An Act To Update the Site Location of Development Laws

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 30-A MRSA §4406, sub-§1, ¶B-1, as enacted by PL 1989, c. 769, §1, is repealed.

Sec. 2. 30-A MRSA §4406, sub-§1, ¶F, as enacted by PL 1989, c. 769, §1, is repealed.

Sec. 3. 38 MRSA §482, sub-§4-D, as amended by PL 1987, c. 812, §§5 and 18, is repealed.

Sec. 4. 38 MRSA §482, sub-§5, ¶C, as repealed and replaced by PL 1993, c. 680, Pt. A, §35, is repealed.

Sec. 5. 38 MRSA §482, sub-§5, ¶C-1, as repealed and replaced by PL 1993, c. 680, Pt. A, §35, is repealed.

Sec. 6. 38 MRSA §482, sub-§5, ¶E, as amended by PL 1995, c. 493, §5, is further amended to read:

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~~a lot to an abutting owner ~~or~~if the lot is not further divided or transferred within a 5-year period, except as provided in this subsection, or sale or lease of a lot to a spouse, child, parent, grandparent or sibling of the developer if ~~those lots are~~the lot is 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;

Sec. 7. 38 MRSA §482, sub-§5, ¶F, as repealed and replaced by PL 1993, c. 680, Pt. A, §35, is amended to read:

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~~a lot created with a conservation easement as defined in Title 33, section 476 that is recorded at the appropriate registry of deeds prior to the beginning of land clearing or construction, ~~provided that the department~~as long as the department approves and is made a party to the easement; and

Sec. 8. 38 MRSA §483-B is enacted to read:

§ 483-B. Location of development of state or regional significance

The department may not approve an application for a structure, a development occupying a land or water area in excess of 20 acres or a subdivision unless the development is located or designed as described in subsection 1 or 2.

1. Residential subdivisions. A subdivision in which all lots are for single-family, detached, residential housing; common areas; or open space must be:

A. Located in a locally designated growth area, as identified in a comprehensive plan adopted pursuant to and consistent with the procedures, goals and guidelines of Title 30-A, chapter 187, article 2 or as identified in a growth management program certified under Title 30-A, section 4347-A;

B. In the absence of a consistent comprehensive plan, located in an area served by a public sewer system that has the capacity for the development or in an area identified as a census designated place in the latest Federal Decennial Census or an urban compact municipality or compact area as defined in Title 23, section 754; or

C. Designed to meet department standards for a subdivision adopted pursuant to section 484. The department may accept an application designed to meet those subdivision standards and determine whether the design meets those standards as part of the department's review of the application.

If the department approves an application for a subdivision designed to meet subdivision standards under section 484 and later identifies a violation of those standards, the noncompliance is considered a violation of the permit and applicable standards.

2. Structures, 20-acre developments and other subdivisions. A structure, a development that occupies a land or water area in excess of 20 acres or a subdivision in which at least one lot is not for single-family, detached, residential housing; common areas; or open space must be:

A. Located in a locally designated growth area, as identified in a comprehensive plan adopted pursuant to and consistent with the procedures, goals and guidelines of Title 30-A, chapter 187, article 2 or as identified in a growth management program certified under Title 30-A, section 4347-A; or

B. In the absence of a consistent comprehensive plan, located in an area served by a public sewer system that has the capacity for the development or in an area identified as a census designated place in the latest Federal Decennial Census or an urban compact municipality or compact area as defined in Title 23, section 754.

3. Exceptions. This section does not apply to:

A. A development described by Title 30-A, section 4349-A, subsection 1, paragraph C, subparagraph (1), (2), (3), (4), (5) or (7) as determined by the department. For purposes of this subsection, Title 30-A, section 4349-A, subsection 1, paragraph C, subparagraph (2) includes but is not limited to wind power developments and transmission lines; and

B. Reconstruction or expansion of a development or other project in existence on January 1, 2010.

Sec. 9. 38 MRSA §484, sub-§1, as amended by PL 1995, c. 287, §1, is further amended to read:

1. Financial capacity and technical ability. 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 or a loan by a financial institution authorized to do business in ~~this~~the 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.

