

MAINE STATE LEGISLATURE

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116th MAINE LEGISLATURE

FIRST REGULAR SESSION-1993

Legislative Document

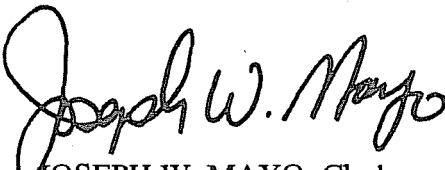
No. 1492

H.P. 1105

House of Representatives, May 11, 1993

An Act Related to the Site Location of Development Laws.

Submitted by the Department of Environmental Protection pursuant to Joint Rule 24.
Reference to the Committee on Energy and Natural Resources suggested and ordered printed.


JOSEPH W. MAYO, Clerk

Presented by Representative ANDERSON of Woodland.
Cosponsored by Representative: COLES of Harpswell.

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

2
4 **Sec. 1. 38 MRSA §482, sub-§2**, as repealed and replaced by PL 1987, c. 812, §§2 and 18, is amended to read:

6 **2. Development that may substantially affect the**
8 **environment.** "Development which that may substantially affect
10 the environment," in this article also called "development,"
12 means any federal, state, municipal, quasi-municipal,
14 educational, charitable, residential, commercial or industrial
16 development which on a parcel that:

18 A. Occupies a land or water area in excess of 20 acres;

20 ~~B. Contemplates drilling for or excavating natural
22 resources on land or under water where the area affected is
24 in excess of 60,000 square feet;~~

26 C. Is a mining or advanced exploration activity as defined
28 in this section;

30 ~~D. Is a hazardous activity as defined in this section;~~

32 E. Is a structure as defined in this section; or

34 ~~F. Is a conversion of an existing structure that meets the
36 definition of structure in this section;~~

38 G. Is a subdivision as defined in this section; or

40 ~~H. Is a multi-unit housing development as defined in this
42 section located wholly or in part within the shoreland zone.~~

44 ~~This term does not include state highways, state aid highways and
46 borrow pits for sand, fill or gravel of less than 5 acres or when
48 regulated by the Department of Transportation, and such borrow
50 pits entirely within the jurisdiction of the Maine Land Use
Regulation Commission under Title 12, chapter 206-A, and those
activities regulated by the Department of Marine Resources under
Title 12, section 6072.~~

42 **Sec. 2. 38 MRSA §482, sub-§2-A**, as enacted by PL 1979, c. 466,
44 §13, is repealed.

46 **Sec. 3. 38 MRSA §482, sub-§2-B**, as enacted by PL 1979, c. 466,
48 §13, is repealed and the following enacted in its place:

50 **2-B. Mining or advanced exploration activity.** "Mining or
advanced exploration activity" means an activity or process
necessary for the extraction or removal of the product or

2 overburden or for the preparation, washing, cleaning or other
3 treatment of the product and includes one or more of the
4 following:

5 A. An excavation of more than 5 acres of land for borrow,
6 topsoil, clay or silt whether alone or in combination;

7 B. The bulk sampling, extraction or beneficiation of
8 metallic minerals, not including test sampling methods
9 conducted in accordance with rules adopted by the department
10 such as test boring, test drilling, hand sampling and
11 digging of test pits with a limited maximum surface opening
12 or methods determined by the department to cause minimal
13 disturbance of soil or vegetative cover; or

14 C. The extraction or removal of more than 1,000 cubic yards
15 of product or overburden, other than an excavation for
16 borrow, topsoil, clay, silt or metallic minerals, from the
17 earth within 12 successive calendar months.

18 "Mining activity or advanced exploration" does not include
19 excavation or grading preliminary to a construction project
20 unless intended to circumvent this article. An excavation of 5
21 or fewer acres of land for topsoil, clay or silt must be
22 conducted in accordance with the most recent revision of the
23 "Maine Erosion and Sedimentation Handbook for Construction: Best
24 Management Practices."

