

# MAINE STATE LEGISLATURE

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(EMERGENCY)  
FIRST REGULAR SESSION

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ONE HUNDRED AND TENTH LEGISLATURE

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**Legislative Document**

**No. 1550**

H. P. 1365

House of Representatives, April 16, 1981

Submitted by the Department of Environmental Protection pursuant to Joint Rule 24.

Out of Order, referred to the Committee on Energy and Natural Resources. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Representative Hall of Sangerville.

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STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY-ONE

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**RESOLVE, Providing for Standards to Achieve Erosion Control on Roads in Organized Areas under the Site Location of Development Law.**

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**Emergency preamble.** Whereas, Acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the Legislature has directed the Board of Environmental Protection to adopt standards for the construction of roads; and

Whereas, the Board of Environmental Protection has adopted these standards under chapter 377 of the rules of the Department of Environmental Protection effective September 14, 1980, in accordance with the site location of development law; and

Whereas, in order for these standards to remain in effect beyond 90 days after adjournment of the First Regular Session of the 110th Legislature, the Legislature must approve such standards; now, therefore, be it

**Construction of roads; standards approved. Resolved:** That the 110th Legislature, now in First Regular Session, approve the standards governing the construction of roads provided in chapter 377 of the rules of the Department of Environmental Protection effective September 14, 1980, and adopted by the Board

of Environmental Protection under the site location of development law, the Revised Statutes, Title 38, section 488, subsection 2.

**Emergency clause.** In view of the emergency cited in the preamble, this resolve shall take effect when approved.

**STATEMENT OF FACT**

This resolve pertains to standards which are incorporated in the statement of fact as "Exhibit A" in the form adopted by the Department of Environmental Protection and which are to be applied in the organized areas of the State. A person constructing a road subject to the site location law may choose to follow the standards or apply for a permit.

The standards are intended to prevent erosion and sedimentation of lakes, rivers, streams and coastal waters.

**Exhibit A**

06-096 DEPARTMENT OF ENVIRONMENTAL PROTECTION

Chapter 377 REVIEW OF ROADS UNDER THE SITE LOCATION OF DEVELOPMENT LAW

**SUMMARY:** These regulations describe the Board's jurisdiction in reviewing roads under the Site Location of Development Law (38 M.R.S.A. § 481 et seq.); define and clarify terms used in the Site Location of Development Law and Regulations; describe the procedure to be used in reviewing proposed roads; establish standards which must be met in order to qualify for exemption from the law; and, describe the terms and conditions which the Board may impose on the approval of an application in order to ensure compliance with the law.

**1. Board Jurisdiction**

A. The Board of Environmental Protection shall exercise its jurisdiction in reviewing proposed roads which "are to be stripped or graded and not to be revegetated which causes a total project, including any buildings to occupy a ground area in excess of 3 acres", as defined in 38 M.R.S.A. § 482(6)(B).

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**NOTE:** The following table may be used as a guide in determining whether a proposed road exceeds the three acre threshold.

<b>width of road, not including the portion of the right-of-way to be revegetated</b>	<b>length of road beyond which the 3 acre threshold is exceeded</b>
12 feet	2.06 miles

14 feet	1.77 miles
16 feet	1.55 miles
18 feet	1.38 miles
20 feet	1.24 miles
22 feet	1.13 miles
24 feet	1.03 miles
26 feet	.95 miles
28 feet	.88 miles
30 feet	.83 miles
32 feet	.77 miles
34 feet	.73 miles
36 feet	.69 miles
38 feet	.65 miles
40 feet	.62 miles

1. Pursuant to 38 M.R.S.A. § 488, developments which consist only of a municipal or private road or way are exempt from the Board’s jurisdiction under the Site Location Law provided they are located, constructed, and maintained in accordance with the following provisions:

- a. The Maine Land Use Regulation Commission’s (LURC) rules and regulations when a road is to be located in a development or protection district, as established by LURC.
- b. LURC’s “Erosion Control on Logging Jobs” guidelines when roads are to be located in LURC’s management districts; and
- c. The Board’s road standards found in Sections 4 and 5 of these regulations when roads are to be located outside of LURC’s jurisdiction.

**2. Definitions**

The following terms, as used in the Site Location Law (38 M.R.S.A. § 481 et seq.) and in these regulations (Chapter 377), shall have the following meanings, unless the context otherwise indicates:

A. Private way. “Private way” means a road, as used in 38 M.R.S.A. § 482(6)(B) and as defined in Department of Environmental Protection Regulations, Chapter 371(1)(0), that has a primary purpose other than providing access to the general public and which is not intended or likely to be maintained through the use of public funds. Private ways include, but are not limited to, land management roads, private roads, and private driveways.

- 1. Roads that are constructed and maintained through the use of public funds by public agencies for administrative purposes, and are not intended to be used by the general public, shall be considered private ways.

B. Public way. “Public way” means a road, as used in 38 M.R.S.A. § 482(6)(B) and as defined in Department of Environmental Protection Regulations, Chapter 371(1)(0), which is intended to be used by the general public

and which is intended or likely to be maintained through the use of public funds. Public ways include, but are not limited to, public roads which are not specifically exempt under 38 M.R.S.A. § 482(2) and roads which are part of a subdivision or other form of development, even if the overall development, exclusive of roads, is not subject to review under the Site Location Law.

