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Public Law
124th Legislature
First Regular Session

Chapter 293
H.P. 887 - L.D. 1268

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. 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. 2. 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. 3. 38 MRSA §486-B is enacted to read:

§ 486-B. General permit authority; Department of Transportation and Maine Turnpike Authority 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 or the Maine Turnpike Authority 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 or the Maine Turnpike Authority'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 or the Maine Turnpike Authority'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 or the Maine Turnpike Authority'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 the Maine Turnpike Authority; 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 or the Maine Turnpike Authority 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 or the Maine Turnpike Authority 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 or the Maine Turnpike Authority. 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. 4. 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-B 1 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. 5. 38 MRSA §490-D, sub-§1, as amended by PL 2007, c. 616, §3, is further amended to read:

1. Significant wildlife habitat and other protected areas. Affected land may not be located in, on or over a significant wildlife habitat or other type of protected natural resource, as defined in section 480-B, or in an area listed pursuant to the Natural Areas Program, Title 12, section 544. The department may allow excavation to occur ~~in, on or over a significant wildlife habitat or other type of protected natural resource provided~~ under this section as long as a permit is obtained pursuant to article 5-A. Permit requirements for certain excavations in, on or over high and moderate value inland waterfowl and wading bird habitat are also governed by section 480-GG.

Sec. 6. 38 MRSA §490-Z, sub-§1, as amended by PL 2007, c. 616, §6, is further amended to read:

1. Significant wildlife habitat and other protected areas. Affected land may not be located in, on or over a significant wildlife habitat or other type of protected natural resource, as defined in section 480-B, or in an area listed pursuant to the Natural Areas Program, Title 12, section 544. The department may allow excavation to occur ~~in, on or over a significant wildlife habitat or other type of protected natural resource provided~~ under this section as long as a permit is obtained pursuant to article 5-A. Permit ~~requirement~~ requirements for certain excavations in, on or over high and moderate value inland waterfowl and wading bird habitat are also governed by section 480-GG.

Sec. 7. 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.

Effective September 12, 2009