Commission or any municipal planning board on or after May 9, 1970."

storm water management standards contained in board rules. The person conducting these activities shall file a notice of intent to comply with the department prior to clearing and construction.

B. A roundwood or lumber storage yard and any road associated solely with the yard, constructed prior to the effective date of this subsection, is exempt from review under this article provided the following requirements are met.

(1) Within one year after the effective date of this subsection, a notice of intent to comply must be provided to the department.

(2) Within 2 years of the effective date of this subsection, construction and operation of the yards and roads must be in compliance with the erosion and sedimentation control standards and storm water standards contained in board rules and adopted pursuant to section 484.

(3) Any expansion or alteration of such facilities must meet the requirements of paragraph A.

C. Notice of intent filed under this subsection must be complete, submitted on forms approved by the department and mailed by certified mail, return receipt requested. The notice must include a fee of \$250. The fee for transfer or minor revision of the notice of intent is \$105.

D. ²⁰ Repealed. Laws 2001, c. 232, § 19.

E. For purposes of this subsection only, "roundwood" means logs, bolts and other round sections of wood as they are cut from the tree and split firewood.

19. Municipal capacity.^{21 22} A structure, as defined in section 482, subsection 6, that is from 3 acres up to and including 7 acres or a subdivision, as defined in section 482, subsection 5, that is made up of 15 or more lots for single-family, detached, residential housing, common areas or open space with an aggregate area of from 30 acres up to and including 100 acres is exempt from review under this article if it is located wholly within a municipality or municipalities meeting the criteria in paragraphs A to D as determined by the department and it is located wholly within a designated growth area as identified in a comprehensive plan adopted pursuant to Title 30-A, chapter 187, subchapter II.²³ The planning board of

²⁰ Repeal effective September 21, 2001.

²¹ Laws 1997, c. 485, §2 which amended this subsection included a transition provision that read:

“**Sec 2. Transition.** The Department of Environmental Protection and the State Planning Office shall consult with municipalities that will be presumed to have capacity pursuant to the Maine Revised Statutes, Title 38, section 488, subsection 19 on or after January 1, 2003 to assist those municipalities in developing capacity as defined by the criteria in Title 38, section 488, subsection 19, paragraphs A to D.

The State Planning Office shall review its municipal financial assistance program to ensure that the criteria considered by the office in making grants for planning and implementation of local growth management programs are consistent with the criteria for a determination of capacity in Title 38, section 488, subsection 19.”

²² PL 2001, ch.626 further amended this provision by providing the list of municipalities determined to have capacity must be published by the first of each year. It also deleted text providing that the department would presume municipalities with a population of 5,000 or more to have capacity on or after January 1, 2003.

²³ The following change (PL 1999, ch.776) took effect August 11, 2000:

“A structure, as defined in section 482, subsection 6, that is from 3 acres up to and including 7 acres or a subdivision, as defined in section 482, subsection 5, that is made up of 15 or more lots for single-family, detached, residential housing, common areas or open space with an aggregate area of from 30 acres up to and including 100 acres is exempt from review under this article if it is located wholly within a designated growth area as identified in a comprehensive plan adopted pursuant to Title 30-A, chapter 187, subchapter II.”

The amendment was accompanied by transition language that read:

“**Sec 23. Transition; site location of development laws.** A development that was exempt from review under the site location of development laws pursuant to the Maine Revised Statutes, Title 38, section 488, subsection 19 and reviewed by the municipality in which it is located prior to the effective date of this Act is considered to be locally wholly within a designated

the municipality in which the development is located or an adjacent municipality may petition the commissioner to review such a structure or subdivision if it has regional environmental impacts. This petition must be filed within 20 days of the receipt of the application by the municipality. State jurisdiction must be exerted, if at all, within 30 days of receipt of the completed project application by the commissioner from the municipality or within 30 days of receipt of any modification to that application from the municipality. Review by the department is limited to the identified regional environmental impacts. The criteria are as follows:

- A. A municipal planning board or reviewing authority is established and the municipality has adequate resources to administer and enforce the provisions of its ordinances. In determining whether this criterion is met, the commissioner may consider any specific and adequate technical assistance that is provided by a regional council;
- B. The municipality has adopted a site plan review ordinance. In determining the adequacy of the ordinance, the commissioner may consider model site plan review ordinances commonly used by municipalities in this State that address the issues reviewed under applicable provisions of this article prior to July 1, 1997;
- C. The municipality has adopted subdivision regulations. In determining the adequacy of these regulations, the commissioner may consider model subdivision regulations commonly used by municipalities in this State; and
- D. The State Planning Office has determined that the municipality has a comprehensive land use plan and land use ordinances or zoning ordinances that are consistent with Title 30-A, chapter 187 in providing for the protection of wildlife habitat, fisheries, unusual natural areas and archaeological and historic sites.

The department, in consultation with the State Planning Office, shall publish a list of those municipalities determined to have capacity pursuant to this subsection. This list need not be established by rule and must be published by January 1st of each year. The list must specify whether a municipality has capacity to review structures or subdivisions of lots for single-family, detached, residential housing, common areas or open space or both types of development. The department may recognize joint arrangements among municipalities and regional organizations in determining whether the requirements of this subsection are met. The department may review municipalities that are determined to have capacity pursuant to this subsection for compliance with the criteria in paragraphs A to D, and if the department determines that a municipality does not meet the criteria, the department may modify or remove the determination of capacity.

A modification to a development that was reviewed by a municipality and exempted pursuant to this subsection is exempt as long as the modification will not cause the total area of the development to exceed the maximum acreage specified in this subsection for that type of development or, based upon information submitted by the municipality concerning the development and modification, the department determines that the modification may be adequately reviewed by the municipality.

