

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

FIRST REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

NO. 1284

H.P. 955 House of Representatives, April 15, 1987
Reference to the Committee on Energy and Natural
Resources suggested and ordered printed.

EDWIN H. PERT, Clerk

Presented by Representative SIMPSON of Casco.

Cosponsored by Representatives CARROLL of Gray, HOLLOWAY
of Edgecomb, and Senator CLARK of Cumberland.

STATE OF MAINE

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

1 **AN ACT to Provide a Comprehensive Growth**
2 **Management Plan for the State.**
3

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

6 Sec. 1. 30 MRSA c. 409 is enacted to read:

7 CHAPTER 409

8 LAND USE PLANNING

9 §5951. Legislative findings

10 The Legislature finds:

11 1. New land uses. That the siting design and
12 construction of new buildings and land uses and the

1 conduct of activities associated with new development
2 have a significant effect on public services; the
3 availability and quality of natural, scenic and cul-
4 tural resources; the availability and quality of
5 housing and jobs; and the public health, safety and
6 general welfare of municipalities and the State;

7 2. Planning. That sound planning and regulation
8 of future development is essential to avoid undue fi-
9 nanacial burdens on citizens and adverse effects on
10 municipalities, the natural resources and the quality
11 of life in the State;

12 3. Municipal responsibilities. That municipali-
13 ties have sole responsibility for permitting most de-
14 velopment activities in the organized portion of the
15 State. Many municipalities lack sufficient technical
16 capacity and financial resources to conduct the level
17 of planning needed to guide both local and state de-
18 isions relating to land use;

19 4. Perspectives. That a broader than local
20 perspective is warranted in the accommodation of new
21 development because critical natural resources, sce-
22 nic character, public services and development pat-
23 terns frequently cross municipal boundaries; and

24 5. State role. That, without state leadership,
25 encouragement and strong support of local and regional
26 efforts to guide growth and manage future develop-
27 ment, the State's special and diverse character, con-
28 tinued prosperity and quality of life are at risk.

29 §5952. Purposes

30 It is the purpose of this chapter, in conformity
31 with, and in furtherance of, the policies established
32 in Title 38, section 1801, to utilize and strengthen
33 the existing role, processes and powers of local gov-
34 ernments in the establishment and implementation of
35 land use planning and regulation programs to guide
36 and control future development; to clarify the
37 State's role in guiding and supporting local govern-
38 ments and their regional commissions; and to encour-
39 age and assure cooperation among municipalities and
40 local governments, regional commissions and state
41 agencies toward this end.

1 It is the purpose of this chapter to specify the
2 minimum requirements for local land use planning and
3 regulation in the State, especially in relation to
4 areas of state concern; and to require those municipi-
5 palities experiencing the greatest growth pressures
6 to develop comprehensive land use plans and implement
7 them through regulatory and nonregulatory measures.

8 At the same time, the purpose is to assure state
9 support and consistency of these activities through
10 the provision of guidelines, financial assistance,
11 technical assistance and information and incentives
12 for communities and their regional commissions to
13 participate and update their programs periodically.
14 The purpose is to conduct state development activi-
15 ties and make financing decisions in conformance with
16 local and interlocal plans that meet state guide-
17 lines.

18 §5953. Definitions

19 As used in this chapter, unless the context indi-
20 cates otherwise, the following terms have the follow-
21 ing meanings.

22 1. Areas of state concern. "Areas of state con-
23 cern" means those geographic areas as identified in
24 section 5959, which natural and cultural attributes
25 and special planning requirements warrant coordinated
26 land use planning and regulation.

27 2. Board. "Board" means the Board of Environmen-
28 tal Protection.

29 3. High growth municipalities. "High growth mu-
30 nicipalities" are those which are experiencing or are
31 predicted to experience the most intense pressures
32 from development according to criteria established by
33 the State Planning Office pursuant to section 5956.

34 4. Land use planning and implementation program.
35 "Land use planning and implementation program" means
36 a municipality's future land use or comprehensive
37 plan, together with the ordinances, regulations, cap-
38 ital budgeting and administrative organization re-
39 quired to implement and enforce the plan.

1 §5954. Local land use planning and implementation
2 authority

3 All incorporated cities and towns have the power
4 and responsibility pursuant to the Constitution of
5 Maine, Article VIII, Part Second, Section 1, to:

6 1. Plan. Plan for their future development and
7 growth;

8 2. Adopt plans. Adopt and amend a plan with po-
9 licies and strategies to guide their future develop-
10 ment and growth; and

11 3. Implement plans. Implement their plan by the
12 adoption of land use management standards and regula-
13 tions.

14 §5955. Minimum land use planning and implementation
15 program for all municipalities

16 All municipalities shall develop and adopt future
17 land use plans and implementation programs which at a
18 minimum must meet state guidelines under this section
19 by January 1, 1997.

20 A municipality incorporated as a city or town af-
21 ter the effective date of this chapter shall, within
22 one year, establish a local planning board pursuant
23 to section 4963 and prepare and adopt a future land
24 use plan and implementation program within 3 years.

25 1. Future land use plan. The future land use
26 plan shall consist of:

27 A. A policy statement of the governing body of a
28 municipality that describes the vision for the
29 future development and conservation of the commu-
30 nity and interrelates all functional and natural
31 systems and activities related to the future use
32 of lands and visual character of the community;
33 and

34 B. A generalized, coordinated land use map that
35 designates the desired and appropriate density
36 and character of future development for difficult
37 parts of the municipalities.

1 2. Basis of plan. The future land use plan shall
2 be based upon surveys, studies and data regarding the
3 area, including the character, natural values and
4 sensitivity of undeveloped land; the availability of
5 public services, sewer and water utilities and their
6 future location to guide growth to appropriate loca-
7 tions; the need for economic development and redevel-
8 opment; and the amount of land required to accommo-
9 date reasonable growth. The plan shall be consistent
10 with state policies and make adequate provision for
11 incorporating local responsibility for shoreland ar-
12 reas, state highway land use management areas and
13 areas of state concern. The plan shall contain a spe-
14 cific policy statement indicating the relationship of
15 the proposed development and conservation of the area
16 in the planning and implementation programs of adja-
17 cent municipalities and to state policies.

18 §5956. Implementation program

19 All implementation provisions shall be directly
20 related to the policy objectives of the future land
21 use plan.

22 1. Requirements. Implementation programs shall
23 include the following:

24 A. Shoreland zoning ordinances pursuant to Title
25 38, sections 435 to 446;

26 B. Subdivision review procedures pursuant to
27 section 4956;

28 C. State highway land use management ordinances
29 pursuant to Title 38, chapter 25;

30 D. Regulatory provisions as appropriate to pro-
31 tect ground water and areas of state concern out-
32 lined in this chapter; and

33 E. Other regulatory components as appropriate
34 including, but not limited to, such techniques as
35 planned unit development, site plan approval,
36 subdivision approval, open-space zoning,
37 clustered development, performance zoning, condi-
38 tional zoning, contract zoning, solar access zon-
39 ing, transfer of development rights, impact fees,
40 exactions and growth rate management controls.

1 2. Coordination. Planning and implementation
2 programs shall be coordinated with those of surround-
3 ing municipalities and consistent with regional ob-
4 jectives. A plan is coordinated when the needs of all
5 levels of government, semipublic and private agencies
6 and the citizens of the State have been considered
7 and accommodated as much as possible.

8 3. State obligations. The State shall provide
9 guidelines, data examples, models, workshops and
10 how-to guides and technical and financial assistance
11 to assist municipalities in fulfilling the require-
12 ments of this chapter.

13 A. Guidelines shall be developed by the State
14 Planning Office by January 1, 1988, with the ad-
15 vice of a growth management advisory committee
16 and pursuant to the Maine Administrative Proce-
17 dure Act, Title 5, chapter 375, to aid municipal-
18 ities in the preparation of future land use plans
19 and implementation programs, especially as they
20 relate to areas of state concern and ground water
21 protection and to aid regional commissions in
22 their review. The guidelines shall be reviewed
23 and updated as necessary, not less than every 4
24 years.

25 B. The data shall include, but not be limited
26 to, population projections, analyses of soil
27 suitability for development, hydrologic data such
28 as nutrient and sediment loading tolerance for
29 sensitive watersheds, the location of identified
30 natural features of state significance and ground
31 water classification areas.

32 C. The State Planning Office, in conjunction
33 with other state agencies and regional commis-
34 sions, shall develop and provide to municipali-
35 ties examples, models, how-to guides and work-
36 shops related to the minimum requirements, in-
37 cluding suggested performance standards for natu-
38 ral resource protection and land use management.

39 D. The State shall provide generalized technical
40 assistance in land use planning through regional
41 commissions.

1 4. Regional commission review and approval. Pursuant to Title 38, chapter 23, regional commissions shall review proposed local plans and programs and determine whether each is consistent with state policies and with the programs of adjacent municipalities. Pursuant to the Maine Administrative Procedure Act, Title 5, chapter 375, the State Planning Office shall establish procedures and criteria to assure a reasonable degree of consistency in regional commission reviews.

11 5. State consistency. Priority for state and federal funding for special purpose grants shall be given to those municipalities with approved plans and implementation programs. State development activities and business financing decisions shall be consistent with approved local plans and programs. Municipalities with approved plans and programs shall be eligible for state financial assistance for local code enforcement activities.

20 6. Public participation. The public shall be encouraged to participate in the development of local plans and implementation programs to the fullest extent possible.

24 §5957. Comprehensive plan and implementation program requirements

26 Designated high growth municipalities shall develop and adopt comprehensive plans and implementation programs that are consistent with state policies and that meet state guidelines by January 1, 1995.

30 1. Elements of a comprehensive plan. A comprehensive plan shall include, but not be limited to, the following elements:

33 A. A future land use plan as described in section 5955;

35 B. A capital improvement plan designed to determine the capacity of existing facilities and the ability to accommodate growth;

38 C. A traffic circulation plan consisting of the types, locations and extent of existing and pro-

1 posed major thoroughfares and transportation
2 routes, including bicycle and nonvehicular ways;

3 D. A plan for the conservation, use and protec-
4 tion of natural and historic resources and visual
5 character;

6 E. A wildlife management plan consisting of
7 goals for the management of inland and marine
8 wildlife within the community and a strategy for
9 the protection of habitat and travel corridors
10 necessary to meet those stated goals;

11 F. A long-range plan for the sound disposal of
12 solid waste;

13 G. A recreation, access and open-space plan in-
14 dicating a comprehensive system of public and
15 private sites of recreational and aesthetic en-
16 joyment and for the pursuit of traditional
17 livelihoods, like clamming and worming; and

18 H. A plan to assure affordable and adequate
19 housing for persons of low and moderate income.
20 The plan shall contain a specific policy state-
21 ment indicating the relationship of the proposed
22 development and conservation of the area to the
23 planning and implementation programs of adjacent
24 municipalities and to state policies.

25 2. Implementation program. The implementation
26 program at a minimum shall include performance stan-
27 dards for development related to visual character and
28 natural resource protection.

29 3. Designation of high-growth towns. The imple-
30 mentation program shall comply with any requirements
31 for identified high-growth towns.

32 4. Coordination. Planning and implementation
33 programs shall be coordinated with those of surround-
34 ing municipalities and shall be consistent with re-
35 gional objectives. A plan is coordinated when the
36 needs of all levels of government, semipublic and
37 private agencies and the citizens of the State have
38 been considered and accommodated as much as possible.