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NOTE: "Road", as defined in Department Regulations, Chapter 371(1)(0), means: "a way or course which is:

1. Constructed or formed by substantial recontouring of the land;
2. Designed to permit passage of most wheeled vehicles;
3. Not intended to be abandoned and revegetated within a short period of time; and
4. Designed to be permanent or intended to be used for a significant period of time."

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C. Road.

1. In calculating whether the three acre threshold of the law has been exceeded:
  - a. The area of continuous road to be constructed after the effective date of these regulations, exclusive of banks, ditches, and portions of the right-of-way which are to be revegetated within two growing seasons from the time construction commences.
  - b. The area of roads constructed prior to the effective date of these regulations shall not be included, unless otherwise specified.
  - c. The reconstruction of an existing road, including widening or straightening, to be undertaken after the effective date of these regulations shall be included.
  - d. Normal maintenance of an existing road, including gravel resurfacing, grading, re-ditching, reshaping, culvert maintenance and replacement, and the clearing of brush, shall not be included.
2. Once a continuous stretch of road has exceeded the three acre threshold, all additions to that road are subject to review under the law.

D. Substantial recontouring of land. "Substantial recontouring of land", as used in Department Regulations, Chapter 371(1)(0)(1), means the removal of vegetation and the movement of soil such that the natural configuration of the land is altered.

E. Designed to permit passage of most wheeled vehicles. "Designed to permit passage of most wheeled vehicles", as used in Department Regulations, Chapter 371(1)(0)(2), means that the road is designed such that it will be passable by most four-wheel drive vehicles, exclusive of skidders and tracked vehicles.

F. To be abandoned and revegetated within a short period of time. “To be abandoned and revegetated within a short period of time”, as used in Department Regulations, Chapter 371(1)(0)(3), means that the road ceases to be used for the purpose for which it was constructed and is revegetated, either naturally or artificially, such that vegetation is present and is effectively stabilizing exposed mineral soil within two growing seasons from the time construction commences.

G. Designed to be permanent or intended to be used for a significant period of time. “Designed to be permanent or intended to be used for a significant period of time”, as used in Department Regulations, Chapter 371(1)(0)(4), means that the road is designed and intended to be used for a period of time exceeding two years from the time construction commences.

### **3. Procedure**

A. Roads which qualify for exemption from the Site Location Law (see 38 M.R.S.A. § 488 or Section 1(A)(1) of these regulations) may be developed without prior notification submitted to the Board.

B. Roads which are subject to the Site Location Law and which do not qualify for exemption under the law shall be approved by the Board prior to commencing construction.

### **4. Standards For the Construction of Private Ways**

In order to qualify for the exemption provided for under 38 M.R.S.A. § 488, private ways to be located in areas not subject to the jurisdiction of the Maine Land Use Regulation Commission shall be located, constructed, and maintained in accordance with the following standards:

A. Private ways shall not be constructed in the following areas, except as provided by Section 3(B) of these regulations.

1. A historic site, as defined in Department Regulations, Chapter 375(11) (B);
2. A site of an unusual natural area, as defined in Department Regulations, Chapter 375(12)(B);
3. An area of particular importance to fish and wildlife, including, but not limited to:
  - a. Important deer wintering areas;
  - b. Habitat of any species declared threatened or endangered by the Commissioner, Maine Department of Inland Fisheries and Wildlife, or the Director of the U.S. Fish and Wildlife Service;
  - c. Nesting areas for bird colonies; or
  - d. Important freshwater wetlands.
4. An area over 2,700 feet in elevation above sea level; or

5. An area where the soil type or types may not be suitable for the nature of the undertaking, such as muck or peat soils.

B. Proper measures will be taken during the construction of the private way to insure that unreasonable sedimentation and erosion of exposed mineral soil and fill will not take place.

C. Long, steady grades will be avoided and occasional breaks in grade will be made to facilitate natural drainage, unless water runoff is properly managed through the use of drainage structures.

D. Road grades will be kept below ten percent except for short distances where the grade may exceed ten percent. Where a road grade exceeds ten percent, culverts, water bars, water turnouts, and/or ditching will be installed to properly manage water runoff.

E. Roads will be designed and constructed to facilitate natural drainage by outsloping, insloping, or crowning, as appropriate.

F. Cut and fill banks will be stabilized to avoid unreasonable slumping, washing, or the erosion of such banks.

G. Drainage ditches will be provided where appropriate to effectively control water entering the road area.

1. Ditches will be properly stabilized such that the potential for unreasonable erosion does not exist.
2. Ditches will not drain directly into natural water bodies, including lakes, ponds, rivers, and streams.
3. Ditches along roads approaching water crossings will be designed to empty onto a filter strip of undisturbed, vegetated land. The width of the filter strip will be dependent on the slope of the land between the outflow point of the ditch and the normal high water mark of the surface water body and will be at least the width indicated below:

average slope of land between the ditch outflow point and the normal high water mark (percent)	width of filter strip between the end of the ditch and the normal high water mark (feet along surface of the ground)
0	25
10	45
20	65
30	85
40	105
50	125

- a. Where a filter strip of the appropriate width indicated is impractical, an appropriate technique will be used to reasonably prevent sediment from

directly entering the water body, such as sump holes or settling basins sized to accommodate maximum, anticipated flow in the ditches.