20. Modifications in permitted subdivisions. Review is not required under this article in the following instances:

- A. When the owner of a single lot in a subdivision with a permit under this article conveys a right of access to adjacent land that was not part of the permitted subdivision, if the right-of-way is not contrary to the terms of the subdivision permit and the right-of-way is not more than 50 feet long; or
- B. When 2 lot owners in a subdivision with a permit under this article convey reciprocal easements for the purpose of constructing a common driveway in place of 2 separate driveways, if the single

growth area as identified in a comprehensive plan adopted pursuant to Title 30-A, chapter 187, subchapter II for the purposes of Title 38, section 488, subsection 19 as long as the municipality continues to meet the criteria in that subsection.”

driveway reduces the total amount of impervious area in the affected subwatershed and the single driveway is not contrary to the terms of the subdivision permit.

C. Deleted. 2001, c. 232, § 20 (effective September 21, 2001).

21. Waste facilities. Waste facilities regulated by the department under section 1310-N, 1319-R or 1319-X are exempt from review under this article. This exemption applies to new facilities, modifications of facilities, transfers of facilities and relicensing of facilities.²⁴

22. Unauthorized subdivision lots in existence for at least 20 years. A lot that when sold or leased created a subdivision requiring a permit under this article is not considered a subdivision lot and is exempt from the permit requirement for a subdivision if a permit has not been obtained and the subdivision has been in existence for 20 or more years. A lot is considered a subdivision lot and is not exempt under this subsection if:

- A. Approval of the subdivision under this article was denied by the department and the department's decision was recorded in the appropriate registry of deeds;
- B. The department has issued a notice of violation of this article with respect to the subdivision; or
- C. The lot has been the subject of an enforcement action or order.

23. Agricultural fair property. Development on property that is used for one or more agricultural fairs licensed by the Commissioner of Agriculture, Food and Rural Resources under Title 7, chapter 3 is exempt from review under this article if:

- A. The property is not used for motorized vehicle racing for more than 14 days beyond those days authorized for the operation of the agricultural fair;
- B. Motorized vehicle racing on the property is licensed by the Department of Public Safety;
- C. Use of the property beyond those days authorized for the operation of the agricultural fair meets a noise standard pursuant to section 484, subsection 3. The department shall enforce the noise standard under this paragraph; and
- D. The property has been identified as the location of an agricultural fair in an agricultural fair license issued by the Department of Agriculture, Food and Rural Resources prior to September 15, 2006.

§ 24. Nonmetallic mining accessory uses and facilities. Accessory uses and facilities within an excavation or quarry operating under the performance standards in article 7 or 8-A are exempt from this article if the performance standards in article 7 or 8-A or the rules implementing those articles are at a minimum as restrictive as the standards imposed under this article. For the purposes of this subsection, "accessory uses and facilities" means uses and facilities associated with the processing of material pursuant to article 7 or 8-A such as screening and the crushing, loading and manufacture of ready-mix concrete and bituminous concrete and associated products and weight scales, scale shacks and maintenance garages. This subsection does not apply to a development constructed during or after reclamation.

§ 489. Municipal review of subdivisions. Repealed. Laws 1989, c. 207, § 1.

§ 489-A. Municipal review of development

The commissioner may register municipalities for authority to substitute permits issued pursuant to Title 30-A, chapter 141 or 187, for permits required by section 485-A under the following conditions.

- 1. Kinds of projects.** The following kinds of projects may be reviewed by registered municipalities

²⁴ Effective September 14, 1993.

pursuant to this section:

- A. Subdivisions as described in section 482, subsection 5 of more than 20 acres but less than 100 acres; or
- B and C. Deleted. Laws 1993, c. 383, § 27.
- D. Deleted. Laws 1997, c. 393, Pt. A, § 46.
- E. Deleted. Laws 1993, c. 383, § 27.
- F. Deleted. 1997, c. 393, Pt. A, § 46.
- G. Repealed. 1999, c. 790, Pt. A, § 52.
- H. Structures as described in section 482, subsection 6 in excess of 3 acres but less than 7 acres.

1-A. Modification. An application for a modification to a development reviewed by a municipality pursuant to subsection 1 may be reviewed by the municipality as long as:

- A. The modification will not cause the total area of the development to exceed an upper area threshold specified in subsection 1; or
- B. Based upon information submitted by the municipality concerning the development and modification, the department determines that the modification may be adequately reviewed by the municipality.

In addition, a municipality may modify a permit for a subdivision or structure issued by the department prior to registration of the municipality pursuant to this section if the total area of the modification and any prior modifications reviewed pursuant to this section does not exceed the upper area threshold provided in subsection 1 except as allowed in paragraph B.

2. Registration. The commissioner shall register municipalities to grant permits for projects under subsection 1-B if the commissioner finds that the municipality meets all of the following criteria:

- A. A municipal planning board or reviewing authority is established;
- B. A comprehensive plan consistent with Title 30-A, chapter 187 has been adopted with standards and objectives determined by the department to be at least as stringent as this article;
- C. Subdivision regulations have been adopted that are consistent with Title 30-A, chapter 187, and determined by the commissioner to be at least as stringent as criteria set forth in section 484;
- D. Site plan review regulations have been adopted with criteria determined by the commissioner to be at least as stringent as section 484;
- D-1. Deleted. Laws 1999, c. 243, § 19.
- E. The municipality has adequate resources to administer and enforce the provisions of its ordinances;
- F. Procedures for public hearing and notification have been established including:
 - (1) Notice to the commissioner upon receipt of an application, including a description of the project;
 - (2) Notice of issuance and denial to the applicant and commissioner, including the reason for denial;
 - (3) Public notification of the application and any hearings; and
 - (4) Satisfactory hearing procedures;
- G. Procedures for appeal by aggrieved parties of local decisions are defined; and

H. A registration form, provided by the commissioner, has been completed and submitted by the municipality, demonstrating compliance with the criteria under this subsection.