1 5. State obligations. The State shall provide
2 guidelines, examples, models, how-to guides and work-
3 shops; and technical and financial assistance to as-
4 sist municipalities in fulfilling the provisions of
5 this chapter. Guidelines shall be developed by the
6 State Planning Office by January 1, 1988, with the
7 advice of a growth management advisory committee and
8 pursuant to the Maine Administrative Procedure Act,
9 Title 5, chapter 375, to aid municipalities in the
10 preparation of comprehensive plans and implementation
11 programs. The guidelines shall encourage local imple-
12 mentation of state policies and shall be updated not
13 less than every 4 years. The State shall provide spe-
14 cialized expertise in capital improvements, transpor-
15 tation and housing planning through state or regional
16 commissions' personnel to the extent possible. The
17 State shall provide competitive grants to municipali-
18 ties for up to 80% of the cost of planning activi-
19 ties, depending upon financial need.

20 6. Schedule for assistance. State assistance
21 shall be available to high-growth municipalities on a
22 priority basis. The State Planning Office, in con-
23 junction with other state agencies, shall assist 50
24 communities in developing local comprehensive plans
25 and implementation programs within each 3-year period
26 beginning October 1, 1987, until all high-growth mu-
27 nicipalities that wish to participate are assisted.
28 The State Planning Office shall establish a list of
29 high-growth municipalities in order of priority by
30 October 1st in advance of each legislative session
31 and shall seek notification from those with highest
32 priority if they wish to receive state assistance.
33 The State Planning Office shall submit a biennial
34 budget in conjunction with other participating state
35 agencies to the Legislature to provide data and tech-
36 nical and financial assistance to the targeted munic-
37 ipalities. Municipalities that accelerate the devel-
38 opment of their local programs ahead of schedule
39 shall be reimbursed the amount they are eligible to
40 receive at the time they qualify for state assist-
41 ance, provided that their plans and implementation
42 programs meet state guidelines.

43 7. Eligibility for state or federal pass-through
44 special purpose grants. High-growth municipalities
45 seeking state or federal pass-through funds for eco-

1 conomic development or construction of public facilities
2 shall have approved comprehensive plans and im-
3 plementation programs. Those municipalities with
4 plans and implementation programs shall be given pri-
5 ority in competition with other municipalities seek-
6 ing state or federal pass-through funds for related
7 land acquisition and development purposes.

8 8. Regional commission review and approval. Pur-
9 suant to Title 38, chapter 23, regional commissions
10 shall review proposed local planning and implementa-
11 tion programs and determine if each is consistent
12 with state policies and with the programs of adjacent
13 municipalities. Pursuant to the Maine Administrative
14 Procedure Act, Title 5, chapter 375, the State Plan-
15 ning Office shall establish procedures and criteria
16 to assure a reasonable degree of consistency in re-
17 gional commission reviews.

18 9. State consistency with local planning and im-
19 plementation programs. Priority for state and federal
20 pass-through funding for special purpose grants shall
21 be given to those municipalities with approved com-
22 prehensive plans and implementation programs. State
23 development activities and business financing deci-
24 sions shall be consistent with approved comprehensive
25 plans and implementation programs. Municipalities
26 with approved plans and programs shall be eligible
27 for state financial assistance for code enforcement
28 activities.

29 §5958. Update of plans and implementation programs

30 Municipalities shall review and update their fu-
31 ture land use or comprehensive plans and implementa-
32 tion programs not less than every 10 years.

33 §5959. Additional requirements for towns and cities
34 containing areas of state concern

35 All municipalities that contain identified areas
36 of state concern shall develop planning and implemen-
37 tation programs relating to these areas and according
38 to state guidelines by January 1, 1997.

39 1. Identification of areas of state concern. The
40 State shall map the locations of the following:

1 A. Special watershed areas which are those wa-
2 tersheds of public surface water supplies and of
3 estuaries and lakes determined to be of statewide
4 significance by the State Planning Office in con-
5 junction with the Department of Environmental
6 Protection and other agencies;

7 B. Heritage areas which are assemblages of natu-
8 ral, historic and scenic features of state sig-
9 nificance as identified by the State Planning Of-
10 ice pursuant to Title 5, section 3315;

11 C. Maine agricultural and forestry areas which
12 are areas with potential for continued viability
13 identified by the Department of Agriculture, Food
14 and Rural Resources and the Department of Conser-
15 vation in conjunction with local soil and water
16 conservation districts; and

17 D. Those ground water resources which are highly
18 vulnerable to ground water contamination, as
19 identified by the Maine Geological Survey.

20 Agencies shall give municipalities and the public am-
21 ple opportunity to review and comment upon the loca-
22 tion of these areas before planning boundaries are
23 finalized.

24 2. Local responsibilities. Municipalities shall
25 provide for the reasonable protection and sound de-
26 velopment of these areas in their land use planning
27 and implementation programs. Where areas of state
28 concern cross municipal boundaries, the affected
29 towns and cities shall cooperate in the development
30 and management of their local planning and implemen-
31 tation programs. Municipalities may enact zoning or-
32 dinances to manage growth in areas of state concern.
33 Zoning ordinances adopted pursuant to this section
34 need not depend upon the existence of a zoning ordi-
35 nance for all of the land and water areas within a
36 municipality, notwithstanding section 4962 to the
37 contrary. It is the intent of the Legislature to rec-
38 ognize that it is reasonable for municipalities to
39 treat areas of state concern specially and to zone
40 within them rather than to wait until such time as
41 zoning ordinances may be enacted for all of the land
42 within municipal boundaries.

1 3. State obligations. The State shall provide
2 guidelines, data, examples, models, workshops and
3 how-to guides and technical and financial assistance
4 to assist municipalities in fulfilling the provisions
5 of this chapter. Guidelines shall be developed by the
6 State Planning Office by January 1, 1988, with the
7 advice of a growth management advisory committee and
8 pursuant to the Maine Administrative Procedure Act,
9 Title 5, chapter 375, to aid municipalities in the
10 preparation of future land use plans and implementa-
11 tion programs as they relate to areas of state con-
12 cern. The guidelines shall be updated not less than
13 every 4 years and shall include performance and use
14 standards for areas of state concern. The State shall
15 provide data and specialized expertise in such areas
16 as ground water; visual analysis; natural, historic
17 and scenic areas protection; wildlife management; and
18 limnology through state agency or regional commis-
19 sions' personnel to the extent possible; and general-
20 ized technical assistance in land use planning
21 through regional commissions. The State shall pro-
22 vide competitive grants to municipalities for up to
23 80% of the cost for planning activities, depending
24 upon financial need.

25 4. Schedule for assistance. State assistance
26 shall be available to municipalities for ground water
27 planning on a priority basis according to criteria
28 established by the Director of the State Planning Of-
29 fice and for areas of state concern according to the
30 following schedule.

31 A. York and Cumberland Coun- Beginning July
32 ties 1, 1987

33 B. Sagadahoc, Lincoln, Knox, Beginning July
34 Waldo, Hancock and Washington 1, 1989
35 Counties

36 C. Androscoggin, Kennebec, Beginning July
37 Oxford, Franklin and Penobscot 1, 1991
38 Counties

39 D. Piscataquis, Somerset and Beginning July
40 Aroostook Counties 1, 1993

41 5. Regional commission review and approval. Pur-

1 suant to Title 38, chapter 23, regional commissions
2 shall review the proposed local plans and programs
3 and determine if each is consistent with state poli-
4 cies and with the planning and implementation pro-
5 grams of adjacent municipalities; and if the municipi-
6 ality has afforded reasonable protection for areas
7 of state concern. Pursuant to the Maine Administra-
8 tive Procedure Act, Title 5, chapter 375, the State
9 Planning Office shall establish procedures and crite-
10 ria to assure a reasonable degree of consistency in
11 regional commission reviews.

12 6. State consistency. Priority for state and
13 federal pass-through funding for special purpose
14 grants shall be given to those municipalities with
15 approved planning and implementation programs for ar-
16 reas of state concern. Priority for the acquisition of
17 state lands shall be given to areas of state concern.
18 State development activities and business financing
19 decisions shall be consistent with approved local
20 planning and implementation programs. Municipalities
21 with approved planning and implementation programs
22 shall also be eligible for state financial assistance
23 for local code enforcement activities.

24 7. Local option not to participate in program
25 development. If a municipality decides not to develop
26 its own planning and implementation program relating
27 to areas of state concern, the Director of the State
28 Planning Office shall designate a regional commission
29 to develop a program for the municipality. State rev-
30 enue sharing funds to the town shall be redirected to
31 the regional agency to cover the local share required
32 to accomplish the work.

33 8. Failure to administer programs. The Depart-
34 ment of Environmental Protection shall monitor the
35 administration and enforcement of local programs re-
36 lating to areas of state concern. If the Board of En-
37 vironmental Protection finds at any time that a mu-
38 nicipality is failing to effectively administer and
39 enforce the program, the board shall establish a
40 6-month period in which the municipality will be
41 given the opportunity to demonstrate acceptable per-
42 formance according to criteria established by the
43 board prior to January 1, 1988. If the municipality
44 fails to so demonstrate, no state permit relating to

1 land use (these permits shall be listed) may be is-
2 sued for development within the areas of state con-
3 cern within the municipality.

4 §5960. Interlocal agreement

5 The powers and authority contained in this chap-
6 ter may be employed by municipalities individually or
7 jointly by mutual agreement of the governing body of
8 each municipality.

9 Sec. 2. 38 MRSA c. 3, sub-c. 1, arts. 1-A, 1-C
10 and 2-A, as amended, are repealed.

11 Sec. 3. 38 MRSA §435, as amended by PL 1985, c.
12 737, Pt. A, §110, is repealed and the following en-
13 acted in its place:

14 §435. Shoreland areas; legislative purposes

15 To aid in the fulfillment of the State's role as
16 trustee of its waters and to promote public health,
17 safety and the general welfare, it is declared to be
18 in the public interest that shoreland areas be sub-
19 ject to zoning, land use and subdivision controls.
20 Shoreland areas shall include those within 330 feet
21 of the normal high water mark of any pond, river or
22 salt water body or within 330 feet of any coastal or
23 freshwater wetland. The purposes of these controls
24 shall be to further the maintenance of safe and
25 healthful conditions; to prevent and control water
26 pollution; to protect fish spawning grounds, aquatic
27 life, bird and other wildlife habitat; to protect
28 buildings and lands from flooding and accelerated
29 erosion; to protect and enhance rural and community
30 values; to protect commercial fishing and maritime
31 industries; to protect freshwater and coastal wet-
32 lands and their habitats; to control building sites,
33 placement of structures and land uses; to conserve
34 shore cover and visual, as well as actual, points of
35 access to inland and coastal waters; to conserve nat-
36 ural beauty and open space; and to anticipate and re-
37 spond to the cumulative impacts of development in
38 shoreland areas.

39 It is further declared that, in accordance with
40 Title 12, section 402, certain river and stream seg-

1 ments, as identified in section 437, are significant
2 river segments and deserve special shoreland zoning
3 controls designed to protect their natural and recre-
4 ational features.

5 Zoning ordinances adopted pursuant to this arti-
6 cle need not depend upon the existence of a zoning
7 ordinance for all the land and water areas within a
8 municipality, notwithstanding Title 30, section 4962.
9 The intent of the Legislature is to recognize that it
10 is reasonable for municipalities to treat shoreland
11 areas specially and to immediately zone around water
12 bodies rather than to wait until such time as zoning
13 ordinances may be enacted for all the land within mu-
14 nicipal boundaries.