25 **Sec. 4. 38 MRSA §482, sub-§2-C, as corrected by RR 1991, c. 2,**
26 **§146, is repealed.**

27 **Sec. 5. 38 MRSA §482, sub-§2-D, as enacted by PL 1987, c. 812,**
28 **§§3 and 18, is repealed.**

29 **Sec. 6. 38 MRSA §482, sub-§2-E, as enacted by PL 1987, c. 812,**
30 **§§3 and 18, is amended to read:**

31 **2-E. Coastal wetlands.** "Coastal wetlands" means all-tidal
32 and-subtidal-lands;-all-lands-below-any-identifiable-debris-line
33 left-by-tidal-action;-all-lands-with-vegetation-present-that-is
34 tolerant-of-salt-water-and-occurs-primarily-in-a-salt-water-or
35 estuarine-habitat;-and-any-swamp,-marsh,-bog,-beach,-flat-or
36 ether-contiguous-lowland-which-is-subject-to-tidal-action-or
37 normal-storm-flowage-at-any-time-except-during-periods-of-maximum
38 storm-activity has the same meaning as in section 480-B,
39 subsection 2. Coastal-wetlands-may-include-portsions-of-coastal
40 sand-dunes.

41 **Sec. 7. 38 MRSA §482, sub-§2-F, as enacted by PL 1987, c. 812,**
42 **§§3 and 18, is amended to read:**

2 **2-F. Freshwater wetlands.** "Freshwater wetlands" means
3 ~~freshwater swamps, marshes, bogs and similar areas which are:~~ has
4 the same meaning as in section 480-B, subsection 4.

6 A. ~~Of 10 or more contiguous acres;~~

8 B. ~~Characterized predominately by wetland vegetation; and~~

10 C. ~~Not considered part of a great pond, coastal wetland,~~
11 ~~river, stream or brook.~~

12 ~~These areas may contain small inclusions of land that do not~~
13 ~~conform to the criteria of this subsection.~~

16 **Sec. 8. 38 MRSA §482, sub-§3,** as amended by PL 1983, c. 513,
17 §2, is repealed.

18 **Sec. 9. 38 MRSA §482, sub-§3-B,** as enacted by PL 1987, c. 812,
19 §§4 and 18, is amended to read:

22 **3-B. Normal high-water line.** "Normal high-water line"
23 ~~means that line which is apparent from visible markings, changes~~
24 ~~in the character of soils due to prolonged action of the water or~~
25 ~~changes in vegetation, and which distinguishes between~~
26 ~~predominantly aquatic and predominantly terrestrial land~~ has the
27 same meaning as in section 480-B, subsection 6.

28 **Sec. 10. 38 MRSA §482, sub-§4,** as amended by PL 1971, c. 613,
29 §2, is further amended to read:

32 **4. Person.** "Person" means any person, firm, association,
33 partnership, corporation, municipal or other local governmental
34 entity, quasi-municipal entity, state agency, federal agency,
35 educational or charitable organization or institution or other
36 legal entity.

38 **Sec. 11. 38 MRSA §482, sub-§4-B,** as affected by PL 1989, c.
39 890, Pt. A, §40 and amended by Pt. B, §86, is further amended to
40 read:

42 **4-B. Reclamation.** "Reclamation" means the rehabilitation
43 of the area of land affected by mining under a plan approved by
44 the department, including, but not limited to, the ereation
45 stabilization of lakes or ponds, ~~where practicable~~ slopes and
46 creation of safety benches, the planting of forests, the seeding
47 of grasses and legumes for grazing purposes, the planting of
48 crops for harvest and the enhancement of wildlife and aquatic
49 resources, but not including the filling in of pits, and the
50 filling or sealing of shafts and underground workings with solid

materials unless necessary for protection of ground water or safety.

2
4 **Sec. 12. 38 MRSA §482, sub-§4-C,** as enacted by PL 1981, c. 449, §§6 and 9, is repealed.

6 **Sec. 13. 38 MRSA §482, sub-§4-E,** as enacted by PL 1987, c. 812, §§6 and 18, is amended to read:

10 **4-E. River, stream or brook.** "River, stream or brook"
12 means a free flowing body of water from that point at which it
14 provides drainage for a watershed of 25 square miles to its mouth
16 has the same meaning as in section 480-B, subsection 9.