2-A. Current requirements. Municipalities registered under this section shall ensure that municipal regulations continue to meet the criteria listed in section 489-A, subsection 2.

A. The commissioner shall immediately notify registered municipalities of new or amended regulations adopted by the department pursuant to this article.

B. Amendments to municipal regulations must be adopted by the municipality within one calendar year of the effective date of new or amended department regulations and submitted to the commissioner for approval within 45 calendar days of adoption by the municipality.

3. Certification. A municipality certified by the Department of Economic and Community Development under Title 30-A, chapter 191 may be registered if the commissioner finds the municipality has fulfilled the requirements of subsection 2 and applies to be registered.

3-A. Record of review and basis for decision. The municipality shall submit one copy of the record of review and basis of decision for each development or modification of a development approved pursuant to this section within 40 working days of final action by the reviewing authority, unless otherwise approved by the commissioner.

4. Suspension of registration. If the commissioner finds that a municipality no longer meets the criteria set forth under subsection 2 or 2-A, or is not adequately implementing those requirements, the commissioner may suspend the registration and shall notify the municipality accordingly. The notice must contain findings of fact and conclusions of law. If registration is suspended, the commissioner shall recommend actions for the municipality to come into compliance with this section. The commissioner may waive the suspension for new projects that have received at least one substantive municipal review prior to the suspension of registration. If the department determines that a municipality meets the criteria specified in section 488, subsection 19, the department shall suspend the registration for the type of development exempt from review in that municipality pursuant to section 488, subsection 19.

5. Transition. Municipalities registered under former section 489 as it existed on October 1, 1975, must be certified under this section for one year from the effective date of this section. Thereafter, the municipality must comply with the requirements under subsection 2.

6. Central list of pending projects. The commissioner shall maintain and make available a list of projects pending municipal review under this section.

7. Technical assistance. The commissioner and other state review agencies may provide technical assistance to municipalities upon request for projects reviewed under this section.

8. Application review process. Upon the determination by the municipal reviewing authority that an application for a permit or permit amendment under this section is complete for processing:

A. The municipality shall submit to the commissioner within 14 days of that determination by the municipal reviewing authority, one copy of the project application and one copy of the notification form provided by the commissioner;

B. The commissioner shall review the application and, within 30 days of its receipt, or within 30 days of receipt of any subsequent amendment to the application, notify the municipality if the department intends to exercise jurisdiction as provided in subsection 9; and

C. If the department does not act within the 30-day period following receipt of the application or within 30 days of receipt of any amendment to the application, this inaction constitutes a decision not to exercise jurisdiction as provided in subsection 9.

9. State jurisdiction. The department shall review projects for registered municipalities if:

A. The commissioner finds that the project:

- (1) Meets one or more of the criteria set forth in section 341-D, subsection 2, paragraph A, B or C;
- (2) Will have a potentially significant environmental effect; or
- (3) Could affect more than one municipality.

In making these findings, the commissioner shall consider all public comments submitted to the department;

B. The local reviewing authority for the municipality in which the project is located petitions the commissioner in writing; or

C. Deleted. Laws 1993, c. 383, § 27.

D. The proposed project is located in more than one municipality.

State jurisdiction must be exerted if at all, within 30 days of receipt of the completed project application by the commissioner from the municipality or within 30 days of receipt of any modification to that application from the municipality.

10. Appeal of decision by commissioner to review. An aggrieved party may appeal the decision by the commissioner to exert or not exert state jurisdiction over the proposed project to the board. Review and actions taken by the department are subject to appeal procedures governing the department under section 341-D, subsections 4 and 5.

10-A. Appeal of decision by commissioner to grant, withhold or suspend registration. An appeal of the decision by the commissioner to grant, withhold or suspend registration is as follows.

A. The decision of the commissioner to grant, withhold or suspend the registration may be appealed to the board by a person aggrieved by the decision. The board shall review, may hold a hearing on and may affirm, amend or reverse the decision of the commissioner when the decision is appealed within 30 days of issuance of notification of the decision. The board shall give written notice to persons that have asked to be notified of the commissioner's decision. The board may allow the record to be supplemented if it finds that the evidence offered is relevant and material in determining whether the municipality no longer meets the criteria set forth in subsections 2 and 2-A.

B. The board is not bound by the commissioner's findings of fact or conclusions of law but may adopt, modify or reverse findings of fact or conclusions of law established by the commissioner. Any changes made by the board under this paragraph must be based upon the board's review of the record, any supplemental evidence admitted by the board and any hearing held by the board.

11. Joint enforcement. Any person who violates any permit issued under this section is subject to the provisions of section 349, in addition to any penalties which the municipality may impose. Any permits issued or conditions imposed by a local authority must be enforced by the commissioner and the municipality that issued the permit.

§ 489-B. Uranium and thorium mining

Mining for uranium or thorium is prohibited within the State.

§ 489-C. Rescission

The commissioner shall rescind a permit upon request and application of the permittee if no outstanding permit violation exists, the development is not continued or completed and the following requirements are met:

1. Development other than a subdivision. The permittee has not constructed or caused to be

constructed, or operated or caused to be operated, a development other than a subdivision as defined at the time of permit issuance;

2. Subdivision. If the development is a subdivision, the permittee has not sold or leased or caused to be sold or leased more than 4 lots; or

3. Reclamation following borrow, clay or topsoil mining. If the permittee has constructed or caused to be constructed, or operated or caused to be operated a development consisting of an excavation of more than 5 acres of land for borrow, topsoil, clay or silt, whether alone or in combination, and the department determines that:

A. The affected area has been successfully reclaimed;

B. There are not continuing requirements; and

C. There will be no additional mining for borrow, clay or topsoil by the permittee or any transferee at any time as provided by deed covenants enforceable by the department.