15 Sec. 4. 38 MRSA §436, sub-§1-A, as enacted by PL
16 1985, c. 794, Pt. A, §7, is amended to read:

17 1-A. Commercial fishing activities. "Commercial
18 fishing activities" includes means activities direct-
19 ly related to commercial fishing and those commercial
20 activities commonly associated with or supportive to
21 of commercial fishing, such as the manufacture or
22 sale of ice, bait and nets and the sale, manufacture,
23 installation or repair of boats, engines and other
24 electronic-devices equipment commonly used on boats.

25 Sec. 5. 38 MRSA §436, sub-§1-E, as enacted by PL
26 1985, c. 794, Pt. A, §7, is amended to read:

27 1-E. Maritime activities. "Maritime activities"
28 includes means the construction, repair, storage,
29 loading and unloading of boats, ~~chance~~ chandlery
30 and other commercial activities designed and intended
31 to facilitate maritime trade.

32 Sec. 6. 38 MRSA §436, sub-§§1-G and 1-H are en-
33 acted to read:

34 1-G. Coastal wetlands. "Coastal wetlands" means
35 all tidal and subtidal lands, all lands below any
36 identifiable debris line left by tidal action, all
37 lands with vegetation present that is tolerant of
38 salt water and occurs primarily in a salt water or
39 estuarine habitat, together with any swamp, marsh,

1 bog, beach, flat or other contiguous lowland which is
2 subject to tidal action or normal storm flowage at
3 any time except periods of maximum storm activity.

4 1-H. Freshwater wetlands. "Freshwater wetlands"
5 means all lands identified by the department in ac-
6 cordance with section 407-A.

7 **Sec. 7.** 38 MRSA §436, sub-§3, as reallocated by
8 PL 1985, c. 481, Pt. A, §24, is amended to read:

9 3. River. "River" means a free flowing body of
10 water from that point at which it provides drainage
11 for a watershed of 25 10 square miles to its mouth.

12 **Sec. 8.** 38 MRSA §436, sub-§4, as reallocated by
13 PL 1985, c. 481, Pt. A, §24, is repealed.

14 **Sec. 9.** 38 MRSA §436, sub-§5, as amended by PL
15 1985, c. 553, is further amended to read:

16 5. Structure. "Structure" means anything built
17 for the support, shelter or enclosure of persons, an-
18 imals, goods or property of any kind, together with
19 anything constructed or erected with a fixed location
20 on or in the ground, exclusive of fences. Notwith-
21 standing any provisions in a local ordinance to the
22 contrary, all new principal and accessory structures
23 shall meet the set-back requirements from normal high
24 watermark of any water body, except structures which
25 require direct access to the water as an operational
26 necessity, such as piers, docks and retaining walls.
27 This subsection is not intended to prohibit a board
28 of appeals from granting a variance to the set-back
29 requirements in compliance with Title 30, section
30 4963, subsection 3, nor is it intended to prohibit
31 the expansion of a nonconforming use or structure
32 where otherwise allowed by ordinance.

33 **Sec. 10.** 38 MRSA §436, sub-§6, as reallocated by
34 PL 1985, c. 481, Pt. A, §24, is amended to read:

35 6. Timber harvesting. "Timber harvesting" means
36 the cutting and removal of trees from their growing
37 site and the attendant operation of cutting and
38 skidding machinery but not the construction or cre-

1 ation of roads. Timber harvesting does not include
2 the clearing of land for approved construction.
3 ~~Within the strip extending 50 feet inland from the~~
4 ~~normal high watermark, a cleared opening or openings~~
5 ~~not greater than 30 feet in width for every 100 feet~~
6 ~~of shoreline may be created, provided that when open-~~
7 ~~ings are combined, there shall be no single opening~~
8 ~~along the shore wider than 60 feet, and there shall~~
9 ~~be no more than one 60-foot opening along 200 feet of~~
10 ~~shoreline.~~

11 Sec. 11. 38 M RSA §438, as enacted by PL 1985, c.
12 481, Pt. A, §91, is repealed.

13 Sec. 12. 38 M RSA §438-A is enacted to read:

14 §438-A. Municipal authority; state oversight

15 With respect to all shoreland areas described in
16 section 435, municipalities shall adopt zoning, land
17 use and subdivision control ordinances pursuant to
18 existing laws and in accordance with the following
19 requirements.

20 1. Minimum guidelines. In accordance with Title
21 5, chapter 375, subchapter II, the Board of Environ-
22 mental Protection shall adopt, and from time to time
23 shall update and amend, minimum guidelines for munic-
24 ipal zoning, land use and subdivision controls which
25 are designed to carry out the legislative purposes
26 described in section 435 and this article. Those min-
27 imum guidelines shall include, without limitation,
28 provisions governing building and structure size,
29 setback and location; establishment of resource pro-
30 tection, general development, limited residential,
31 commercial fisheries and maritime activity zones and
32 other zones. Within each zone, there shall be pre-
33 scribed uses which may be allowed with or without
34 conditions. There shall be established criteria for
35 the issuance of permits and for nonconforming uses,
36 land use standards and administrative and enforcement
37 procedures. The board shall comprehensively review
38 and update its guidelines beginning January 1, 1988,
39 and shall reevaluate and update those guidelines at
40 least once every 4 years thereafter. The board shall
41 provide a recommended schedule of fees which munici-
42 palities may charge for permits in order to recover

1 the costs of administration of their shoreland zoning
2 programs.

3 2. Municipal procedures. Acting in accordance
4 with a local comprehensive plan, municipalities shall
5 prepare and submit to the board zoning, land use and
6 subdivision ordinances which are consistent with, or
7 are not less protective than, the minimum guidelines,
8 or amendments to those guidelines, adopted by the
9 board. When a municipality determines that special
10 local conditions of urbanization within portions of
11 the shoreland zone require a different set of stan-
12 dards than those in the minimum guidelines, it shall
13 document those special conditions and submit them,
14 together with its proposed ordinance provisions, to
15 the board for review and approval.

16 3. Board approval. Municipal ordinances and any
17 amendments to those ordinances shall not be effective
18 unless approved by the board. In determining whether
19 to approve municipal ordinances or amendments to
20 them, the board shall consider the legislative pur-
21 poses described in section 435, the minimum guide-
22 lines and any special local conditions which, in the
23 judgment of the board, justify a departure from the
24 requirements of the minimum guidelines in a manner
25 which is not inconsistent with the legislative pur-
26 poses described in section 435. Recognizing that the
27 guidelines are intended as minimum standards, the
28 board shall approve a municipal ordinance which im-
29 poses more restrictive standards than those in the
30 guidelines.

31 4. Enforcement. If a municipality fails to adopt
32 ordinances as required under this article, or if the
33 board determines that an ordinance which a municipal-
34 ity has adopted does not satisfy the requirements and
35 purposes of this article, the board, acting in ac-
36 cordance with Title 5, chapter 375, subchapter II,
37 shall adopt suitable ordinances, or suitable provi-
38 sions of ordinances, on behalf of that municipality.
39 Following adoption by the board, those ordinances or
40 provisions shall be effective and binding within the
41 municipality and shall be administered and enforced
42 by that municipality.

43 5. Municipal notice. If the board determines

1 that a municipality has failed to take adequate mea-
2 sures to administer and enforce ordinances adopted by
3 it, or adopted by the board on behalf of that municipi-
4 pality, the board shall notify the municipality and
5 provide it with a description of the steps which the
6 municipality must take in order to achieve a reason-
7 able degree of compliance. If a municipality fails or
8 refuses to achieve such compliance, the board shall
9 issue a finding of noncompliance which shall be sub-
10 mitted in writing to the municipality, the Department
11 of Transportation and the State Planning Office. For
12 any period during which a finding of noncompliance is
13 in effect, any funds otherwise due that municipality
14 under programs administered or funded by the Depart-
15 ment of Transportation or the State Planning Office
16 shall be withheld pending the board's determination
17 that the municipality has taken measures sufficient
18 to assure that compliance. If a board finding of non-
19 compliance continues in effect for more than one year
20 and the municipality continues to fail to take mea-
21 sures to the board's satisfaction in order to assure
22 compliance, the municipality shall forfeit the funds
23 withheld and they shall be distributed to other mu-
24 nicipalities or otherwise for other lawful purposes.

25 6. Exemptions. Any areas within a municipality
26 which are subject to nonmunicipal zoning, land use
27 and subdivision controls may be exempted from the op-
28 eration of this section upon a finding by the board
29 that the purposes of this chapter have been accom-
30 plished by those nonmunicipal measures.

31 7. Variances. A variance issued by a municipali-
32 ty pursuant to an ordinance adopted under this arti-
33 cle shall not be effective unless approved by the
34 commissioner. The commissioner shall approve a vari-
35 ance issued by a municipality when it concurs with
36 the municipality's determination of compliance with
37 the requirements of Title 30, section 4963, provided
38 that the legislative purposes declared in section 435
39 will not be adversely affected.

40 Sec. 13. 38 MRSA §439, as reallocated by PL
41 1985, c. 481, Pt. A, §27, is repealed and the follow-
42 ing enacted in its place:

43 §439. Additional municipal powers; limitations

1 1. Other ordinances. In addition to the ordi-
2 nances required by this chapter, municipalities may
3 adopt zoning, land use and subdivision controls ap-
4 plicable to other bodies of water as may be required
5 to protect the public health, safety and general wel-
6 fare and further the purposes of this chapter.

7 2. Ordinances over water. Notwithstanding the
8 scope of shoreland areas as identified in section
9 435, the jurisdiction of municipal shoreland zoning
10 and land use control ordinances adopted under this
11 article may include any structure built on, over or
12 abutting a dock, wharf, pier or other structure ex-
13 tending beyond the normal high water mark of a water
14 body or placed between the normal high water mark and
15 the normal low water mark or otherwise within any
16 wetland. Accordingly, municipalities may enact ordi-
17 nances affecting structures which extend over the wa-
18 ter or are placed on lands lying between high and low
19 water marks or within wetlands.

20 3. Soil suitability. Any other law notwithstand-
21 ing, when a zoning ordinance adopted in conformity
22 with this article requires a written report of soil
23 suitability for subsurface waste disposal or commer-
24 cial or industrial development, that report shall be
25 prepared and signed by a duly qualified person who
26 has made an on-the-ground evaluation of the soil
27 properties involved. Persons qualified to prepare
28 such reports shall be certified by the Department of
29 Human Services and shall include state certified soil
30 scientists, registered professional foresters, state
31 certified geologists and other persons who have
32 training and experience in the recognition and evalu-
33 ation of soil properties and can provide proof of
34 such training and experience in a manner specified by
35 the Department of Human Services. That department may
36 promulgate rules as provided under Title 5, chapter
37 375, subchapter II, for the purpose of establishing
38 training and experience standards required by this
39 subsection.

40 4. Set-back requirements. Notwithstanding any
41 provision in a local ordinance to the contrary, all
42 new principal and accessory structures, and replace-
43 ments and substantial expansions of the structures,
44 within the shoreland zone as established by section

1 435 shall meet the water set-back requirements ap-
2 proved by the board, except structures which require
3 direct access to the water as an operational neces-
4 sity, such as piers and docks. For purposes of this
5 subsection, substantial expansion of a building shall
6 be an expansion which increases either the volume or
7 floor area by 50% or more. This subsection is not in-
8 tended to prohibit a municipal board of appeals from
9 granting a variance, subject to the requirements of
10 this article and of Title 30, section 4963, nor is it
11 intended to prohibit a less than substantial expan-
12 sion of a legally existing, nonconforming use or
13 structure where allowed by ordinance, provided that
14 the expansion does not create further nonconformity
15 with the water set-back requirement.