18 **Sec. 14. 38 MRSA §482, sub-§4-F,** as enacted by PL 1987, c. 812, §§6 and 18, is amended to read:

20 **4-F. Shoreland zone.** "Shoreland zone" means all area
22 within 250 feet of the normal high water line of any great pond,
24 river or salt water body, or within 250 feet of the upland edge
26 of a freshwater or coastal wetland has the same meaning as
28 "shoreland areas" in section 435. Terms used within this
30 definition have the same meanings as in section 436-A.

32 **Sec. 15. 38 MRSA §482, sub-§5,** as amended by PL 1991, c. 500,
34 §3, is further amended to read:

36 **5. Subdivision.** A "subdivision" is the division of a
38 parcel of land into 5 or more lots to be offered for sale or
40 lease to the general public during any 5-year period if the lots
42 to be offered, together with the roads, common areas, easement
44 areas and all portions of the parcel of land in which rights or
46 interests, whether express or implied, are to be so offered make
48 up an aggregate land area of more than 20 acres except for the
50 following:

C. Lots of 40 or more acres but not more than 500 acres
shall may not be counted as lots except where:

(1) The proposed subdivision is located wholly or
partly within the shoreland zone;

C-1. Lots of more than 500 acres in size shall may not be
counted as lots;

D. Five years after a subdivider establishes a
single-family residence for that subdivider's own use on a
lot parcel and actually uses all or part of the lot parcel
for that purpose during that period, that a lot shall
containing that residence may not be counted as a lot;

2 E. Unless intended to circumvent this article, the
4 following transactions may not be considered lots offered
for sale or lease to the general public:

6 (1) Sale or lease of lots to an abutting owner or to a
8 spouse, child, parent, grandparent or sibling of the
developer if those lots are not further divided or
10 transferred to a person not so related to the developer
within a 5-year period;

12 (2) Personal, nonprofit transactions, such as the
transfer of lots by gift or devise, if those lots are
14 not further divided or transferred within a 5-year
period; or

16 (3) Grant of a bona fide security interest in the
18 whole lot or subsequent transfer of the whole lot by
the original holder of the bona fide security interest
20 or that person's successor in interest; and

22 F. In those subdivisions which that would otherwise not
require site location approval, unless intended to
24 circumvent this article, the following transactions shall
may not, except as provided, be considered lots offered for
26 sale or lease to the general public:

28 (1) Sale or lease of common lots created with a
conservation easement as defined in Title 33, section
30 476, provided that the Department of Environmental
Protection is made a party.

32 The exception described in paragraph F does not apply, and the
34 subdivision requires site location approval whenever the use of a
lot described in paragraph F changes or the lot is offered for
36 sale or lease to the general public without the limitations set
forth in paragraph F. For the purposes of this subsection only,
38 a parcel of land is defined as all contiguous land in the same
ownership provided that lands located on opposite sides of a
40 public or private road ~~shall-be~~ are considered each a separate
parcel of land unless that road was established by the owner of
42 land on both sides of the road subsequent to January 1, 1970. A
lot to be offered for sale or lease to the general public is
44 counted, for purposes of determining jurisdiction, from the time
a municipal subdivision plan showing that lot is recorded or the
46 lot is sold or leased, whichever occurs first, until 5 years
after that recording, sale or lease.

48 Sec. 16. 38 MRSA §482, sub-§6, as amended by PL 1987, c. 812,
50 §§8 and 18, is further amended to read:

2 **6. Structure.** A "structure" shall ~~mean~~ means:

4 A. ~~A building or buildings on a single parcel constructed~~
6 ~~er erected with a fixed location on or in the ground or~~
8 ~~attached to something on or in the ground which occupies a~~
 ~~ground area in excess of 60,000 square feet or contains a~~
 ~~total floor area of 100,000 square feet or more; or~~

10 B. Parking Buildings, parking lots, roads, paved areas,
12 wharves or areas to be stripped or graded and not to be
14 revegetated which causes within a calendar year that cause a
 ~~total project, including any buildings~~ to occupy a ground
 area in excess of 3 acres.

16 **Sec. 17. 38 MRSA §482-A, sub-§1**, as amended by PL 1989, c.
18 680, is repealed.