H. When a road is not approaching a water crossing, unless impractical because of the topography of the land, a filter strip of undisturbed, vegetated land will be left between the exposed mineral soil of the road and the normal high water mark of any natural water body. The width of the filter strip will be at least as wide as is indicated in the table set forth under subsection G.

I. For a length of fifty feet of roadway on both sides of a water crossing, the width of the disturbed right-of-way will be no greater than the width of the roadway, ditches, and embankments (fill) plus ten feet on both sides of the road.

J. Water crossings will be kept to a minimum and will cross water bodies at right angles to the fullest extent possible.

1. Bridges will cross streams where streams are straight and narrow and the stream banks are high and straight, to the fullest extent practicable.

K. Bridges and culverts at stream and swale crossings will be designed, installed, and maintained to allow the passage of maximum anticipated stream flow and, where relevant, the passage of fish.

1. Culverts used at water crossings will be installed such that:

- a. The culvert inlet is placed at or below, but not above, the grade of the stream bed.
- b. Filling under the culvert to bring the culvert up to grade is avoided.
- c. The culvert is set on firm ground and earth is compacted at least halfway up the side of the culvert to prevent water from leaking around the culvert.
- d. The culvert is covered with at least one foot of soil and the cover is compacted to prevent settling in the road.
- e. A headwall at the upstream end of the culvert is protected from eroding by means appropriate for the situation.

2. Bridges will be built such that exposed soil is properly stabilized to reasonably avoid erosion and sedimentation.

L. Ditch relief or cross drainage culverts, open top culverts, and drainage dips will be placed where appropriate to move water across the road before the flow in drainage ditches gains sufficient volume or head to erode the ditches or roadway.

1. On slopes greater than 10%, ditch relief or cross drainage culverts and open top culverts will be placed across the road at approximately a 30 degree angle downslope from a line perpendicular to the centerline of the road.

2. Drainage dips may be used in place of ditch relief culverts only where the road grade is 10 percent or less.



3. Ditch relief culverts, cross drainage culverts, open top culverts and drainage dips will direct drainage onto a filter strip of natural undisturbed land, and their outlets will be stablized with appropriate materials.

NOTE: The following table should be used as a guide in spacing ditch relief culverts and drainage dips along a road.

Road Grade (percent)	Spacing (feet)
1-2	500-300
3-5	250-180
6-10	167-140
11-15	136-127
16-20	125-120

M. Water crossings and drainage systems will be maintained throughout the time when a road is being used such that they are effective in accomplishing their intended purpose.

N. Upon discontinuation or suspension of the use of a road for more than three years:

- 1. Water bars will be constructed at intervals which allow the water bars to accomplish their intended function.

NOTE: The following table should be used as a guide in determining the spacing of water bars:

Road Grade (percent)	Spacing (feet)
1-2	250
3-5	200-135
6-10	100-80
11-15	80-60
16-20	60-45
21+	40

a. Water bars will be constructed at approximately a 30 degree angle downslope from a line perpendicular to the centerline of the road and should drain at a slight outslope onto undisturbed, vegetated land.

b. Water bars will be constructed so as to effectively prevent surface water from flowing over or under the water bar and will extend a sufficient distance beyond the roadway so that water will not reenter the road surface.

2. All bridges and culverts, which will not be maintained, will be removed and all areas of exposed mineral soil will be permanently stablized.

- a. The removal of bridges and culverts will be done in a manner and during

the appropriate season such that unreasonable erosion and sedimentation will not occur.

#### **5. Standards for the Construction of Public Ways**

In order to qualify for the exemption provided for under 38 M.R.S.A. § 488, public ways to be located in areas not subject to the jurisdiction of the Maine Land Use Regulation Commission shall be located, constructed, and maintained in accordance with the following standards:

A. Public ways shall not be constructed in the areas identified under section 4(A) of these regulations, except as provided by Section 3(B) of these regulations.

B. Public ways will have a travel way of at least a minimum width of eighteen feet, unless the Maine Department of Transportation indicates that a lesser width is satisfactory.

C. Public ways will be constructed and maintained in accordance with the road standards of the municipality within which they are located.

#### **6. Terms and Conditions**

The Board may, as a term or condition of approval, establish any reasonable requirement to ensure that a proposed road, not qualifying for exemption from the law, is in compliance with all provisions of the Site Location Law and Regulations.

After public notice and public hearing on June 26, 1980, the above regulations are hereby adopted this 13th day of August, 1980.

**BASIS STATEMENT:** These regulations are adopted to explain and clarify the review of proposed roads under the Site Location Law and to establish standards for road construction which, if met, result in the exemption of a proposed road from the jurisdiction of the law.

Effective September 14, 1980.