16 5. Timber harvesting. Municipal ordinances shall
17 regulate timber harvesting within the shoreland area.
18 That regulation shall comply with the board's guide-
19 lines and shall be not less restrictive than the fol-
20 lowing: Within the strip of land extending 50 feet
21 inland from the normal high water mark, a cleared
22 opening not greater than 30 feet in width for every
23 100 feet of shoreline may be created, provided that,
24 when openings are combined, there shall be no single
25 opening along the shore wider than 60 feet, and there
26 shall be no more than one 60-foot opening along any
27 200 feet of shoreline.

28 6. Screening. Within the shoreland zone, municip-
29 al ordinances shall provide for effective vegetative
30 screening between buildings and shorelines. Ordina-
31 nces shall comply with the board's guidelines and
32 shall be not less restrictive than the following: No
33 clear cutting of vegetation may be permitted, except
34 that openings not greater than 30 feet in width for
35 every 100 feet of shoreline may be created. Selective
36 cutting of not more than 40% of the trees 4 inches or
37 more in diameter measured at 4 1/2 feet above ground
38 level is allowed in any 10-year period, provided that
39 a well-distributed stand of trees and other natural
40 vegetation remains.

41 Sec. 14. 38 M RSA §442, as enacted by PL 1985, c.
42 481, Pt. A, §92, is repealed.

43 Sec. 15. 38 M RSA §443, as enacted by PL 1985, c.

1 481, Pt. A, §93, is repealed and the following en-
2 acted in its place:

3 §443. Cooperation

4 1. Consultations. All agencies of State Govern-
5 ment shall cooperate to accomplish the objectives of
6 this article. To that end, the department shall con-
7 sult with the governing bodies of municipalities and
8 with other state agencies to secure achievement of
9 the purposes of this article and shall extend to mu-
10 nicipalities all possible technical and other assist-
11 ance for that purpose.

12 2. Special areas. In order to aid municipalities
13 in meeting the requirements of this article, the De-
14 partment of Inland Fisheries and Wildlife shall identi-
15 fy areas within municipalities which comprise wild-
16 life habitat of statewide significance and the munic-
17 ipalities involved shall provide for reasonable pro-
18 tection of such areas under its zoning, land use and
19 subdivision ordinances. The State Planning Office, in
20 consultation with the Department of Conservation and
21 the Maine Historic Preservation Commission, shall
22 identify areas within municipalities which possess
23 historic, scenic, cultural or natural values of
24 statewide significance and the municipalities in-
25 olved shall provide for reasonable protection of
26 such areas under its zoning, land use and subdivision
27 ordinances. The State Planning Office, in consulta-
28 tion with the Department of Marine Resources and De-
29 partment of Transportation, shall identify areas in
30 and around harbors and in the vicinity of important
31 shellfish resource areas, which are vital for pur-
32 poses of sustaining important commercial fisheries
33 and maritime activities. The municipalities involved
34 shall provide for reasonable protection of such areas
35 under their zoning, land use and subdivision ordi-
36 nances.

37 3. Attorney General. In any legal action in
38 which the pleadings challenge the validity or legali-
39 ty of any ordinance or portion of an ordinance
40 adopted pursuant to this article, the Attorney Gener-
41 al shall be made a party until removed as such by his
42 consent. Without limitation of any other remedy pro-
43 vided in this article, if a municipality fails to

1 adopt, administer or enforce zoning, land use and
2 subdivision ordinances as required under this arti-
3 cle, the Attorney General may bring an action against
4 that municipality in the Superior Court of the county
5 in which the municipality lies, seeking such legal or
6 equitable relief as justice requires. Without limita-
7 tion, such relief may include an order by the Superi-
8 or Court requiring the municipality to take action to
9 comply with this article, together with the recovery
10 by the Attorney General from that municipality of all
11 legal and other costs incurred by the State in seek-
12 ing the compliance.

13 Sec. 16. 38 MRSA §447, as enacted by PL 1985, c.
14 794, Pt. A, §10, is repealed.

15 Sec. 17. 38 MRSA §481, as amended by PL 1983, c.
16 513, §1, is further amended to read:

17 §481. Findings and purpose

18 The Legislature finds that the economic and so-
19 cial well-being of the citizens of the State of Maine
20 depend upon the location of state, municipal, quasi-
21 municipal, educational, charitable, commercial and
22 industrial developments with respect to the natural
23 environment of the State; that many developments be-
24 cause of their size and nature are capable of causing
25 irreparable damage to the people and the environment
26 on the development sites and in their surroundings;
27 that the location of such developments is too impor-
28 tant to be left only to the determination of the own-
29 ers of such developments; and that discretion must be
30 vested in state authority to regulate the location of
31 developments which may substantially affect environ-
32 ment and quality of life in the State.

33 The Legislature further finds that the incremen-
34 tal cumulative effects of numerous small developments
35 are having an adverse impact on the natural re-
36 sources, infrastructure and scenic character of the
37 State and that, because of the threat to the economy
38 of the State and its quality of life posed by the cu-
39 mulative impact of development, this impact and miti-
40 gation must be considered in the review of all devel-
41 opments subject to this subchapter.

1 The--Legislature--further--finds--that--certain--geo-
2 logical--formations--particularly--sand--and--gravel--de-
3 posits,--contain--large--amounts--of--high--quality--ground
4 water.--The--ground--water--in--these--formations--is--an--im-
5 portant--public--and--private--resource,--for--drinking--wa-
6 ter--supplies--and--other--industrial,--commercial--and--ag-
7 ricultural--uses.--The--ground--water--in--these--forma-
8 tions--is--particularly--susceptible--to--injury--from
9 pollutants,--and--once--polluted,--may--not--recover--for
10 hundreds--of--years.--It--is--the--intent--of--the--Legisla-
11 ture,--that--activities--that--discharge--or--may--discharge
12 pollutants--to--ground--water--may--not--be--located--on
13 these--formations;.

14 The--purpose--of--this--subchapter--is--to--provide--a
15 flexible--and--practical--means--by--which--the--State,--act-
16 ing--through--the--Board--of--Environmental--Protection,--in
17 consultation--with--appropriate--state--agencies,--may--ex-
18 ercise--the--police--power--of--the--State--to--control--the
19 location--of--those--developments--substantially--affect-
20 ing--local--environment--in--order--to--insure--that--such
21 developments--will--be--located--in--a--manner--which--will
22 have--a--minimal--adverse--impact--on--the--natural--environ-
23 ment--within--the--development--sites--and--of--their--sur-
24 roundings--and--protect--the--health,--safety--and--general
25 welfare--of--the--people.

26 Sec. 18. 38 MRSa §482, sub-§1-A is enacted to
27 read:

28 1-A. Cumulative effects of development. "Cumula-
29 tive effects of development" means 2 or more individ-
30 ual effects, which, when considered together, are
31 substantial or which compound or increase other envi-
32 ronmental effects.

33 A. The individual effects may be changes result-
34 ing from a single project or a number of separate
35 projects.

36 B. The cumulative effect from several projects
37 is the change in the environment which results
38 from the incremental effect of a project when
39 added to other past, present and reasonably fore-
40 seeable probable future projects. Cumulative ef-
41 fects result from individually minor but collec-
42 tively significant projects taking place over a

1 period of time.

2 **Sec. 19. 38 MRSA §482, sub-§2, as amended by PL**
3 **1985, c. 162, §7, is further amended to read:**

4 **2. Development which may substantially affect**
5 **the environment. "Development which may substantially**
6 **affect the environment," in this Article article**
7 **called "development," means any state, municipal,**
8 **quasi-municipal, educational, charitable, commercial**
9 **or industrial development, including subdivisions,**
10 **which occupies a land or water area in excess of 20**
11 **10 acres, or which contemplates drilling for or exca-**
12 **vating natural resources, on land or under water**
13 **where the area affected is in excess of 60,000 square**
14 **feet, or which is a mining activity, or which is a**
15 **hazardous activity, or which is a structure; but ex-**
16 **cluding state highways, state aid highways, borrow**
17 **pits for sand, fill or gravel, ~~of less than 5 acres~~**
18 **~~or when regulated by the Department of Transporta-~~**
19 **~~tion, and such borrow pits~~ entirely within the juris-**
20 **isdiction of the Maine Land Use Regulation Commission**
21 **under chapter 206-A, and those activities regulated**
22 **by the Department of Marine Resources under Title 12,**
23 **section 6072.**

24 **No person may construct or cause to be constructed or**
25 **operate or cause to be operated, or in the case of a**
26 **subdivision sell, offer for sale, or cause to be**
27 **sold, any development requiring approval under sec-**
28 **tion 483 without first having obtained approval for**
29 **such construction, operation or sale from the Board**
30 **of Environmental Protection.**

31 Developments wholly or partly within a critical re-
32 source area identified in section 2013 and reviewed
33 under chapter 23 are exempt from this article.

34 **Sec. 20. 38 MRSA §482, sub-§2-B, as enacted by**
35 **PL 1979, c. 466, §13, is amended to read:**

36 **2-B. Mining activity. "Mining activity" means**
37 **the breaking of the surface soil in order to facili-**
38 **tate or accomplish the extraction or removal of more**
39 **than 1,000 cubic yards of product or overburden from**
40 **the earth ~~within 12 successive calendar months;~~ any**
41 **activity or process that for the extraction or remov-**

1 al of the product or overburden; and the preparation,
2 washing, cleaning or other treatment of that product
3 so as to make it suitable for commercial, industrial
4 or construction use, but shall not include excavation
5 or grading preliminary to a construction project.

6 Sec. 21. 38 MRSA §482, sub-§4-A, as enacted by
7 PL 1979, c. 466, §13, is amended to read:

8 4-A. Product. "Product" means clay, peat, stone
9 minerals, ores, topsoils, sand and gravel, fill or
10 other solid matter.

11 Sec. 22. 38 MRSA §482, sub-§4-D, as enacted by
12 PL 1981, c. 449, §§6 and 9, is amended to read:

13 4-D. Significant ground water aquifer. "Signifi-
14 cant ground water aquifer" means a porous formation
15 of ice-contact and glacial outwash sand and gravel or
16 fractured bedrock that contains significant recover-
17 able quantities of water which is likely to provide
18 drinking water supplies.

19 Sec. 23. 38 MRSA §482, sub-§5, as amended by PL
20 1985, c. 654, is further amended to read:

21 5. Subdivision. A "subdivision" is the division
22 of a parcel of land into 5 or more lots to be offered
23 for sale or lease to the general public during any
24 5-year 10-year period if such lots make up an aggre-
25 gate land area of more than 20 10 acres except for
26 the following:

27 A. ~~All the lots are at least 10 acres in size;~~

28 B. ~~All the lots are at least 5 acres, and the~~
29 ~~municipality has adopted additional regulations~~
30 ~~governing subdivisions pursuant to Title 30, sec-~~
31 ~~tion 4956, and the lots less than 10 acres are of~~
32 ~~such dimensions as to accommodate within the~~
33 ~~boundaries of each a rectangle measuring 200 feet~~
34 ~~and 300 feet, which abuts at one point the prin-~~
35 ~~cipal access way or the lots have at least 75~~
36 ~~feet of frontage on a cul-de-sac which provides~~
37 ~~access;~~

38 C. ~~All the lots are at least 5 acres, but do not~~

1 make--up--a--total-of-more-than-100-acres-and-the
2 lots-less-than-10-acres-are-of-such-dimensions-as
3 to-accommodate-within-the-boundaries--of--each--a
4 rectangle--measuring-200-feet-and-300-feet, which
5 abuts-at-one-point-the-principal--access--way--or
6 the--lots--have-at-least-75-feet-of-frontage-on-a
7 cul-de-sac-which-provides-access;

8 D. Unless intended to circumvent this Article
9 article, the following transactions shall not be
10 considered lots offered for sale or lease to the
11 general public:

12 (1) Sale or lease of lots to an abutting
13 owner or to a spouse, child, parent, grand-
14 parent or sibling of the developer; or

15 (2) Personal, nonprofit transactions, such
16 as the transfer of lots by gift or devise;
17 or

18 E. In those subdivisions which would otherwise
19 not require site location approval, unless in-
20 tended to circumvent this Article, the following
21 transactions shall not, except as hereinafter
22 provided, be considered lots offered for sale or
23 lease to the general public:

24 ~~(1) Sale or lease of mainland lots of 1/2~~
25 ~~acre or less in size which serve as parking~~
26 ~~lots and points of access to the water by~~
27 ~~boats for island property owners; and~~

28 (2) Sale or lease of common lots created
29 with a conservation restriction as defined
30 in Title 33, section 667; provided that the
31 Department of Environmental Protection is
32 made a party.