20 **Sec. 18. 38 MRSA §483-A**, as amended by PL 1991, c. 499, §19,
 is further amended to read:

22 **§483-A. Prohibition**

24 No person may construct or cause to be constructed or
26 operate or cause to be operated or, in the case of a subdivision,
 sell or lease, offer for sale or lease or cause to be sold or
28 leased, any development ~~requiring approval under this article~~
 that may substantially affect the environment without first
30 having obtained approval for this construction, operation, lease
32 or sale from the department. A person having an interest in, or
 undertaking an activity on, a parcel of land affected by an order
 or permit issued by the department may not act contrary to that
 order or permit.

34 **Sec. 19. 38 MRSA §484, sub-§6**, as amended by PL 1989, c. 890,
36 Pt. A, §40 and Pt. B, §91, is further amended to read:

38 **6. Infrastructure.** The developer has made adequate
40 provision of utilities, including water supplies, sewerage
 facilities and solid waste disposal, and roadways and open space
42 required for the development and the development will not have an
 unreasonable adverse effect on the existing or proposed
44 utilities, and roadways and open space in the municipality or
 area served by those services ~~or open space~~. ~~In assessing the~~
46 ~~impact on open space, the department shall use as a standard that~~
 ~~which is set forth in the municipality's comprehensive land use~~
 ~~plan, when such a plan exists.~~

48 **Sec. 20. 38 MRSA §484, sub-§8**, as enacted by PL 1987, c. 812,
50 §§10 and 18, is repealed.

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Sec. 21. 38 MRSA §486-A, sub-§7 is enacted to read:

7. Minor revisions. An application for an order addressing a minor revision must be processed within a period specified by the department if the applicant meets requirements adopted by the department.

Sec. 22. 38 MRSA §487-A, as affected by PL 1989, c. 890, Pt. A, §40 and amended by Pt. B, §§95 and 96, is repealed.

Sec. 23. 38 MRSA §488, as amended by PL 1991, c. 160, §2, is further amended to read:

§488. Applicability

This Article shall ~~does~~ not apply to any development in existence or in possession of applicable state or local licenses to operate or under construction on January 1, 1970, or to any development the construction and operation of which has been specifically authorized by the Legislature prior to May 9, 1970, ~~or to public service corporation transmission lines, except transmission lines carrying 100 kilovolts or more,~~ nor shall ~~does~~ it apply to the renewal or revision of leases of parcels of land upon which a structure or structures have been located as of March 15, 1972, ~~nor to the rebuilding or reconstruction of natural gas pipelines or transmission lines within the same right-of-way.~~

~~Developments which consist only of a municipal or private road or way are exempt from the requirements of this Article as follows, except that the administering agency may require a person constructing a road to notify the agency of the location of the road within 21 days.~~

~~1. Unorganized areas. Within those areas of the State which are subject to the jurisdiction of the Maine Land Use Regulation Commission under Title 12, chapter 206-A, such roads and ways are exempt from this Article.~~

~~2. Organized areas. Within all areas of the State not subject to the jurisdiction of the Maine Land Use Regulation Commission, such roads and ways are exempt provided they are located, constructed and maintained in accordance with standards adopted by the board in accordance with this section. The board shall consider road construction standards adopted by the Maine Land Use Regulation Commission in promulgating these standards.~~

3. Standards, guidelines, definitions and revisions. Standards, guidelines, definitions and any revisions adopted

2 pursuant to this section shall ~~be~~ are in effect until 90 days
4 after adjournment of the next regular session of the Legislature
following enactment of this subsection, unless approved by
legislative resolve.

6 **5. Subdivision exemptions.** The following developments are
8 exempt from this article:

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

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

16 (1) The average density of the subdivision is not
18 higher than one lot for every 5 acres of developable
land in the parcel;

20 (2) The developable land in the parcel totals 200
22 acres or less and at least 50% of the developable land
in the parcel is preserved in perpetuity through
24 conservation easements pursuant to Title 33, chapter 7,
subchapter VIII-A, in units no smaller than 10 acres in
26 size and of such dimensions as ~~to~~ that accommodate
within each unit boundary a rectangle measuring 250
28 feet by 500 feet;

30 (3) The conservation easements preserve the land in an
32 essentially undeveloped natural state including the
preservation of farmland having a history of
34 agricultural use and the preservation of forest land
designed to retain the natural character of the area,
36 except that other methods of harvesting are permissible
following a natural disaster;