A rescission is considered a minor revision.

§ 489-D. Technical assistance to municipalities

A state department or agency shall provide technical assistance to a municipality in the form of a peer review of development studies when the state capacity and resources exist.

1. Costs. A state department or agency may charge a municipality for this assistance under this section. A municipality may recover these costs from the developer.

2. Type of development. The following provisions apply to assistance under this section.

A. Assistance is available for the review of site location issues arising from a proposal for a subdivision of at least 5 lots and 20 acres and for a proposal for a development that has at least 3 acres of buildings, parking lots, roads, paved areas, wharves or areas to be stripped or graded and not revegetated and not subject to review by the department under this article.

B. A municipality may also obtain technical assistance in the form of a peer review from a private consultant or regional council and may recover costs from the developer for a project of any size. The State Planning Office has the authority to establish rules as necessary for this purpose.

§ 490. Reclamation

1. Requirement. Mining activities must include provisions for safety and reclamation of the land area affected or otherwise comply with an approval issued pursuant to this chapter. These provisions must include a plan for the maintenance of the mine site during mining and for a period after termination of mining, including the methods and annual estimated costs for gas monitoring; leachate pumping, transportation, monitoring and treatment; ground water monitoring, collection and analysis; such revegetation as the department determines necessary; and activities necessary for prevention of soil erosion and for protection of ground and surface waters.

2. Bonds. The department may require a bond payable to the State with sureties satisfactory to the department or such other security as the department may determine will adequately secure compliance with this chapter, conditioned upon the faithful performance of the requirements set forth in this chapter and of the rules of the board. Other security may include a security deposit with the State, an escrow account and agreement, insurance or an irrevocable trust. In determining the amount of the bond or the security, the department shall take into consideration the character and nature of the overburden, the future suitable use of the land involved and the cost of grading and reclamation to be required. All proceeds of forfeited bonds or other security must be expended by the department for the reclamation of the area for which the bond was posted, and any remainder returned to the operator.

2-A. Metallic ore mines. Security is required of a person engaged in the mining of metallic ores in order to ensure compliance with reclamation, closure and postclosure care maintenance requirements of the permit and the cleanup and corrective action costs of permitted or accidental releases.

3. Time schedules. It is the duty of a person engaged in a mining activity to commence the reclamation of the area of land affected by the mining activity as soon as possible after the beginning of the mining activity of that area in accordance with plans previously approved by the department. If it appears that planting to provide vegetative cover of an affected area may not be successful, the department may authorize the deferring of the planting until the soil has become suitable for those purposes and a yearly report must be filed with the commissioner indicating the soil conditions until a successful planting or seeding has been completed.

4. Gifts and funds for reclamation.

4-A. Acquisition of property. The department may acquire, by purchase, lease, condemnation, donation or otherwise any real property or any interest in real property that the board determines, by 2/3 majority vote, is necessary to conduct remedial action under this section. There may be no cause of action to compel the department to acquire any interest in real property under this section. Upon completion of reclamation work, the land may be sold or conveyed or remain property of the State. The department may accept funds from private or other sources, which shall be used for reclamation purposes, whether in conjunction with appropriated funds of the State or otherwise.

5. Cooperation with others. The department shall cooperate with the federal, state and local governments, with natural resource and conservation organizations, and with any public or private entities having interests in any subject within the purview of this chapter.

The department is designated the public agency of the State for the purpose of cooperating with appropriate departments and agencies of the Federal Government concerning reclamation of lands in connection with development and mining of minerals in the State, and for the purpose of cooperating and consulting with federal agencies in carrying out this chapter. For these purposes, the department may accept federal funds which may be made available pursuant to federal law, and may accept such technical and financial assistance from the Federal Government as the department determines advisable and proper for purposes of this chapter.

The department is further designated the public agency of the State for the purposes of meeting requirements of the Federal Government with respect to the administration of these federal funds, not inconsistent with this chapter.

6. Fees. All fees collected and other funds received by the department pursuant to this section must be placed in a reclamation fund to carry out the purposes of this chapter. This fund does not lapse.

7. Definition. For the purpose of this section, "reclamation" when applied to a metallic ore mine, includes continued maintenance of land affected by mining for a period after termination of mining activity.

8. Rules. The board may adopt or amend rules to carry out this section, including rules relating to operational or maintenance plans; standards for determining the reclamation period; annual revisions of those plans; limits, terms and conditions on bonds or other security; proof of financial responsibility of a person engaged in mining activity or the affiliated person who guarantees performance; estimation of reclamation costs; reports on reclamation activities; or the manner of determining when the bond or other security may be discharged.

9. Enforcement. If, after an opportunity for a hearing, the commissioner determines that the owner of a mine site or the person who was engaged in mining at the mine site has violated this section, the commissioner shall direct the department staff or contractors under the supervision of the commissioner to enter on the property and carry out the necessary reclamation. The person engaged in mining or any

affiliated person who guarantees performance at the mine site is liable for the reasonable expenses of this necessary reclamation. The commissioner may use the bond or other security to meet the reasonable expenses of reclamation.

Appendix A. Recent Unallocated Law Provisions of Interest

Laws 1993, c. 383, § 42 [effective October 13, 1993]

[Sec. 26 of this Act, among other changes, amended 38 MRSA 482(5) and added 38 MRSA 488 (9) to (13)]

This transition provision applies to sections 1 to 28 of this Act.