33 These exceptions shall not apply, and the subdi-
34 vision will require site location approval, when-
35 ever the use of a lot described in subparagraph
36 ~~(1)~~ or (2) changes or the lot is offered for sale
37 or lease to the general public without the limi-
38 tations set forth in subparagraph ~~(1)~~ or (2).

39 ~~F. For the purposes of this subsection, a parcel~~

1 of-land-is-defined-as-all-contiguous-land-in--the
2 same--ownership,--provided--that-lands-located-on
3 opposite-sides-of-a-public-or-private-road--shall
4 be--considered-each-a-separate-parcel-of-land-un-
5 less-that-road-was-established-by--the--owner--of
6 land-on-both-sides-of-the-road-subsequent-to-Jan-
7 uary-17-1970;

8 G.--Lots-of-40-or-more-acres-shall-not-be-counted
9 as-lots,--or

10 H.--Five--years--after-a-subdivider-establishes-a
11 single-family-residence-for-his-own-use-on-a--lot
12 and-actually-uses-the-lot-for-that-purpose-during
13 that--period,--that-lot-shall-not-be-counted-as-a
14 lot.

15 Sec. 24. 38 MRSA §484, 3rd ¶, as amended by PL
16 1971, c. 618, §12, is further amended to read:

17 The board shall approve a development proposal
18 whenever it finds that:

19 Sec. 25. 38 MRSA §484, sub-§1, as amended by PL
20 1971, c. 613, §5, is further amended to read:

21 1. Financial capacity. The developer has the fi-
22 nancial capacity and technical ability to meet state
23 air and water pollution control standards, and has
24 made adequate provision for solid waste disposal, the
25 control of offensive odors, and the securing and
26 maintenance of sufficient and healthful water sup-
27 plies and sewerage facilities and compliance with
28 this article.

29 Sec. 26. 38 MRSA §484, sub-§3, as amended by PL
30 1971, c. 613, §5, is further amended to read:

31 3. No adverse effect on the natural environment.
32 The developer has made adequate provision for fitting
33 the development harmoniously into the existing natu-
34 ral environment and that the development will not ad-
35 versely affect existing uses, scenic character, or
36 natural resources in the municipality or in neighbor-
37 ing municipalities, taking into account the cumula-
38 tive effects of development.

1 Sec. 27. 38 MRSA §484, sub-§§6 and 7 are enacted
2 to read:

3 6. Public access. Where the development abuts a
4 great pond, river or saltwater shoreline, the devel-
5 opment will not unreasonably affect public access
6 rights to those waters.

7 7. Infrastructure. The developer has made ade-
8 quate provision for utilities, roadways, open space
9 and recreational facilities required for the develop-
10 ment and the development will not have an unreason-
11 able adverse effect on the existing utilities, road-
12 ways, open space and recreational facilities in the
13 municipality or area served by those services.

14 Sec. 28. 38 MRSA §489, sub-§1, ¶¶A-1 and A-2 are
15 enacted to read:

16 A-1. Adopted a comprehensive plan and zoning or-
17 dinance approved by the board;

18 A-2. Adopted a subdivision ordinance that ad-
19 resses all criteria set forth in section 484;

20 Sec. 29. 38 MRSA §489, sub-§1, ¶B, as enacted by
21 PL 1975, c. 447, is amended to read:

22 B. Developed a suitable application; and

23 Sec. 30. 38 MRSA cc. 23 and 25 are enacted to
24 read:

25 CHAPTER 23

26 PROTECTION OF NATURAL RESOURCES

27 §2001. Findings; purpose

28 The Legislature finds and declares that the
29 State's rivers and streams, great ponds, freshwater
30 wetlands, coastal wetlands, coastal erosion areas,
31 coastal sand dunes, fragile mountain areas and criti-
32 cal wildlife habitat are resources of the State's
33 concern. These resources have great scenic beauty and
34 unique characteristics, unsurpassed recreational,
35 cultural, historical and environmental value of

1 present and future benefit to the citizens of the
2 State and that uses are causing the rapid degradation
3 and, in some cases, the destruction of these critical
4 resources producing significant adverse economic and
5 environmental impacts and threatening the health,
6 safety and general welfare of all citizens of the
7 State.

8 1. Specific resources. The Legislature finds and
9 declares the following.

10 A. The State's rivers and streams are among its
11 most important resources for multiple uses, in-
12 cluding providing important habitat for wildlife
13 and freshwater and anadromous fisheries, major
14 opportunities for citizens and tourists to hunt,
15 fish, boat and enjoy nature's beauty and solace
16 from an industrialized society, as well as for
17 economic expansion through the development of
18 hydropower, the revitalization of waterfronts and
19 ports and the attraction of tourists and desir-
20 able new businesses to the State.

21 B. Great ponds provide multiple recreational op-
22 portunities and drinking water supplies, devel-
23 oped or undeveloped for citizens; they serve as
24 important habitat for waterfowl, aquatic plants
25 and other wildlife; their scenic beauty is a key
26 component of the State's character; and they
27 serve as a major attraction for the State's grow-
28 ing tourist industry.

29 C. Freshwater and coastal wetlands are
30 invaluable and fragile resources for flood pre-
31 vention, erosion control, water pollution con-
32 trol, wildlife habitat, scientific research and
33 nonintensive recreation.

34 D. Fragile and mobile coastal sand dunes provide
35 critical protection from sea level rises and the
36 destructive power of coastal storms, serve as
37 flood and erosion control buffers, support sub-
38 stantial wildlife and recreational uses and pro-
39 vide scenic views and solace from the pressures
40 of an industrialized society.

41 E. Coastal erosion areas are unstable, high haz-

1 ard areas vulnerable to sea level rises and the
2 destructive power of coastal storms. The public
3 safety requires their protection from inappropriate
4 uses to preserve life and property and con-
5 serve the public resources from unwise expendi-
6 tures in hazardous areas.

7 F. The steep slopes, fragile soils and plant
8 life and high visual relief of the State's moun-
9 tain areas require protection from erosion con-
10 trol, plant and wildlife habitat, value as scenic
11 views and viewpoints and recreational uses.

12 G. A primary threat to the survival of wildlife
13 species is the loss of habitat from encroaching
14 development. It is essential to the maintenance
15 of ecological diversity and the quality of life
16 in this State to preserve identified critical
17 habitat of endangered and threatened species and
18 habitat identified as of high value because of
19 its cumulative importance to a large number of
20 species. The opportunity to hunt and fish the
21 woods, fields and waters of the State is impor-
22 tant to supplement the food supplies of Maine
23 people and to provide opportunities for recre-
24 ation and the appreciation of nature. To preserve
25 this important attribute of the State's special
26 character and quality of life, high value deer
27 wintering areas and wildfowl habitat areas must
28 be protected.

29 2. Further findings. The Legislature further
30 finds and declares that the protection and enhance-
31 ment of the environment of these resources is a mat-
32 ter of high urgency and priority and that this envi-
33 ronment is being endangered by unwise uses.

34 The Legislature further finds and declares that the
35 cumulative impact of frequent minor alterations and
36 occasional major alterations of these resources poses
37 a threat to the environment and economy of the State
38 and its quality of life. These impacts and their mit-
39 igation must be considered in the review of all ac-
40 tivities subject to this chapter.

41 The Legislature further finds and declares that there
42 is a need to facilitate research, develop programs

1 and establish sound environmental standards that will
2 prevent the degradation of and will encourage the en-
3 hancement of these resources.

4 3. Legislative intent. It is the intent of the
5 Legislature that existing programs related to rivers
6 and streams, great ponds, freshwater wetlands, coast-
7 al wetlands, coastal erosion areas, sand dunes, frag-
8 ile mountain areas and critical wildlife habitat con-
9 tinue and that the Department of Environmental Pro-
10 tection provide coordination and vigorous leadership
11 to develop new programs to achieve the purposes of
12 this chapter. The well-being of the citizens of the
13 State requires the development and maintenance of an
14 efficient system of administering this chapter to
15 minimize delays and difficulties in evaluating alter-
16 ations of these resource areas.

17 §2002. Definitions

18 As used in this chapter, unless the context oth-
19 erwise indicates, the following terms have the fol-
20 lowing meanings.

21 1. Coastal erosion areas. "Coastal erosion ar-
22 reas" means those tidal shoreline areas that have
23 measurable receding shorelines as determined over a
24 period of a year or more.

25 2. Coastal sand dunes. "Coastal sand dunes"
26 means sand deposits within a marine beach system
27 above high tide, including, but not limited to, beach
28 berms, frontal dune ridges, back dune areas and other
29 sand areas deposited by wave or wind action. Coastal
30 sand dunes may extend into the coastal wetlands.

31 3. Coastal wetlands. "Coastal wetlands" means
32 all tidal and subtidal lands, including all areas be-
33 low any identifiable debris line left by tidal ac-
34 tion; all areas with vegetation present that is
35 tolerant of salt water and occurs primarily in a salt
36 water habitat; and any swamp, marsh, bog, beach, flat
37 or other contiguous lowland which is subject to tidal
38 action or normal storm flowage at any time except pe-
39 riods of maximum storm activity. Coastal wetlands may
40 include portions of coastal sand dunes.

1 4. Critical wildlife habitat. "Critical wildlife
2 habitat" means areas identified pursuant to section
3 2013 as:

4 A. Habitat for species appearing on the official
5 state or federal lists of endangered or threat-
6 ened species;

7 B. High value deer wintering areas and travel
8 corridors;

9 C. High value wildfowl habitat areas;

10 D. Critical spawning and nursery areas for At-
11 lantic sea run salmon; or

12 E. Areas of high value because of their cumula-
13 tive value to the survival and maintenance of a
14 number of species managed by the State.

15 5. Cumulative effects. "Cumulative effect" means
16 2 or more individual effects, which, when considered
17 together, are substantial or which compound or in-
18 crease other environmental effects.

19 A. Individual effects may be changes resulting
20 from a single project or a number of separate
21 projects.

22 B. The cumulative effect from several projects
23 is the change in the environment which results
24 from the incremental effects of a project when
25 added to other past, present and reasonably fore-
26 seeable future projects. Cumulative effects can
27 result from individually minor but collectively
28 significant projects taking place over a period
29 of time.

30 6. Fragile mountain areas. "Fragile mountain ar-
31 eas" means areas above 2,700 feet in elevation.