38 (4) The conservation easements grant a 3rd-party right
40 of enforcement, as defined in Title 33, section 476, to
the department. The conservation easements granting a
42 3rd-party right of enforcement must be submitted to and
accepted by the commissioner;

44 (5) All significant wildlife habitat that is mapped or
46 that qualifies for mapping under section 480-B,
subsection 10 is included in the preserved land area
48 under subparagraph (3);

50 (6) No clearing, grading, filling or other development
activity occurs on sustained slopes in excess of 30%;

2 (7) If the developable land in the parcel not subject
4 to the requirements of subparagraphs (3) and (5) is
6 located wholly or in part in the watershed of any lake
8 or pond classified GPA under section 465-A, long-term
measures to control phosphorus transport are taken in
accordance with a phosphorus control plan that is
consistent with standards for phosphorus control
adopted by the board;

10 (8) Soil erosion and sedimentation during development
12 of the subdivision ~~is~~ are controlled in accordance with
14 a plan approved by the municipality in which the
subdivision is located or by the soil and water
conservation district for the county in which the
subdivision is located;

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

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

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

44 C. A development consisting only of a residential
46 subdivision of fewer than 30 lots as long as:

48 (1) All lots are served by a municipal sewer system;

2 (2) The parcel is located within a municipality having
4 a comprehensive plan and land use ordinances that the
6 Department of Economic and Community Development has
8 determined are consistent with Title 30-A, sections
10 4312 to 4349; and

12 (3) All lots are restricted to residential or open
14 space use, except that 10 years after a residence is
16 established on a lot, that lot may be converted to a
18 nonresidential use by a lot buyer if allowed under
20 municipal ordinances.

22 A lot in a residential subdivision exempted pursuant to this
24 paragraph is no longer counted toward the 30-lot threshold
26 for purposes of determining jurisdiction more than 5 years
28 after the time a municipal subdivision plan showing the lot
30 is recorded or the lot is sold or leased, whichever occurs
32 first. A residential subdivision is a division of a parcel
34 in which all lots are used for single-family housing or open
36 space.

38 ~~6. Multi-unit housing exemption. Developments that consist~~
40 ~~only of multi-unit housing located entirely within the area of~~
42 ~~the State subject to the jurisdiction of the Maine Land Use~~
44 ~~Regulation Commission under Title 12, chapter 206-A, are exempt~~
46 ~~from the requirements of this article.~~

48 **7. Exemption for expansion at existing manufacturing**
50 **facility.** ~~New construction that is not a development that may~~
52 ~~substantially affect the environment at an existing a licensed~~
54 ~~manufacturing facility is exempt from review under this article~~
56 ~~provided that the additional disturbed area not to be revegetated~~
58 ~~does not exceed 30,000 square feet ground area in any calendar~~
60 ~~year and does not exceed 60,000 square feet ground area in~~
62 ~~total. When review under this article is required for~~
64 ~~development at an existing a licensed manufacturing facility, the~~
66 ~~applicant shall provide plans for the new development, as well as~~
68 ~~for those activities which that have been undertaken pursuant to~~
70 ~~this subsection. The permittee shall notify the department prior~~
72 ~~to new construction conducted pursuant to this exemption. The~~
74 ~~notice must identify the type, location and ground area of the~~
76 ~~new construction.~~

78 **8. Exemption for storage facility.** A development that
80 consists exclusively of a storage facility that occupies a ground
82 area of less than 100,000 square feet, contains a total floor
84 area of less than 150,000 square feet and occupies a total area
86 of less than 4 acres of impervious surface area, including
88 buildings, parking lots, roads, paved areas, wharves or areas to
90 be stripped or graded and not revegetated, is exempt from review
92 under this article if:

