

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND NINTH LEGISLATURE

Legislative Document

No. 1098

S. P. 350

In Senate, March 9, 1979

Referred to the Committee on Energy and Natural Resources. Sent down for concurrence and ordered printed.

Presented by Senator Trafton of Androscoggin.

Cosponsors: Senators O'Leary of Oxford and Huber of Cumberland.

MAY M. ROSS, Secretary of the Senate

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-NINE

AN ACT to Amend the Subdivision Law to Allow Consideration of Cumulative Impact Costs to the Community from Gradual Development.

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

Sec. 1. 30 MRSA § 4956, sub-§ 1, as repealed and replaced by PL 1975, c. 475, § 1, is repealed and the following enacted in its place:

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms shall have the following meanings.

A. A subdivision is the division of a tract or parcel of land into 3 or more lots within any 5-year period, which period begins after September 22, 1971, whether accomplished by sale, lease, development, buildings or otherwise, provided that a division accomplished by devise, condemnation, order of court, gift to a person related to the donor by blood, marriage or adoption, unless the intent of the gift is to avoid the objectives of this section, or by transfer of any interest in land to the owner of land abutting thereon, shall not be considered to create a lot or lots for the purposes of this section.

In determining whether a tract or parcel of land is divided into 3 or more lots, the first dividing of a tract or parcel, unless otherwise exempted herein, shall be considered to create the first 2 lots and the next dividing of either of the first

2 lots, by whomever accomplished, unless otherwise exempted herein, shall be considered to create a 3rd lot, unless both the dividings are accomplished by a subdivider who shall have retained one of the lots for his own use as a single family residence for a period of at least 5 years prior to the 2nd dividing. Lots of 40 or more acres shall not be counted as lots.

For the purposes of this section, a tract or 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 shall be considered each a separate tract or parcel of land unless the road was established by the owner of land on both sides thereof.

B. Wetland.

(1) Costal wetlands shall include areas with vegetation present that is tolerant of salt water and occurs primarily in a salt water habitat and any swamp, marsh, bog, beach, flat or other contiguous lowland which is subject to tidal action or normal storm flowage at any time excepting periods of maximum storm activity.

(2) Inland wetlands shall include areas identified on the basis of soils or vegetation as inland wetlands, including, but not limited to, swamps, marshes, or bogs.

(a) Wetland soils include, but are not limited to, Atherton, Biddeford, Burnham, fresh water marsh, Halsey, muck, peat and muck, Saco, Scarborough, Washburn, Whately and Whitman.

(b) Wetland vegetation includes, but is not limited to, carex, rushes, reedtop, reed grasses, mannagrasses, prairie cordgrass, mints, plume grass, rice cutgrass, sedges, giant burweed, cattails, arrowheads, pickerel weed, smartweeds, spikerushes, wild rice, pondweeds, duckweeds, coontail, spatterdock, wild celery, water milfoil, water lillies, alder dogwood, willow, buttonbush, sweet gale, labrador tea, leather-leaf, cranberries, cottongrass, sphagnum moss, stunted black spruce and stunted tamarack; provided that such vegetation is growing in generally waterlogged or watercovered areas.

Sec. 2. 30 MRSA § 4956, sub-§ 3, first paragraph, as repealed and replaced by PL 1971, c. 454, is amended to read:

3. Guidelines. When promulgating any subdivision regulations and when reviewing any subdivision for approval or for conditional approval, the planning board, agency or office, or the municipal officers, shall consider the following criteria and before granting approval shall determine that the proposed subdivision either alone or in conjunction with other development in the area:

Sec. 3. 30 MRSA § 4956, sub-§ 3, ¶¶ J, K and L, as repealed and replaced by PL 1971, c. 454, are amended to read:

J. Is in conformance with a duly adopted subdivision regulation or ordinance, comprehensive plan, development plan, or land use plan, if any; ~~and~~

K. The subdivider has adequate financial and technical capacity to meet the above stated standards;

L. Whenever situated, in whole or in part, within 250 feet of any pond, lake, river or tidal waters, will not adversely affect the quality of such body of water or unreasonably affect the shoreline of such body of water;

Sec. 4. 30 MRSA § 4956, sub-§ 3, ¶¶ M and N are enacted to read:

M. Will not have a significant adverse impact on wildlife; and

N. Will not have an adverse impact on wetlands.

Sec. 5. 30 MRSA § 4956, sub-§ 3, as last amended by PL 1973, c. 465, §§ 2-4, is further amended by adding at the end 2 new paragraphs to read:

In the event that systems which dispose of waste waters underground are to be utilized in the subdivision, the reviewing authority shall require that measures be taken to prevent pollution of groundwater. After July 1, 1981, these measures shall include requiring lot sizes consistent with guidelines to be promulgated by the Board of Environmental Protection which indicate the minimum lot sizes needed to prevent groundwater pollution under different soil and groundwater conditions.

In cases where the Maine Geological Survey of the Department of Conservation has identified an area favorable for the extraction of groundwater, where wells yield at least 10 gallons per minute, the reviewing authority shall exercise special care and consult with the Department of Environmental Protection or the Maine Geological Survey, or both, to determine what other measures, if any, are needed to prevent the pollution of groundwater. These areas are particularly important as in general they are both some of the most important sources of groundwater in Maine and easily contaminated.

With regard to the guidelines for lot sizes, the Board of Environmental Protection shall consult with the Department of Human Services, Division of Health Engineering; the Department of Agriculture, State Soil and Water Conservation Commission; the Department of Conservation, Maine Geological Survey; and the Maine Land Use Regulation Commission in determining what size lots are needed to maintain groundwater in a state suitable for domestic uses, including drinking. The Board of Environmental Protection shall promulgate the guidelines on or before July 1, 1981, and shall review them in light of changing information at least every 5 years thereafter.

STATEMENT OF FACT

The Legislature finds and declares that numerous developments and subdivisions of land can gradually produce major impacts upon community services, public health and safety and environmental quality. Each individual subdivision which is reviewed by a municipal reviewing authority may not, by itself, cause substantial harm. The accumulated results of numerous subdivisions may produce substantial costs or other problems for the people of Maine communities. The subdivision review process should consider not only the specific problems caused by the development in question, but the situation resulting from the accumulated demands on services, resources and the environment. In particular, the Legislature finds that houses with septic tanks should be built on lots which are large enough to permit disposal of sewage without surface and groundwater contamination and resultant public health problems.

This bill is the result of work undertaken by the Governor's Advisory Committee on Coastal Development and Conservation in response to a legislative resolve introduced in the 108th Legislature.

In fiscal year 1979-80, the Department of Environmental Protection is to seek federal funds from any source to carry out the purposes of this Act.

In the event that the Department of Environmental Protection is unable to obtain federal funds to carry out the purposes of this Act, an appropriation will be necessary to restrain consultants or project employees or both.