32 7. Freshwater wetlands. "Freshwater wetlands"
33 means freshwater swamps, marshes, bogs and similar
34 areas identified pursuant to section 2013, which are:

35 A. Of 10 or more contiguous acres;

1 B. Characterized predominantly by wetland vege-
2 tation; and

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

5 These areas may contain small inclusions of land that
6 do not conform to the criteria of this subsection.

7 8. Great ponds. "Great ponds" means any inland
8 body of water which in a natural state has a surface
9 area in excess of 10 acres and any body of water arti-
10 ficially formed or increased which has a surface
11 area in excess of 30 acres.

12 9. Normal high water line. "Normal high water
13 line" for all great ponds and nontidal rivers,
14 streams and brooks means that line which is apparent
15 from visible markings, changes in the character of
16 soils due to prolonged action of the water, or from
17 changes in vegetation from predominantly aquatic to
18 predominantly terrestrial. In the case of great
19 ponds, all land below the normal high water line
20 shall be considered the bottom of the great pond for
21 the purposes of this chapter.

22 10. Permanent structure. "Permanent structure"
23 means any structure, including, but not limited to,
24 causeways, piers, docks, concrete slabs, piles,
25 marinas, retaining walls and buildings, which is
26 fixed in, on or over the water for a period exceeding
27 7 months each year.

28 11. Significant ground water aquifer. "Signifi-
29 cant ground water aquifer" means a porous formation
30 of ice-contact and glacial outwash sand and gravel or
31 fractured bedrock that contains significant recover-
32 able quantities of water which is likely to provide
33 drinking water supplies.

34 §2003. Prohibitions

35 No person may perform or cause to be performed
36 any of the following activities without first obtain-
37 ing a permit from the Board of Environmental Protec-
38 tion: Dredging, removing or displacing soil, vege-
39 tation or other materials; draining or otherwise

1 dewatering; filling, including adding sand to a sand
2 dune; or erecting any permanent structure in, on or
3 over any river, stream, brook, great pond, inland
4 wetland, coastal wetland, coastal erosion area,
5 coastal sand dune, fragile mountain area or critical
6 wildlife habitat or on land adjacent to any such area
7 in such matter that any dredged spoil, fill or struc-
8 ture may fall or be washed into the waters, wetlands
9 or dunes, or diversion, draining or dewatering of the
10 waters or wetland shall occur.

11 §2004. Standards

12 The board shall grant a permit upon proper appli-
13 cation and upon such terms as it deems necessary to
14 fulfill the purposes of this chapter when it finds
15 that the applicant has demonstrated that the proposed
16 activity meets the following standards.

17 1. Financial capacity. The developer has the fi-
18 nanical capacity and technical ability to meet state
19 air and water pollution control standards and has
20 made adequate provision for solid waste disposal, the
21 control of offensive odors and the securing and main-
22 tenance of sufficient and healthful water supplies
23 and sewerage facilities and compliance with this
24 chapter.

25 2. Traffic movement. The developer has made ade-
26 quate provision for traffic movement of all types in-
27 to, out of or within the development area.

28 3. Existing uses. The activity will not unrea-
29 sonably interfere with existing scenic, aesthetic,
30 recreational and navigational uses.

31 4. Soil erosion. The activity will not cause un-
32 reasonable soil erosion.

33 5. Harm to habitats, fisheries. The activity
34 will not unreasonably harm any plant, wildlife habi-
35 tat, travel corridor, freshwater, estuarine or marine
36 fisheries. When identified critical habitats are in-
37 involved, the activity will not diminish the resource
38 value of these habitats.

39 6. Interfere with natural water flow. The activ-

1 ity will not unreasonably interfere with the natural
2 flow of any surface or subsurface waters.

3 7. Lower water quality. The activity will not
4 unreasonably lower the quality of any waters.

5 8. Flooding. The activity will not unreasonably
6 cause or increase the flooding of the area or adja-
7 cent properties.

8 9. Sand supply. If the activity is on or adja-
9 cent to a sand dune, it will not unreasonably inter-
10 ferre with the natural supply or movement of sand
11 within or to the sand dune system.

12 10. Outstanding river segments. If the proposed
13 activity is a crossing of any outstanding river seg-
14 ment as identified in section 2012, no reasonable al-
15 ternative exists which would have less adverse effect
16 upon the natural and recreational features of the
17 river segment.

18 11. Ground water. The activity will not pose an
19 unreasonable risk that a discharge to or pollution of
20 a significant or highly vulnerable ground water
21 aquifer will occur.

22 12. Public access. The activity will not unrea-
23 sonably affect public access rights to any waters.

24 13. Infrastructure. The applicant has made ade-
25 quate provision of utilities, roadways and open space
26 and recreational facilities required for the develop-
27 ment and the development will not adversely affect
28 such existing facilities or services in the munici-
29 pality or other area served by those facilities and
30 services.

31 §2005. Permits; grants; denials; suspensions

32 The following provisions shall apply to applica-
33 tions.

34 1. Procedure. The department shall process all
35 permits in accordance with chapter 2.

36 2. Municipal participation. The board shall not

1 issue a permit without notifying the municipality in
2 which the proposed activity is to occur and consider-
3 ing any comments filed by the municipality. The mu-
4 nicipality shall have a reasonable period to make
5 comments, as established by the board.

6 3. Water supplies. If the resource subject to
7 alteration or the underlying ground water is utilized
8 by a water company, municipality or water district as
9 a source of supply for drinking water, the applicant,
10 at the time of filing an application, shall forward a
11 copy of the application to the water company, muni-
12 cipality or water district by certified mail. The board
13 shall consider any comments filed within a reasonable
14 period, as established by the board.

15 4. Municipal permits. No permit issued by a mu-
16 nicipality under section 2006 may become effective
17 until 30 days after its receipt by the board. If ap-
18 proved by the board in less than 30 days, the effec-
19 tive date shall be the date of approval. A copy of
20 the application for the permit and the permit issued
21 by the municipality shall be sent, by registered
22 mail, to the board immediately upon its issuance. The
23 board shall review that permit and either approve,
24 deny or modify it as it deems necessary. Failure of
25 the board to act within 30 days of its receipt of the
26 permit shall constitute approval and the permit shall
27 be effective as issued, except that within this 30
28 days the board may extend the time for its review an
29 additional 30 days.

30 5. Winter deferral. When winter conditions pre-
31 vent the board or municipality from evaluating a per-
32 mit application, the board or municipality, upon no-
33 tifying the applicant of that fact, may defer action
34 on the application for a reasonable period. The ap-
35 plicant, during the period of deferral, shall not al-
36 ter the resource area in question.

37 §2006. Delegation of permit granting authority to
38 municipality

39 All permits shall be issued by the board, except
40 that a municipality may apply to the board for au-
41 thority to issue permits. The board shall grant such
42 authority if it finds that the municipality:

1 1. Planning board. Has established a planning
2 board;

3 2. Adopted comprehensive plan and zoning ordi-
4 nance. Has adopted a comprehensive plan and zoning
5 ordinance approved by the board; and

6 3. Notice. Has made provision by ordinance or
7 regulation for prompt notice to the board and the
8 public upon receipt of application and for written
9 notification to the applicant and the board of the
10 issuance of or denial of a permit stating the reasons
11 for the denial.

12 4. Application form. The application form shall
13 be the same as that provided by the board.

14 §2007. Periodic review of delegated authority

15 In the event that the board finds that a municipi-
16 ality has failed to satisfy one or more of the cri-
17 teria of section 2006, it shall notify the municipali-
18 ty accordingly and make recommendations for compli-
19 ance. The municipality may submit a modified applica-
20 tion for approval.

21 If, at any time, the board determines that a mu-
22 nicipality may be failing to exercise its permit
23 granting authority in accordance with its approval
24 procedures or the purposes of this chapter, the board
25 shall notify the municipality of the specific alleged
26 deficiencies and shall order a public hearing to be
27 held in the municipality to solicit public or offi-
28 cial comment. Following that hearing, if the board
29 finds such deficiencies, it shall revoke the
30 municipality's permit granting authority. The municipi-
31 pality may reapply for authority at any time.

32 §2008. Violations

33 A violation is any activity set forth in section
34 2003 which takes place contrary to the provisions of
35 a valid permit or without a permit having been is-
36 sued. Each day of a violation shall be considered a
37 separate offense. A finding that any such violation
38 has occurred shall be prima facie evidence that the
39 activity was performed or caused to be performed by

1 the owner of the property upon which the violation is
2 found to have occurred.

3 §2009. Penalties

4 A violation of this chapter shall be a civil of-
5 fense and shall result in a penalty of not less than
6 \$500 and not more than 3 times the economic value of
7 that violation to the violator.

8 §2010. Enforcement

9 In addition to employees of the department, in-
10 land fisheries and wildlife game wardens, Department
11 of Marine Resources coastal wardens and all other law
12 enforcement officers enumerated in Title 12, section
13 7055, may enforce this chapter.

14 §2011. Exemptions

15 The following shall be exempt from this chapter:

16 1. Water lines and utility cables. The placement
17 of water lines to serve a single-family house or the
18 installation of cables for utilities, such as tele-
19 phone and power cables under a great pond, river,
20 brook or stream, provided that the excavated trench
21 to access the great pond, river, brook or stream is
22 backfilled and riprapped to prevent erosion and that
23 the excavated trench on the landward side of the
24 riprapped area is seeded and mulched to prevent ero-
25 sion and provided that the Department of Conserva-
26 tion, Bureau of Public Lands, has granted permission
27 to place the cable across the pond or river bottom;

28 2. Maintenance and repair. Maintenance and minor
29 repair above the high water line causing no addition-
30 al intrusion of an existing structure into the great
31 pond, river, stream or brook;

32 3. Peat mining. Alteration of a freshwater
33 wetland for the purpose of exploring for or mining
34 peat, subject to chapter 3, subchapter I, article 6,
35 where applicable;

36 4. Interstate pipelines. Alteration of
37 freshwater wetlands associated with the construction,

1 operation, maintenance or repair of an interstate
2 pipeline, subject to chapter 3, subchapter I, article
3 6, where applicable;

4 5. Public works projects. Notwithstanding section
5 2003, that section shall not apply to river,
6 stream or brook crossings in connection with public
7 works projects which alter not more than a total of
8 300 feet in any mile of shore. Alterations to both
9 shores of the river, stream or brook shall be com-
10 bined in arriving at a total shore footage. This ex-
11 ception shall not apply to any project on outstanding
12 river segments, as identified in section 2012.

13 6. Railroad repair and maintenance. Notwith-
14 standing section 2003, that section shall not apply
15 to emergency repairs, maintenance of railroad struc-
16 tures, track or roadbed within the located right-
17 of-way of any railroad.

18 7. Maine Land Use Regulation Commission jurisdic-
19 tion. Notwithstanding section 2003, a permit shall
20 not be required from the board for areas of the State
21 within the jurisdiction of the Maine Land Use Regula-
22 tion Commission under Title 12, chapter 206-A.

23 8. Panning for gold. Notwithstanding section
24 2003, a permit shall not be required for panning
25 gold, provided that no power equipment is used.