Sec. 10. 38 MRSA §484, sub-§5, as repealed and replaced by PL 1987, c. 812, §§10 and 18, is amended to read:

5. Ground water. The proposed development will not pose an unreasonable risk that a discharge to ~~a significant ground water aquifer~~groundwater will occur.

Sec. 11. 38 MRSA §484-C is enacted to read:

§ 484-C. Bonds or other security

1. Bond or other security. The department may require a bond from an applicant for a development under this article payable to the State with sureties satisfactory to the department or such other security as the department may determine will adequately secure compliance, conditioned upon the faithful performance of the requirements of this chapter, department rules and permit provisions.

2. Developments requiring security. Security may be required when the department determines that if construction or operation of a development proposed under this article does not proceed as anticipated, there is an unacceptable risk of unreasonable impacts to the natural environment or existing uses without the security. This risk may be due to factors such as the scope or complexity of required environmental controls or management, the particular type of development, sensitivity of the potentially impacted natural environment or existing uses, site conditions or the compliance history of the applicant.

3. General requirements. The department may require:

A. A bond to address all or a part of the work necessary to comply with applicable requirements;

B. All proceeds of forfeited bonds or other security to be expended by the department for necessary work for which the bond or other security was posted and any remainder returned to the permittee; or

C. Other security, including a security deposit with the State, an escrow account and agreement, insurance or an irrevocable trust.

This section does not apply to mining activities for which a bond or other security is required by the department pursuant to section 490, subsection 2.

Sec. 12. 38 MRSA §485-A, sub-§1-C, as amended by PL 2005, c. 602, §5, is further amended to read:

1-C. Long-term construction projects. The department shall adopt rules ~~allowing the option of, and~~ identifying requirements for ~~, a planning permit~~a long-term construction project that ~~allows~~allow approval of development within a specified area and within specified parameters such as maximum area~~,~~and 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~~a permit for the long-term construction project is issued. The location and parameters of the development must meet the standards of this article. This ~~alternative is not available for~~subsection does not apply to 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 2-A.

~~If the department determines that full compliance with new or amended rules enacted after a planning permit was issued will significantly alter the plan for the development, the department may require the permittee to comply with the rules in effect at the time of issuance of the planning permit and, to the extent practicable, to comply with additional requirements or standards in the new or amended rules for any remaining portion of the development for which final submissions have not been provided. The department may not require significant alteration of constructed or permitted infrastructure authorized by the planning permit, or subsequent approvals designed to serve future development phases in existence at the time of the new or amended rules in assessing practicability.~~

~~For purposes of this subsection, "practicable" means available and feasible considering cost, existing technology and logistics based on the overall purpose of the project as authorized in the planning permit.~~

Sec. 13. 38 MRSA §486-B is enacted to read:

§ 486-B. General permit authority; Department of Transportation developments

1. Authorization. The department may issue a general permit for all or a subclass of developments constructed or caused to be constructed or operated or caused to be operated by the Department of Transportation that require approval pursuant to this article.

2. Standards. A development authorized by a general permit is required to meet all applicable requirements under and rules adopted pursuant to this article. In a general permit the department may:

A. Rely upon the Department of Transportation's environmental procedures and standard practices for purposes of approving a development if the department determines that such practices meet or exceed the requirements of and rules adopted pursuant to this article. This reliance may occur although the Department of Transportation's environmental procedures and standard practices have not been adopted through rulemaking and minor changes to such procedures and practices occur without prior review by the department;

B. Provide for reduced submissions or less review than would otherwise be required for an individual permit; and

C. Set forth specific requirements, terms and conditions.

For purposes of any enforcement under this subsection, the department may rely upon the standards of and rules adopted pursuant to this article, although the department may have relied upon the Department of Transportation's environmental procedures and standard practices for purposes of approval.

3. Review. The department may approve:

A. A specific development upon receipt and review of a notice of intent under subsection 4, paragraph A to comply with standards in the general permit for the specific development from the Department of Transportation; or

B. A notice of intent under subsection 4 prior to receipt of a final design for a development, as long as any requirements in a general permit for the approval are met.