1. For purposes of determining jurisdiction, this Act does not apply to a development for which a permit was required under the Maine Revised Statutes, Title 38, chapter 3, subchapter I, article 6 prior to the effective date of this Act, except that a development permitted as a conversion prior to the effective date of this Act does not require a permit modification for any activity unless the activity itself constitutes a development that may substantially affect the environment, as defined in Title 38, section 482, subsection 2.

2. Unless a subdivision has been proposed or created prior to the effective date of this Act:

A. A lot that is offered for sale or lease to the general public 5 years or more prior to the effective date of this Act, and still offered on that date, is no longer counted for purposes of determining jurisdiction as of that date;

B. A lot that is first offered for sale or lease to the general public within 5 years prior to the effective date of this Act, and still offered on that date, is no longer counted for purposes of determining jurisdiction more than 5 years after the date of the first offering; and

C. Up to 4 lots offered prior to the effective date of this Act may be exempted if they meet the requirements of the Maine Revised Statutes, Title 38, section 488, subsection 5, paragraph C.

3. A permit issued by the department for a development within unorganized territory, other than a permit for metallic mineral mining or advanced exploration activity, may be modified by the Maine Land Use Regulation Commission. Modification of a permit for a metallic mineral mining or advanced exploration activity requires approval by the department and the Maine Land Use Regulation Commission.

Laws 1995, c. 493, § 21 [effective July 3, 1995]

That section of this Act that enacts the Maine Revised Statutes, Title 38, section 413, subsection 2-G applies retroactively to October 13, 1993. That section of this Act that enacts Title 38, section 488, subsection 16 applies retroactively to September 14, 1993. Those section of this Act that amend Title 38, section 488, subsection 10 and enact Title 38, section 488, subsection 17 apply retroactively to any residential subdivision or amendment or revision to any residential subdivision approved by the Environmental Improvement Commission, the Commissioner of Environmental Protection, the Board of Environmental Protection, the Maine Land Use Regulation Commission or any municipal planning board on or after May 9, 1970.

Laws 1995, c. 704 [effective July 1, 1997, amended effective June 30, 1998]

A-23. Transition provisions.

1. A permit issued pursuant to the Maine Revised Statutes, Title 38, chapter 3, subchapter I, article 6 prior to the effective date of this Act remains in effect, as written, until rescinded pursuant to Title 38, section 489-C or modified by the Department of Environmental Protection.

2. A project that requires a permit issued pursuant to the Maine Revised Statutes, Title 38, chapter 3, subchapter I, article 6 prior to the effective date of this Act for a subdivision or a structure that would not require a permit if proposed after the effective date of this Act must continue to meet the standards of the site location of development laws in Title 38, chapter 3, subchapter I, article 6 when applying for a modification except that the additional facilities, lots, roads or any portions of the project that are proposed to be located in new areas that were not identified as protected or part of the development during the licensing process, as determined by the Department of Environmental Protection, do not require review unless the additional portions would themselves require review after the effective date of this Act.

3. A municipality with delegated authority pursuant to the Maine Revised Statutes, Title 38, section 489-A prior to the effective date of this Act continues to have delegated authority following the effective date of this Act.

A-24. Report; permit gathering authority. The Department of Transportation, in consultation with the Department of Environmental Protection and others as appropriate, shall determine the alternatives for a transfer of permit-granting authority relating to traffic, and report to the First Regular Session of the 119th Legislature no later than February 1, 1999. The report of the Department of Transportation must include any necessary implementing legislation that will provide for the transfer of permit-granting authority to the Department of Transportation no later than June 30, 1999.

Unless a transfer of the permit-granting authority to the Department of Transportation occurs earlier, and notwithstanding any other provision of law, beginning June 30, 1999, the Department of Transportation has permit-granting authority relating to traffic. In the event of a transfer, a proposed development subject to review under the Maine Revised Statutes, Title 38, chapter 3, subchapter I, article 6, solely because it meets the traffic threshold provisions of Title 38, section 482, subsection 2, is subject only to the jurisdiction of the Department of Transportation. Projects subject to review under Title 38, chapter 3, subchapter I, article 6 on grounds including, but not limited to, the traffic threshold are subject to the joint jurisdiction of the Department of Environmental Protection and the Department of Transportation and this joint jurisdiction must be exercised through a consolidated proceeding.

Sec. A-25. Development of recommendations. The Land and Water Resources Council, established in the Maine Revised Statutes, Title 5, section 3331, shall form a committee consisting of representatives of the Department of Environmental Protection, the Office of the State Fire Marshal, the Board of Pesticides Control, the Maine Emergency Management Agency, affected industries and municipal and other public interests to discuss and study the requirements of a uniform system for the registration, storage and handling of petroleum products, hazardous materials and other substances with the potential to contaminate groundwater. The committee need not consider spill prevention, control and countermeasures plans and related procedures for activities regulated under Title 38, chapter 3, subchapter I articles 7 and 8. The committee shall develop recommendations regarding required legislative or regulatory actions and submit them to the Land and Water Resources Council no later than January 10, 1998. The Land and Water Resources Council may submit legislation based on these recommendations to the First Regular Session of the 118th Legislature no later than January 20, 1998.

The Department of Environmental Protection shall develop, in concert with the Department of Conservation, the Department of Human Services and other affected state agencies, a program to minimize the potential for unreasonable adverse impact on the availability of groundwater to support existing uses. This program may have both regulatory and nonregulatory components and must assess the availability of groundwater in different regions of this State to support future development without unreasonable adverse impacts on existing uses or the natural environment. The Department of Environmental Protection shall present recommendations for any statutory requirements to the Land and Water Resources Council no later than January 10, 1998. The Land and Water

Resources Council may submit legislation based on these recommendations to the First Regular Session of the 118th Legislature no later than January 20, 1998.

