

MAINE STATE LEGISLATURE

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
114TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1543, L.D. 2128, Bill, "An Act to Replace the Large Lot Exceptions under the Site Location of Development Law with a Low-density Exemption"

Amend the bill by inserting after the enacting clause and before section 1 the following:

Sec. 1. 30-A MRSA §4406, sub-§1, as enacted by PL 1989, c. 104, Pt. A, §45 and Pt. C, §10 and as amended by PL 1989, c. 362, §2 and c. 497, §10, is further amended to read:

1. **Sales or other conveyances.** No person may sell, lease, develop, build upon or convey for consideration, or offer or agree to sell, lease, develop, build upon or convey for consideration any land or dwelling unit in a subdivision ~~which~~ that has not been approved by the municipal reviewing authority of the municipality where the subdivision is located and approved under Title 38, chapter 3, subchapter I, article 6, where applicable, and subsequently recorded in the proper registry of deeds.

A. No register of deeds may record any subdivision plat or plan ~~which~~ that has not been approved under this subchapter. Approval for the purpose of recording must appear in writing on the plat or plan. All subdivision plats and plans required by this subchapter must contain the name and address of the person under whose responsibility the subdivision plat or plan was prepared.

B. Whenever the initial approval or any subsequent amendment of a subdivision is based in part on the granting of a variance from any applicable subdivision approval standard, that fact shall must be expressly noted on the face of the subdivision plan to be recorded in the registry of deeds.

2 (1) In the case of an amendment, if no amended plan is
4 to be recorded, a certificate shall must be prepared in
6 recordable form and recorded in the registry of deeds.
This certificate shall must:

8 (a) Indicate the name of the current property
owner;

10 (b) Identify the property by reference to the
12 last recorded deed in its chain of title; and

14 (c) Indicate the fact that a variance, including
16 any conditions on the variance, has been granted
and the date of the granting.

18 (2) The variance is not valid until recorded as
provided in this paragraph. Recording must occur
20 within 90 days of the final subdivision approval or
approval under Title 38, chapter 3, subchapter I,
22 article 6, where applicable, whichever date is later,
or the variance is void.

24 B-1. Whenever the subdivision is exempt from Title 38,
chapter 3, subchapter I, article 6, because of the operation
26 of Title 38, section 488, subsection 5, that fact must be
expressly noted on the face of the subdivision plan to be
28 recorded in the registry of deeds. The developable land, as
defined in Title 38, section 488, subsection 5, must be
30 indicated on the plan. The person submitting the plan for
recording shall prepare a sworn certificate in recordable
32 form and record it in the registry of deeds. This
certificate must:

34 (1) Indicate the name of the current property owner;

36 (2) Identify the property by reference to the last
38 recorded deed in its chain of title and by reference to
the subdivision plan;

40 (3) Indicate that an exemption from Title 38, chapter
42 3, subchapter I, article 6, has been exercised;

44 (4) Indicate that the requirements of Title 38, section
46 488, subsection 5, have been and will be satisfied; and

48 (5) Indicate the date of notification of the Department
of Environmental Protection under Title 38, section
50 488, subsection 5.

52 The exemption is not valid until recorded as provided in
this paragraph. Recording must occur within 90 days of the

2 final subdivision approval under this subchapter or the
3 exemption is void.

4 C. ~~No~~ A building inspector may not issue any permit for a
5 building or use within a land subdivision unless the
6 subdivision has been approved under this subchapter and
7 under Title 38, chapter 3, subchapter I, article 6, where
8 applicable.

10 D. Any person who sells, leases, develops, builds upon, or
11 conveys for consideration, offers or agrees to sell, lease,
12 develop, build upon or convey for consideration any land or
13 dwelling unit in a subdivision ~~which~~ that has not been
14 approved under this subchapter and under Title 38, chapter
15 3, subchapter I, article 6, where applicable, shall be
16 penalized in accordance with section ~~4452~~ 4452.

18 E. Any person who, after receiving approval from the
19 municipal reviewing authority or approval under Title 38,
20 chapter 3, subchapter I, article 6, and recording the plan
21 at the registry of deeds, constructs or develops the
22 subdivision, or transfers any lot, in a manner other than
23 depicted on the approved plans or amendments or in violation
24 of any condition imposed by the municipal reviewing
25 authority or the Department of Environmental Protection,
26 where applicable, shall be penalized in accordance with
27 section ~~4552~~ 4452.

28 F. Any person who sells, leases or conveys for
29 consideration any land or dwelling unit in a subdivision
30 approved under this subchapter and exempt from Title 38,
31 chapter 3, subchapter I, article 6, because of the operation
32 of Title 38, section 488, subsection 5, shall include in the
33 instrument of sale, lease or conveyance a covenant to the
34 transferee that all of the requirements of Title 38, section
35 488, subsection 5, have been and will be satisfied.'