4. Procedure. Procedures for a general permit under this section include:

A. A notice of intent must be submitted on a form provided by the department and contain information required by the department that is necessary to determine whether standards will be met; and

B. If a general permit provides for approval of a notice of intent under paragraph A prior to submission of final designs to the department, then following submission of the designs the department may require that changes in design be made where necessary to conform with applicable standards.

The Department of Transportation may choose to apply for an individual permit for a development rather than file a notice of intent under paragraph A.

The department may require the Department of Transportation to file for an individual permit for a development that would otherwise be authorized to file a notice of intent under paragraph A as provided for in the general permit.

5. Approval. A development authorized under a general permit is considered to be approved by the department upon approval by the department of a notice of intent under subsection 4, paragraph A. The permit must include the text of the general permit and the department's approval of the notice of intent under subsection 4. The department may condition its approval of the notice of intent as necessary to ensure compliance with standards under a general permit.

6. Fee. The department may not charge a fee for processing and approval of a notice of intent under subsection 4, paragraph A.

7. Modification of general permit. Notwithstanding section 341-D, the department may modify a general permit through notification of the Department of Transportation. The department shall modify a general permit whenever rules adopted pursuant to this article are enacted or modified and may modify a general permit as otherwise necessary to provide for efficient administration and conformance with department standards.

8. Modification of notice of intent. The department shall provide for application and approval of modification of the notice of intent in any general permit.

Sec. 14. 38 MRSA §488, sub-§5, as amended by PL 1995, c. 704, Pt. A, §17 and affected by Pt. C, §2, is repealed.

Sec. 15. 38 MRSA §489-A, sub-§2, as amended by PL 1999, c. 243, §19, is further amended to read:

2. Registration. The commissioner shall register municipalities to grant permits for projects under subsection ~~1~~ B1 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;

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.

Sec. 16. Report. The Department of Environmental Protection shall review the storm water management provisions in the Maine Revised Statutes, Title 38, section 420-D and the site location of development provisions of Title 38, chapter 3, subchapter 1, article 6 that provide for the registration of municipalities for the authority to substitute local permits for state permits and exempt developments or projects from permitting or specified standards within certain municipalities or portions of municipalities. The department shall also consider whether these provisions may need to be amended in light of changes in the regulation of storm water discharges under Title 38, section 413. The department shall report concerning its review and recommend any needed statutory changes on this or related subjects to the Joint Standing Committee on Natural Resources by January 15, 2010. The committee is authorized to submit a bill related to this report to the Second Regular Session of the 124th Legislature at the time of submission of the report.

SUMMARY

This bill changes the site location of development laws in the following ways.

It eliminates the definition of "significant ground water aquifer. It eliminates the exceptions for a lot of 40 or more acres in the definition of "subdivision." It changes the exception for a sale or lease of a lot to an abutter in the definition of "subdivision" by clarifying that the lot may not be further divided or transferred within a 5-year period, except as otherwise provided. It changes the exception for a common lot created with a conservation easement in the definition of "subdivision." It removes the requirement that the lot be a common lot and adds the requirement that the conservation easement be approved by the Department of Environmental Protection.

It adds a provision specifying the minimal planning requirements that must be met for a permit to be approved by the department.

It changes the groundwater standard by changing a requirement to avoid an unreasonable risk of discharge to a significant ground water aquifer to a requirement to avoid an unreasonable risk of discharge to groundwater.

It provides that the Department of Environmental Protection may require a bond or such other security if the department determines that a proposed development will present an unacceptable risk of unreasonable impacts to the natural environment or existing uses without such security.

It makes several changes to a provision addressing approval of future development sites to refocus it on long-term construction projects.

It authorizes the Department of Environmental Protection to issue a general permit for all or a subclass of developments constructed or caused to be constructed or operated or caused to be operated by the Department of Transportation that require approval under the site location of development laws.

It eliminates the low-density subdivision exemption and corrects cross-references to that law.

It adds a one-time reporting requirement concerning provisions in the site location and development laws and storm water management laws that provide for the registration of municipalities for the authority to substitute local permits for state permits and exempt developments or projects from permitting or specified standards within certain municipalities or portions of municipalities. The Joint Standing Committee on Natural Resources is authorized to submit legislation relating to the report to the Second Regular Session of the 124th Legislature.