26 §2012. Special protection for outstanding river seg-
27 ments

28 In accordance with Title 12, section 402, out-
29 standing river segments include:

30 1. Aroostook River. The Aroostook River from the
31 Canadian border to the Masardis and T.10, R.6,
32 W.E.L.S. town line, excluding the segment in T.9,
33 R.5, W.E.L.S., including its tributaries the Big
34 Machias River from the Aroostook River to the Ashland
35 and Garfield Plantation town line and the St. Croix
36 Stream from the Aroostook River in Masardis to the
37 Masardis and T.9, R.5, W.E.L.S. town line;

38 2. Carrabassett River. The Carrabassett River
39 from the Kennebec River to the Carrabassett Valley

1 and Mt. Abram Township town line;

2 3. Crooked River. The Crooked River from its
3 inlet into Sebago Lake in Casco to the Waterford and
4 Albany Township town lines;

5 4. Dennys River. The Dennys River from the rail-
6 road bridge in Dennysville Station to the outlet of
7 Meddybemps Lake, excluding the western shore in Ed-
8 munds Township and No. 14 Plantation;

9 5. East Machias River. The East Machias River,
10 including the main river, from the old powerhouse in
11 East Machias to the East Machias and T. 18, E.D.,
12 B.P.P. townline, from the T.19, E.D., B.P.P. and Wes-
13 ley town line to the outlet of Crawford Lake, and
14 from the No. 21 Plantation and Alexander town line to
15 the outlet of Pocomoonshine Lake, excluding Hadley
16 Lake, Lower Mud Pond and Upper Mud Pond;

17 6. Fish River. The Fish River from the bridge in
18 Fort Kent Mills to the Fort Kent and Wallagrass Plan-
19 tation town line, from the T.16, R.6, W.E.L.S. and
20 Eagle Lake town line to the Eagle Lake and
21 Winterville Plantation town line, and from the T.14,
22 R.6, W.E.L.S. and Portage Lake town line to the Por-
23 tage Lake and T.13, R.7, W.E.L.S. town line, exclud-
24 ing Portage Lake;

25 7. Kennebago River. The Kennebago River from its
26 inlet into Cupsuptic Lake to the Rangeley and Lower
27 Cupsuptic Township town line;

28 8. Kennebec River. The Kennebec River from the
29 Route 14E bridge in Madison to the Caratunk and The
30 Forks Plantation town line, excluding the western
31 shore in Concord Township, Pleasant Ridge Plantation
32 and Carrying Place Township, and excluding Wyman
33 Lake;

34 9. Machias River. The Machias River from the
35 Route 1 bridge to the Northfield and T.19, M.D.,
36 B.P.P. town line, including its tributaries the Old
37 Stream from the Machias River to the northern most
38 crossing of the Wesley and T.31, M.D., B.P.P. town
39 line, excluding the segments in T.25, M.D., B.P.P.
40 and T.31, M.D., B.P.P.;

1 10. Mattawamkeag River. The Mattawamkeag River
2 from the Penobscot River to the Mattawamkeag and
3 Kingman Township town line, and from the Reed Planta-
4 tion and Bancroft town line to the East Branch, in-
5 cluding its tributaries the West Branch from the
6 Mattawamkeag River to the Haynesville and T.3, R.3,
7 W.E.L.S. town line and from its inlet into Upper
8 Mattawamkeag Lake in Island Falls to the Hersey and
9 Moro Plantation town line; the East Branch from the
10 Mattawamkeag River to the Haynesville and Forkstown
11 Township town line and from the T.4, R.3, W.E.L.S.
12 and Oakfield town line to the Smyrna and Dudley Town-
13 ship town line; the Fish Stream for the West Branch
14 of the Mattawamkeag River to the Crystal and Patten
15 town line; the Molunkus Stream from the Silver Ridge
16 Township and Benedicta town line to the East Branch
17 Molunkus Stream; the Macwahoc Stream from the Silver
18 Ridge Township and Sherman town line to the outlet of
19 Macwahoc Lake; and the Baskehegan Stream from the
20 Mattawamkeag River to the Danforth and Brookton Town-
21 ship town line, and from the Brookton Township and
22 Topsfield town line to the Topsfield and Kossuth
23 Township town line, excluding Baskehegan Lake and
24 Crooked Brook Flowage;

25 11. Narraguagus River. The Narraguagus River
26 from the ice dam above the railroad bridge in
27 Cherryfield to the Beddington and Devereaux Township
28 town line, excluding Beddington Lake;

29 12. Penobscot River. The Penobscot River from
30 the Bangor Dam in Bangor to the Veazie Dam and its
31 tributary the East Branch of the Penobscot from the
32 Penobscot River to the East Millinocket and
33 Grindstone Township town line;

34 13. Piscataquis River. The Piscataquis River
35 from the Penobscot River to the Monson and Blanchard
36 Plantation town line, including its tributaries the
37 East and West Branches of the Piscataquis River from
38 the Blanchard Plantation and Shirley town line to the
39 Shirley and Little Squaw Township town line; the
40 Seboeis Stream from the confluence with the
41 Piscataquis River in Howland to the Howland and
42 Mattamiscontis Township town line and from the
43 Mattamiscontis and Maxfield town line to the Maxfield
44 and Seboeis Plantation town line, excluding Shirley

1 Pond and West Shirley Bog;

2 14. Pleasant River. The Pleasant River from the
3 dam in Columbia Falls, formerly the Hathaway Dam, to
4 the Columbia and T.18, M.D., B.P.P. town line, and
5 from the T.24, M.D., B.P.P. and Beddington town line
6 to the outlet of Pleasant River Lake in Beddington;

7 15. Rapid River. The Rapid River from the
8 Magalloway Plantation and Upton town line to the out-
9 let of Pond in the River;

10 16. Saco River. The Saco River from the Little
11 Ossipee River to the New Hampshire border;

12 17. St. Croix River. The St. Croix River from
13 the cotton mill dam in Milltown to the Calais and
14 Baring Plantation town line, from the Baring Planta-
15 tion and Baileyville town line to the Baileyville and
16 Fowler Township town line, and from the Lamber Lake
17 Township and Vanceboro town line to the outlet of
18 Spudnik Lake, excluding Woodland Lake and Grand Falls
19 Flowage;

20 18. St. George River. The St. George River from
21 the Route 90 bridge in Warren to the outlet of Lake
22 St. George in Liberty, excluding White Oak Pond, Sev-
23 en Tree Pond, Round Pond, Sennebec Pond, Trues Pond,
24 Stevens Pond and Little Pond;

25 19. St. John River. The St. John River from the
26 Hamlin Plantation and Van Buren town line to the Fort
27 Kent and St. John Plantation town line, and from the
28 St. John Plantation and St. Francis town line to the
29 Allagash and St. Francis town line;

30 20. Sandy River. The Sandy River from the Kenne-
31 bec River to the Madrid and Township E town line;

32 21. Sheepscot River. The Sheepscot River from
33 the Head Tide dam in Alna to the Halldale Road in
34 Montville, excluding Long Pond and Sheepscot Pond,
35 including its tributary the West Branch of the
36 Sheepscot from its confluence with the Sheepscot Riv-
37 er in Whitefield to the outlet of Branch Pond in
38 China;

1 22. West Branch Pleasant River. The West Branch
2 Pleasant River from the East Branch to the Brownville
3 and Williamsburg Township town line; and

4 23. West Branch Union River. The West Branch Un-
5 ion River from the Route 181 bridge in Mariaville to
6 the outlet of Great Pond in the Town of Great Pond.

7 §2013. Identification of freshwater wetlands, criti-
8 cal wildlife habitat and coastal erosion ar-
9 reas

10 1. Identification by maps. The department shall
11 map areas meeting the definitions of freshwater wet-
12 lands, critical wildlife habitats and coastal erosion
13 areas set forth in this chapter and shall identify
14 these areas mapped, by rules to be adopted, amended
15 or repealed by the commissioner.

16 2. Procedures. The adoption or amendment of maps
17 identifying freshwater wetlands, critical wildlife
18 habitat or coastal erosion areas shall be subject to
19 the rule-making requirements of the Maine Administra-
20 tive Procedure Act, Title 5, chapter 375, except as
21 provided in this section.

22 A. At least 90 days prior to the adoption or
23 amendment of a map, the commissioner shall:

24 (1) Send the map of the affected area to
25 the municipal officers or their designees;

26 (2) Send a notice to each person recorded
27 as owning affected land; and

28 (3) Publish notice in newspapers of general
29 circulation throughout the State and in the
30 area affected.

31 B. Upon receipt of the proposed maps, the munic-
32 ipal officers of each municipality shall:

33 (1) Post notice that the maps are available
34 for review;

35 (2) Hold a public meeting to discuss the
36 identification and delineation of wetlands;

1 and

2 (3) Take any other action they deem appro-
3 prate to increase public participation in
4 this identification and delineation.

5 3. Prohibition. During the 90-day period after
6 the notice has been given, alteration of the affected
7 resource areas shall be prohibited without a permit.

8 §2014. Maps

9 Maps delineating the boundaries of freshwater
10 wetlands, critical wildlife habitat or coastal ero-
11 sion areas that meet the criteria of this chapter
12 shall be available at the office of the municipality
13 in which the resources are located.

14 §2015. Classification of great ponds

15 1. Criteria. The board shall establish, after
16 public hearing, criteria for classifying great ponds
17 according to their trophic conditions and stages of
18 trophic development. In establishing such criteria,
19 the board shall consider the size, depth and volume
20 of the ponds; the number, size and flow of inlets and
21 outlets; the size of drainage areas; stratification;
22 geology; aquatic plant and animal life; other appro-
23 prate physical, chemical and biological characteris-
24 tics; and the statutory water quality classification
25 of these ponds.

26 2. Public hearing. The board shall classify
27 great ponds, after opportunity for a public hearing,
28 in accordance with the criteria it develops.

29 3. Guidelines. The board, after public hearing,
30 may, by rule, establish guidelines for sewerage dis-
31 posal and collection systems and other waste control
32 systems to control, abate and prevent environmental
33 damage to great ponds in each category.

34 §2016. Data bank

35 The department may maintain, in cooperation with
36 other state agencies, a data bank containing all the
37 known information pertaining to all resources of

1 state concern, as enumerated in this chapter, within
2 the State. All governmental agencies, state or federal,
3 shall make available to the department such in-
4 formation in their possession relating to these re-
5 sources.

6 §2017. Research

7 The department may conduct research and studies
8 to determine how the resource values of resources of
9 state concern can be restored and enhanced.

10 §2018. Funds

11 The department is the public agency of the State
12 authorized to accept funds, public and private, for
13 the purposes of this chapter.

14 §2019. Lake Restoration and Protection Fund

15 1. Fund purposes and administration. There is
16 established a nonlapsing Lake Restoration and Protec-
17 tion Fund, from which the department may pay an
18 amount equal to the local share from state appropria-
19 tion of the eligible costs incurred in a lake resto-
20 ration or protection project. Eligible costs include
21 all costs except those related to land acquisition,
22 legal fees and debt service. All money credited to
23 that fund shall be used by the department for
24 projects to improve or maintain the quality of lake
25 waters in the State and for no other purpose. The
26 commissioner may authorize the State Controller to
27 draw his warrant for such funds as may be necessary
28 to pay the lawful expenses of the lake restoration or
29 protection project, up to the limits of the money du-
30 ly authorized. Any balance remaining in the fund
31 shall continue without lapse from year to year and
32 remain available for the purposes for which the fund
33 is established and for no other purpose.

34 2. Money. Money in the Lake Restoration and Pro-
35 tection Fund may not be used for projects in or on
36 lakes for which public access is not provided.