Sec. A-26. Memorandum of agreement. The Department of Environmental Protection and the Department of Human Services shall identify changes to the subsurface wastewater disposal rules and other relevant rules and statutes needed to address the potential impacts on groundwater quality from engineered disposal fields and the Department of Human Services shall adopt any such changes to its rules. The Department of Environmental Protection and the Department of Human Services shall enter into a memorandum of agreement no later than 30 days after the effective date of this Act under which the Department of Environmental Protection shall provide review of potential water quality impacts from large disposal systems.

Sec. C-3. That section of this Act that repeals the Maine Revised Statutes, Title 38, section 488, subsection 3 applies retroactively to July 3, 1980.

PL 1995, c. 704, § C-1 [as amended by PL 1997, c. 502 effective June 30, 1998]

Sec. C-1. Rule-making authority. The Department of Environmental Protection has authority to adopt rules in accordance with the Maine Revised Statutes, Title 5, chapter 375 to implement Title 38, section 420-D; section 484, subsection 2, paragraph B; and section 485-A, subsection 1-C, as enacted by this Act and in accordance with the terms of those sections. Such rules, except those adopted pursuant to Title 38, section 420-D, subsection 11, must be provisionally adopted and submitted to the Legislature for review as major substantive rules pursuant to Title 5, chapter 375, subchapter II-A no later than February 28, 1997. Rulemaking to update the first comprehensive lists of "watersheds of bodies of water most at risk from new development" and "sensitive or threatened regions of watersheds" is not considered major substantive rulemaking pursuant to Title 5, chapter 375, subchapter II-A.

PL 1995, c. 704, Pt. C, § 2

Sec. C-2. Effective date. This Act takes effect July 1, 1997, except section 1 of this Part takes effect 90 days after adjournment of the Second Regular Session of the 117th Legislature. The following provisions take effect September 19, 1997: Part A, section 10 that amends the Maine Revised Statutes, Title 38, section 484, subsection 4; Part A, section 11 that enacts Title 38, section 484, subsection 4-A; and that portion of Part B, section 2 that enacts Title 38, section 420-D.

PL 1997, c. 603, § 9 [effective June 30, 1998]

Sec. 9. Retroactivity. That section of this Act that amends Public Law 1995, chapter 704, Part C, section 2 applies retroactively to July 1, 1997.²⁵

PL 1999, c. 468, § 18 [effective June 30, 1999]

Sec. 18. Transition. Completed applications pending before the Department of Environmental Protection under the Maine Revised Statutes, Title 38, chapter 3, subchapter I, article 6 on the effective date of this Act are not affected by this Act.²⁶

²⁵ This refers to the underlined portion of the following: "This Act takes effect July 1, 1997, except section 1 of this Part takes effect 90 days after adjournment of the Second Regular Session of the 117th Legislature. The following provisions take effect September 19, 1997: Part A, section 10 that amends the Maine Revised Statutes, Title 38, section 484, subsection 4; Part A, section 11 that enacts Title 38, section 484, subsection 4-A; and that portion of Part B, section 2 that enacts Title 38, section 420-D."

PL 1999, c. 333, § 22 [effective September 18, 1999]

Sec. 22. Authorization to report out legislation. The Joint Standing Committee on Agriculture, Conservation and Forestry and the Joint Standing Committee on Natural Resources may report out legislation during the Second Regular Session of the 119th Legislature regarding the regulatory responsibilities of the Maine Land Use Regulation Commission and the Department of Environmental Protection. The legislation may propose reassigning the regulatory responsibilities of the 2 agencies to eliminate or reduce duplicative project review and permitting.

PL 2007, c. 661, §§ B-13 [effective April 18, 2008] from An Act To Implement Recommendations of the Governor's Task Force on Wind Power Development

Sec. B-13. Submission requirements. No later than September 1, 2008, the Department of Environmental Protection and the Maine Land Use Regulation Commission shall, jointly and to the extent not already addressed in existing agency guidance, specify the submission requirements for the following matters for applications for wind energy development, including, but not limited to, expedited wind energy development as defined in the Maine Revised Statutes, Title 35-A, section 3451, subsection 4, in accordance with the recommendations of the February 2008 final report of the Governor's Task Force on Wind Power Development in Maine created by Executive Order issued on May 8, 2007, and the provisions of this Act, as applicable:

1. Effects on scenic character and existing uses related to scenic character;
2. Tangible benefits, including postconstruction reporting of tangible benefits realized;
3. Noise and shadow flicker effects;
4. Effects on avian and bat species;
5. Public safety-related setbacks; and
6. Decommissioning plans, including demonstration of current and future financial capacity that would be unaffected by the applicant's future financial condition to fully fund any necessary decommissioning costs commensurate with the project's scale, location and other relevant considerations, including, but not limited to, those associated with site restoration and turbine removal.

Implementation of this section does not require rulemaking under Title 5, chapter 375.

Sec. E-1. Application; municipal authority. This Act applies to a proposed wind energy development for which the Department of Environmental Protection or the Maine Land Use Regulation Commission has not accepted an application as complete for processing as of the effective date of this Act. This Act does not apply to a proposed wind energy development of the type subject to certification pursuant to the Maine Revised Statutes, Title 35-A, section 3456 for which a municipality has accepted an application as complete for processing as of the effective date of this Act. This Act is not intended to limit a municipality's authority to regulate wind energy development.