38 Further amend the bill by striking out all of section 5 and
39 inserting in its place the following:

40 'Sec. 5. 38 MRSA §488, sub-§§5. 6 and 7 are enacted to read:

42 5. Subdivision exemptions. The following developments are
43 exempt from this article:

46 A. A development that consists only of a subdivision
47 located entirely within the area of the State subject to the
48 jurisdiction of the Maine Land Use Regulation Commission
49 under Title 12, chapter 206-A; and

50 B. A development that consists only of a subdivision if:
51

- 2 (1) The average density of the subdivision is not
3 higher than one lot for every 5 acres of developable
4 land in the parcel;
- 6 (2) The developable land in the parcel totals 200
7 acres or less and at least 50% of the developable land
8 in the parcel is preserved in perpetuity through
9 conservation easements pursuant to Title 33, chapter 7,
10 subchapter VIII-A, in units no smaller than 10 acres in
11 size and of such dimensions as to accommodate within
12 each unit boundary a rectangle measuring 250 feet by
13 500 feet;
- 14 (3) The conservation easements preserve the land in an
15 essentially undeveloped natural state including the
16 preservation of farmland having a history of
17 agricultural use and the preservation of forest land
18 for harvesting by uneven-aged selection methods
19 designed to retain the natural character of the area,
20 except that other methods of harvesting are permissible
21 following a natural disaster;
- 24 (4) The conservation easements grant a 3rd-party right
25 of enforcement, as defined in Title 33, section 476, to
26 the department. The conservation easements granting a
27 3rd-party right of enforcement must be submitted to and
28 accepted by the commissioner;
- 30 (5) All significant wildlife habitat that is mapped or
31 that qualifies for mapping under section 480-B,
32 subsection 10 is included in the preserved land area
33 under subparagraph (3);
- 34 (6) No clearing, grading, filling or other development
35 activity occurs on sustained slopes in excess of 30%;
- 38 (7) If the developable land in the parcel not subject
39 to the requirements of subparagraphs (3) and (5) is
40 located wholly or in part in the watershed of any lake
41 or pond classified GPA under section 465-A, long-term
42 measures to control phosphorus transport are taken in
43 accordance with a phosphorus control plan that is
44 consistent with standards for phosphorus control
45 adopted by the board;
- 46 (8) Soil erosion and sedimentation during development
47 of the subdivision is controlled in accordance with a
48 plan approved by the municipality in which the
49 subdivision is located or by the soil and water
50 conservation district for the county in which the
51 subdivision is located;

2 (9) The nonpreserved, developable land in the parcel
3 is not located wholly or partly within the shoreland
4 zone of a lake or pond classified GPA under section
5 465-A; and

6 (10) At the time all necessary conservation easements
7 are filed with the department and at least 30 days
8 prior to the commencement of clearing and construction
9 activity, the person creating the subdivision notifies
10 the commissioner in writing on a form supplied by the
11 commissioner that the exemption afforded by this
12 paragraph is being used. The person creating the
13 subdivision shall file with that form a set of site
14 plans, including the plans required under subparagraphs
15 (7) and (8), and other evidence sufficient to
16 demonstrate that the requirements of this paragraph
17 have been met. The commissioner shall forward a copy
18 of the form to the municipality in which the
19 subdivision is located.

20 For purposes of this paragraph, "developable land in the
21 parcel" means all contiguous land in the same ownership
22 except for coastal wetlands, freshwater wetlands, rivers,
23 streams and brooks as defined in section 480-B and except
24 for any surface water classified GPA under section 465-A.

25 6. Multi-unit housing exemption. Developments that consist
26 only of multi-unit housing located entirely within the area of
27 the State subject to the jurisdiction of the Maine Land Use
28 Regulation Commission under Title 12, chapter 206-A, are exempt
29 from the requirements of this article.

30 7. Exemption for expansion at existing manufacturing
31 facility. New construction that is not a development that may
32 substantially affect the environment at an existing manufacturing
33 facility is exempt from review under this article provided that
34 the additional disturbed area not to be revegetated does not
35 exceed 30,000 square feet in any calendar year. When review
36 under this article is required for development at an existing
37 manufacturing facility, the applicant shall provide plans for the
38 new development, as well as for those activities which have been
39 undertaken pursuant to this subsection.'

40 Further amend the bill by inserting at the end before the
41 statement of fact the following:

42
43
44 **FISCAL NOTE**

45 The development of phosphorus control standards is currently
46 being undertaken by the Bureau of Water Quality Control within
47 the Department of Environmental Protection. Since funds are
48 already budgeted for this purpose, it is anticipated that this

bill will not result in any additional costs to the department.'

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Further amend the bill by renumbering the sections to read consecutively.

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STATEMENT OF FACT

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10 This amendment retains the provisions of the original bill
12 that repeal the existing large lot exemptions under the site
14 location of development laws. The amendment replaces the
16 proposed low density provision of the original bill with an
18 alternative version that more clearly articulates the exemption
20 criteria. The amendment also requires a person exercising the
22 new low density exemption to attach a certificate to the recorded
24 subdivision plan indicating that such an exemption has been
employed. That person is also required to covenant to any
purchaser or lessee of lots in the subdivision that the
subdivider has satisfied and will continue to satisfy the
requirements of the low density exemption. The amendment also
prohibits the recording of subdivision plans that have not
received approval under the site location of development laws
when that approval is necessary.

Reported by the Committee on Energy and Natural Resources
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