37 §2020. Bulkheads and retaining walls on Scarborough
38 River; permit requirements

1 Nothing in this chapter prohibits the rebuilding,
2 replacement or new construction of a bulkhead, re-
3 taining wall or similar structure, provided that the
4 applicant for a permit demonstrates to the board or
5 municipality as appropriate that the following condi-
6 tions are met:

7 1. Location. The bulkhead or similar structure
8 to be constructed, rebuilt or replaced is located
9 along some or all of the north-northeasterly property
10 lines of land abutting the Scarborough River from the
11 jetty to the Scarborough town landing; and

12 2. Termination. The terminus of any bulkhead or
13 similar structure, including any wing wall, unless
14 connected to another bulkhead or similar structure,
15 shall terminate at least 25 feet from any abutting
16 property.

17 Any permit issued under this section for a bulk-
18 head or similar structure which is not connected at
19 both ends to another bulkhead or similar structure
20 shall be subject to only the standard conditions ap-
21 licable to all permits granted under this chapter as
22 well as the following conditions. The permit appli-
23 cant or applicants shall be responsible for reason-
24 ably maintaining the bulkhead or similar structure
25 and for repairing damage to the frontal sand dune
26 which occurs between the end of the bulkhead or simi-
27 lar structure and the Scarborough town landing and
28 which is caused by the existence of the bulkhead or
29 similar structure. The applicant or applicants shall
30 submit a report prepared by a state-certified geolo-
31 gist to the commissioner every 2nd year following is-
32 suance of the permit or until such time as the com-
33 missioner deems the report need not be filed or can
34 be filed at longer intervals, which report shall de-
35 scribe the status of the frontal sand dune between
36 the end of the bulkhead or similar structure and the
37 Scarborough town landing and contain whatever recom-
38 mendations the geologist determines are reasonably
39 required to maintain the frontal sand dune in that
40 area and the applicant or applicants shall follow the
41 recommendations.

42 CHAPTER 25

1 STATE HIGHWAY LAND USE MANAGEMENT

2 §2101. Short title

3 This chapter shall be known and may be cited as
4 the "Maine State Highway Land Use Management Act."

5 §2102. Findings

6 The Legislature finds that the State's highways:

7 1. Moving traffic, goods and services. Are im-
8 portant for moving traffic, goods and services effi-
9 ciently and safely throughout the State, for trans-
10 port and evacuation in times of crisis, maintaining
11 the competitive standing of the State's businesses
12 and sustaining a high quality of life for its citi-
13 zens, free from traffic congestion and troublesome
14 delays;

15 2. Public investment. Represent substantial pub-
16 lic investment;

17 3. Impression of the State. Are where most citi-
18 zens and tourists to the State form their impressions
19 of the State as a State of great scenic and pastoral
20 beauty; and are of special importance in maintaining
21 the State's high quality of life;

22 4. Planning and management. Demand planning and
23 management requirements that transcend municipal
24 boundaries;

25 5. Natural areas. Cross or border important nat-
26 ural areas and wildlife habitat; and

27 6. Development. Are under intense pressure from
28 development, especially strip development and sprawl,
29 which threatens to diminish their efficiency, safety,
30 scenic character and natural and historic attributes
31 and to necessitate substantial public investment to
32 correct problems that may result from the cumulative
33 effects of development.

34 §2103. Policy and purpose

35 The Legislature declares that the State's high-

1 ways are critical to the economic and social well-
2 being of the people of the State and that the manage-
3 ment of development along the highways is essential
4 to fulfill the State's role as manager of its highway
5 system.

6 The Legislature declares that it is the policy of
7 the State to anticipate and respond to the cumulative
8 effects of development along state highways, with the
9 collaboration and assistance of municipalities, by
10 controlling development densities, access and the
11 siting of new development, in order to protect and
12 maintain safe and uncongested highway conditions, the
13 historic and traditional character of the State's
14 settlements and countryside; opportunities to view
15 inland and coastal waters, mountains and other fea-
16 tures of great significance; and natural resources of
17 state concern, including rare and unusual features,
18 productive agricultural and forest lands and wildlife
19 habitats and travel corridors.

20 It is the purpose of this chapter to designate
21 state highway districts on the basis of acceptable
22 future development densities and accessways and to
23 establish performance and land use standards relating
24 to the siting of development within these districts.
25 These mapped districts and standards shall be used to
26 guide all pertinent state and local land use deci-
27 sions.

28 Zoning ordinances adopted pursuant to this chap-
29 ter need not depend upon the existence of a zoning
30 ordinance for all of the land and water areas within
31 a municipality, notwithstanding Title 30, section
32 4962, to the contrary. It is the intent of the Legis-
33 lature to recognize that it is reasonable for munici-
34 palities to treat state highway management areas sep-
35 arately and to immediately zone adjacent to the high-
36 ways rather than to wait until such time as zoning
37 ordinances may be enacted for all of the land within
38 municipal boundaries.

39 §2104. Definitions

40 As used in this chapter, unless the context indi-
41 cates otherwise, the following terms have the follow-
42 ing meanings.

1 1. Board. "Board" means the Board of Environmen-
2 tal Protection.

3 2. Director. "Director" means the Director of
4 the State Planning Office.

5 3. Regional commissions. "Regional commissions"
6 means regional planning commissions established under
7 Title 30, chapter 204-A, subchapter III.

8 4. Regional technical advisory committee. "Re-
9 gional technical advisory committee" means a regional
10 technical advisory committee as established under
11 section 2105.

12 5. State Highway Land Use Management Area.
13 "State Highway Land Use Management Area" means all
14 land encompassed within the density districts estab-
15 lished by the Director of the State Planning Office
16 abutting federal-aid primary and secondary state
17 highways in organized municipalities. The boundaries
18 shall be not less than 500 feet to either side of
19 highways in compact areas and 1,000 feet to either
20 side in rural areas, unless greater dimensions are
21 requested by a municipality to accomplish the pur-
22 poses of this chapter.

23 §2105. Regional technical advisory committees

24 The director shall establish a technical advisory
25 committee of 11 persons for each region, as deline-
26 ated in section 2106, to advise him on the develop-
27 ment of recommended density districts. The committees
28 shall be composed of municipal officials and citizens
29 from the respective regions, with at least one repre-
30 sentative, who is an appointed official, from each
31 metropolitan transportation planning organization and
32 regional commission in the regions. For large re-
33 gions, the director may establish a committee for
34 each county or lesser division, as appropriate.

35 §2106. Identification of land use districts

36 1. Classification. The State Planning Office,
37 with the assistance of the Department of Transporta-
38 tion and other state agencies, regional commissions,
39 municipalities and the regional technical advisory

1 committees, shall conduct planning studies and clas-
2 sify state highway land use management areas into
3 general development, future general development, lim-
4 ited development, resource protection and historic
5 districts according to the following schedule:

6 A. York and Cumberland Coun- July 1, 1990
7 ties

8 B. Sagadahoc, Lincoln, Knox, July 1, 1991
9 Waldo, Hancock and Washington
10 Counties

11 C. Androscoggin, Oxford, Ken- July 1, 1992
12 nebec, Franklin and Penobscot
13 Counties

14 D. Piscataquis, Somerset and July 1, 1993
15 Aroostook Counties

16 2. Studies. In order to assist the State Plan-
17 ning Office in meeting the requirements of this chap-
18 ter, the Department of Transportation shall conduct
19 regional transportation studies to identify the
20 present and planned capacity of state highways to ac-
21 commodate traffic and increased access. The State
22 Planning Office shall conduct studies to assess the
23 scenic character and sensitive viewing areas along
24 state highway land use management areas and the ca-
25 capacity of adjacent landscapes to absorb development
26 without adverse visual effects. The Department of
27 Inland Fisheries and Wildlife and the State Planning
28 Office shall identify critical wildlife habitat and
29 rare and unusual natural features. The Department of
30 Conservation and the Department of Agriculture, Food
31 and Rural Resources shall identify important farmland
32 and forestry areas, as defined in the Maine Local
33 Land Use Planning and Regulation Act, Title 30, chap-
34 ter 409.

35 3. Municipal review. The municipal officers,
36 planning board and conservation commission of each
37 municipality shall be given the opportunity to review
38 the results of the regional studies and to submit
39 recommendations to the State Planning Office on the
40 classification of land into density districts within
41 their jurisdictions or regions.

1 4. Hearing. The director shall establish, by
2 rule, the management area boundaries and density dis-
3 tricts for each region after conducting at least one
4 public hearing in each region to solicit comments
5 from local officials and the public and according to
6 the rule-making requirements of the Maine Administra-
7 tive Procedure Act, Title 5, chapter 375.

8 §2107. Adoption of performance and land use stan-
9 dards

10 Prior to January 1, 1989, the director, with the
11 advice of the Department of Environmental Protection,
12 the Department of Transportation, other state agen-
13 cies and an advisory committee composed of citizens,
14 municipal officials and environmental, municipal and
15 other appropriate organizations, shall draft and es-
16 tablish performance and land use standards to guide
17 development activities within state highway land use
18 management areas, after at least 4 public hearings
19 and according to the rule-making requirements of the
20 Maine Administrative Procedure Act, Title 5, chapter
21 375. The regulations shall include a recommended fee
22 structure for municipalities to recover the costs re-
23 lated to land use permitting activities.

24 §2108. Municipal authority

25 1. Municipal zoning. For those state highway
26 land use management areas within their jurisdiction,
27 municipalities shall incorporate the density dis-
28 tricts and land use and performance standards into
29 their adopted comprehensive plan and state highway
30 zoning ordinances, or their equivalent. To be effec-
31 tive, those plans and ordinances and their amendments
32 must be approved by the board with the advice of the
33 director and according to a process established by
34 the board, pursuant to the rule-making requirements
35 of the Maine Administrative Procedure Act, Title 5,
36 chapter 375.

37 2. Municipal failure. If a municipality fails to
38 adopt and obtain approval of a local highway manage-
39 ment program within one year after the board has des-
40 ignated land use districts for the region, no state
41 permits under chapter 23 may be issued for projects
42 within the municipality's boundaries.

1 §2109. State consistency

2 The activities and policies of all state agencies
3 shall be consistent with established density dis-
4 tricts and performance and land use standards.

5 §2110. Monitoring program administration and effec-
6 tiveness

7 1. Review. The board shall review the state
8 highway land use management program and local admin-
9 istration of the program every 4 years by region on
10 the anniversary date of the establishment of the den-
11 sity districts and shall update and revise the densi-
12 ty district maps and performance and land use stan-
13 dards as necessary.

14 2. Municipal failure. If the board determines at
15 any time on the advice of the department that a mu-
16 nicipality is failing to effectively administer and
17 enforce the program, the board shall establish a
18 6-month period in which the municipality may have an
19 opportunity to demonstrate acceptable performance ac-
20 ording to criteria established by the board. If the
21 municipality fails to so demonstrate, the provisions
22 of section 2108, subsection 2, shall apply.

23 3. Report. The board shall report to the Legis-
24 lature on the effectiveness of the program every 4
25 years.

26 §2111. Technical assistance, public participation
27 and information

28 The State Planning Office in conjunction with
29 other agencies and regional commissions of government
30 shall establish a technical assistance program to as-
31 sist municipalities in fulfilling the purposes of
32 this chapter and shall provide information to the
33 public concerning the development and provisions of
34 the state highway land use management program. The
35 State and municipalities shall encourage public in-
36 volvement in the development and review of the pro-
37 gram to the fullest extent possible. The maps deline-
38 ating the boundaries of the density districts, state
39 performance, land use standards and applicable local
40 ordinances shall be available at the offices of the

1 municipalities in which the state highways are lo-
2 cated.

3 STATEMENT OF FACT

4 The purpose of this bill is reflected in the leg-
5 islative findings and purposes.

6 1029041087