Sec. E-2. Rulemaking. Any rules adopted pursuant to this Act by the Department of Environmental Protection or the Maine Land Use Regulation Commission are routine technical rules as defined by the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A.

²⁶ The "Act referred to is "An Act to Consolidate Traffic Movement Permits within the Department of Transportation".

Related Provisions

PL 1999, ch. 468, § 2 [effective June 30, 1999] enacts 38 MRSA 704-A(8) to read:

8. Modification of existing permits. A permit issued under Title 38, chapter 3, subchapter I, article 6 prior to the effective date of this section may be modified by the department to address issues relating to traffic movement and adequate provision of roads. At the department's²⁷ request, a person holding such a permit shall send a copy of the permit application to the department and to the Department of Environmental Protection. The department shall notify the Department of Environmental Protection of any substantive changes in the permit and shall provide that department with a copy of the final revised permit.

²⁷ "department" refers to the Maine Department of Transportation (MDOT).

**Appendix B. PL 2007, c. 661, Part B from An Act To Implement Recommendations of the
Governor's Task Force on Wind Power Development**

PART B

Sec. B-1. 38 MRSA §341-D, sub-§2, as enacted by PL 1989, c. 890, Pt. A, §13 and affected by §40, is amended to read:

2. Permit and license applications. ~~The~~Except as otherwise provided in this subsection, the board shall decide each application for approval of permits and licenses that in its judgment:

- A. Involves a policy, rule or law that the board has not previously interpreted;
- B. Involves important policy questions that the board has not resolved;
- C. Involves important policy questions or interpretations of a rule or law that require reexamination; or
- D. ~~Have~~Has generated substantial public interest.

The board shall assume jurisdiction over applications referred to it under section 344, subsection 2-A, when it finds that the criteria of this subsection have been met.

The board may vote to assume jurisdiction of an application if it finds that one or more of the criteria in this subsection have been met.

Any interested party may request the board to assume jurisdiction of an application.

The board may not assume jurisdiction over an application for an expedited wind energy development as defined in Title 35-A, section 3451, subsection 4 or for a certification pursuant to Title 35-A, section 3456.

Sec. B-2. 38 MRSA §341-D, sub-§4, ¶B, as enacted by PL 1989, c. 890, Pt. A, §13 and affected by §40, is amended to read:

B. License or permit decisions made by the commissioner that the board votes to review within 30 days of the next regularly scheduled board meeting following written notification to the board of the commissioner's decision. ~~The~~Except as provided in paragraph D, the procedures for review are the same as provided under paragraph A; ~~and~~

Sec. B-3. 38 MRSA §341-D, sub-§4, ¶C, as enacted by PL 1989, c. 890, Pt. A, §13 and affected by §40, is amended to read:

C. License or permit decisions appealed to the board under another law. Unless the law provides otherwise, the standard of review is the same as provided under paragraph A; and

Sec. B-4. 38 MRSA §341-D, sub-§4, ¶D is enacted to read:

D. License or permit decisions regarding an expedited wind energy development as defined in Title 35-A, section 3451, subsection 4. In reviewing an appeal of a license or permit decision by the commissioner on an application for an expedited wind energy development, the board shall base its decision on the administrative record of the department, including the record of any adjudicatory hearing held by the department, and any

supplemental information allowed by the board using the standards contained in subsection 5 for supplementation of the record. The board may remand the decision to the department for further proceedings if appropriate. The chair of the Public Utilities Commission or the chair's designee shall serve as a nonvoting member of the board and is entitled to fully participate but is not required to attend hearings when the board considers an appeal pursuant to this paragraph. The chair's participation on the board pursuant to this paragraph does not affect the ability of the Public Utilities Commission to submit information to the department for inclusion in the record of any proceeding before the department.

Sec. B-5. 38 MRSA §344, sub-§2-A, ¶A, as enacted by PL 1989, c. 890, Pt. A, §22 and affected by §40, is amended to read:

A. ~~The~~Except as otherwise provided in this paragraph, the commissioner shall decide as expeditiously as possible if an application meets one or more of the criteria set forth in section 341-D, subsection 2 and shall request that the board assume jurisdiction of that application. If at any subsequent time during the review of an application the commissioner decides that the application falls under section 341-D, subsection 2, the commissioner shall request that the board assume jurisdiction of the application.

(1) The commissioner may not request the board to assume jurisdiction of an application for any permit or other approval required for an expedited wind energy development, as defined in Title 35-A, section 3451, subsection 4, or a certification pursuant to Title 35-A, section 3456. Except as provided in subparagraph (2), the commissioner shall issue a decision on an application for an expedited wind energy development within 185 days of the date on which the department accepts the application as complete pursuant to this section or within 270 days of the department's acceptance of the application if the commissioner holds a hearing on the application pursuant to section 345-A, subsection 1-A.

(2) The expedited review periods of 185 days and 270 days specified in subparagraph (1) do not apply to the associated facilities, as defined in Title 35-A, section 3451, subsection 1, of the development if the commissioner determines that an expedited review time is unreasonable due to the size, location, potential impacts, multiple agency jurisdiction or complexity of that portion of the development. If an expedited review period does not apply, a review period specified pursuant to section 344-B applies.

The commissioner may stop the processing time with the consent of the applicant for a period of time agreeable to the commissioner and the applicant.

Sec. B-6. 38 MRSA §344-A, first ¶, as enacted by PL 1991, c. 471, is amended to read:

The commissioner may enter into agreements with individuals, partnerships, firms and corporations outside the department, referred throughout this section as "outside reviewers," to review applications or portions of applications submitted to the department. The commissioner has sole authority to determine the applications or portions of applications to be reviewed by outside reviewers and to determine which outside reviewer is to perform the review. When selecting an outside reviewer, all other factors being equal, the commissioner shall give preference to an outside reviewer who is a public or quasi-public entity, such as state agencies, the University of Maine System or the soil and water conservation districts. ~~The~~Except for an agreement for outside review regarding review of an application for a wind energy development as defined in Title 35-A, section 3451, subsection 11 or a certification pursuant to Title 35-A, section 3456, the commissioner may enter into an agreement with an outside reviewer only with the consent of the applicant and only if the applicant agrees in writing to pay all costs associated with the outside review.

Sec. B-7. 38 MRSA §346, sub-§1, as affected by PL 1989, c. 890, Pt. A, §40 and amended by Pt. B, §4, is further amended to read:

1. Appeal to Superior Court. Except as provided in section 347-A, subsection 3 or 4, any person aggrieved by any order or decision of the board or commissioner may appeal to the Superior Court. These appeals to the Superior Court ~~shall~~must be taken in accordance with Title 5, chapter 375, subchapter ~~VH~~7.

Sec. B-8. 38 MRSA §346, sub-§4 is enacted to read:

4. Appeal of decision regarding an expedited wind energy development. A person aggrieved by an order or decision of the board or commissioner regarding an application for an expedited wind energy development, as defined in Title 35-A, section 3451, subsection 4, may appeal to the Supreme Judicial Court sitting as the law court. These appeals to the law court must be taken in the manner provided in Title 5, chapter 375, subchapter 7.

Sec. B-9. 38 MRSA §352, sub-§3, as amended by PL 2001, c. 212, §2, is further amended to read:

3. Maximum fee. The commissioner shall set the actual fees and shall publish a schedule of all fees by November 1st of each year. If the commissioner determines that a particular application, by virtue of its size, uniqueness, complexity or other relevant factors, is likely to require significantly more costs than those listed on Table I, the commissioner may designate that application as subject to special fees. Through August 31, 2009, a special fee may not exceed \$250,000. Beginning September 1, 2009, a special fee may not exceed \$75,000. Such a designation must be made at, or prior to, the time the application is accepted as complete and may not be based solely on the likelihood of extensive public controversy. All department staff who have worked on the review of the application, including, but not limited to, preapplication consultations, shall submit quarterly reports to the commissioner detailing the time spent on the application and all expenses attributable to the application, including the costs of any appeals filed by the applicant and, after taking into consideration the interest of fairness and equity, any other appeals if the commissioner finds it in the public interest to do so. The costs associated with assistance to the board on an appeal before the board may be separately charged. The processing fee for that application must be the actual cost to the department. The applicant must be billed quarterly and all fees paid prior to receipt of the permit. Nothing in this section limits the commissioner's authority to enter into an agreement with an applicant for payment of costs in excess of the maximum special fee established in this subsection.

Sec. B-10. 38 MRSA §480-D, sub-§1, as enacted by PL 1987, c. 809, §2, is amended to read:

1. Existing uses. The activity will not unreasonably interfere with existing scenic, aesthetic, recreational or navigational uses.

In making a determination under this subsection regarding an expedited wind energy development, as defined in Title 35-A, section 3451, subsection 4, the department shall consider the development's effects on scenic character and existing uses related to scenic character in accordance with Title 35-A, section 3452.

Sec. B-11. 38 MRSA §484, sub-§3, ¶G is enacted to read:

G. In making a determination under this subsection regarding an expedited wind energy development, as defined in Title 35-A, section 3451, subsection 4, the department shall consider the development's effects on scenic character and existing uses related to scenic character in accordance with Title 35-A, section 3452.

Sec. B-12. 38 MRSA §484, sub-§10 is enacted to read:

10. Special provisions; grid-scale wind energy development. In the case of a grid-scale wind energy development, the proposed generating facilities, as defined in Title 35-A, section 3451, subsection 5:

A. Will be designed and sited to avoid unreasonable adverse shadow flicker effects;

B. Will be constructed with setbacks adequate to protect public safety. In making a finding pursuant to this paragraph, the department shall consider the recommendation of a professional, licensed civil engineer as well as any applicable setback recommended by a manufacturer of the generating facilities; and

C. Will provide significant tangible benefits as determined pursuant to Title 35-A, section 3454, if the development is an expedited wind energy development.

The Department of Labor, the Executive Department, State Planning Office and the Public Utilities Commission shall provide review comments if requested by the primary siting authority.

For purposes of this subsection, “grid-scale wind energy development,” “primary siting authority,” “significant tangible benefits” and “expedited wind energy development” have the same meanings as in Title 35-A, section 3451.

Sec. B-13. Submission requirements. No later than September 1, 2008, the Department of Environmental Protection and the Maine Land Use Regulation Commission shall, jointly and to the extent not already addressed in existing agency guidance, specify the submission requirements for the following matters for applications for wind energy development, including, but not limited to, expedited wind energy development as defined in the Maine Revised Statutes, Title 35-A, section 3451, subsection 4, in accordance with the recommendations of the February 2008 final report of the Governor’s Task Force on Wind Power Development in Maine created by Executive Order issued on May 8, 2007, and the provisions of this Act, as applicable:

1. Effects on scenic character and existing uses related to scenic character;
2. Tangible benefits, including postconstruction reporting of tangible benefits realized;
3. Noise and shadow flicker effects;
4. Effects on avian and bat species;
5. Public safety-related setbacks; and

6. Decommissioning plans, including demonstration of current and future financial capacity that would be unaffected by the applicant’s future financial condition to fully fund any necessary decommissioning costs commensurate with the project’s scale, location and other relevant considerations, including, but not limited to, those associated with site restoration and turbine removal.

Implementation of this section does not require rulemaking under Title 5, chapter 375.