- 2 A. An air emission license is not required under section
3 590;
- 4 B. A waste discharge license is not required under section
5 413;
- 6 C. During any one-hour period, the development will not
7 result in a level of traffic at any intersection, including
8 the development entrance, that equals or exceeds:
9
10 (1) Twenty-five vehicles in a left-turn-only lane;
11
12 (2) Thirty-five vehicles in a through lane, right-turn
13 lane or a combined through and right-turn lane; or
14
15 (3) After multiplying the left-turn volume by 1.5, 35
16 vehicles in a combined left-turn and through lane or a
17 combined left-turn, through and right-turn lane;
18
19 D. All significant wildlife habitats within the development
20 that are mapped or that qualify for mapping under section
21 480-B, subsection 10 are undisturbed;
22
23 E. When the development is located wholly or in part in the
24 watershed of any lake or pond classified GPA under section
25 465-A, long-term measures to control phosphorus transport
26 are taken in accordance with a phosphorous control plan that
27 is consistent with standards for phosphorus control adopted
28 by the board;
29
30 F. Clearing, grading, filling or any other development
31 activity does not occur on sustained slopes in excess of 30%;
32
33 G. Soil erosion and sedimentation during construction of
34 the development are controlled in accordance with a plan
35 approved by the municipal reviewing authority with
36 jurisdiction over the location of the development or by the
37 soil and water conservation district for the county in which
38 the development is located;
39
40 H. A storm water management system is installed that is
41 capable of detaining or retaining water for infiltration
42 from a storm of an intensity equal to a 25-year, 24-hour
43 storm such that the rate of the flow of storm water from the
44 development does not exceed the rate of outflow of storm
45 water from the development prior to the undertaking of the
46 development unless the storm water is conveyed exclusively
47 in man-made constructed piped or open drainage systems
48 directly into marine waters other than estuarine waters;
49
50

2 I. The development is located entirely within a
4 municipality that has:

6 (1) Established a municipal planning board or site
8 plan reviewing authority, referred to in this
10 subsection as the municipal reviewing authority;

12 (2) Employed a code enforcement officer; and

14 (3) Established procedures for appeal by parties
16 aggrieved by local decisions under this subsection;

18 J. The municipal reviewing authority agrees to review the
20 development and finds that the development satisfies this
22 subsection and any local requirements; and

24 K. The commissioner is notified of the pending development
26 by the developer at least 15 days prior to undertaking
28 construction; and .

30 ~~L. Any requirements for hazardous activities under section
32 487-A are met.~~

34 ~~Development which consists only of a subdivision or
36 subdivisions located entirely within the area of the State
38 subject to the jurisdiction of the Maine Land Use Regulation
40 Commission under Title 12, chapter 206-A, is exempt from the
42 requirements of this article. New construction which is not a
44 "development which may substantially affect the environment" at
46 an existing manufacturing facility is exempt from review under
48 this article provided that the additional disturbed area not to
50 be revegetated does not exceed 30,000 square feet in any calendar
year. When review under this article is required for development
at an existing manufacturing facility, the applicant shall
provide plans for the new development as well as for these
activities which have been undertaken pursuant to this section.~~

9. Development within unorganized areas. A development
located entirely within an area subject to the jurisdiction of
the Maine Land Use Regulation Commission, other than a metallic
mineral mining or advanced exploration activity, is exempt from
the requirements of this article. For developments within the
commission's jurisdiction, the Director of the Maine Land Use
Regulation Commission may request and obtain technical assistance
and recommendations from the department. The commissioner shall
respond to the requests in a timely manner. The recommendations
of the department must be considered by the Maine Land Use
Regulation Commission in acting upon a development application.

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2 10. Roads and railroad tracks. A structure consisting only
of a road is exempt from the requirements of this article.
4 Railroad tracks other than tracks within yards or stations are
exempt from review under this article.

6 11. Transmission lines and natural gas pipelines. The
rebuilding or reconstruction of an existing public service
8 corporation transmission line within the same right-of-way, the
construction of a public service corporation transmission line
10 carrying less than 100 kilovolts or the construction or
reconstruction of a natural gas pipeline is exempt from review
12 under this article. The construction of a public service
corporation transmission line carrying 100 kilovolts or more is
14 exempt from review under this article as long as it is located,
constructed and maintained in accordance with scenic impact
16 requirements adopted by the department that specifically address
transmission lines. A public service corporation substation
18 located within the same right-of-way is exempt from review as
long as it does not constitute a development.

20 12. Farm and fire ponds. A pond or ponds having a total
22 surface area of less than 10 acres, on a parcel, that is used for
irrigation of field crops, water storage for cranberry operations
24 or fire protection determined to be necessary in that location by
the municipal fire department is exempt from review under this
26 article. This provision does not provide an exemption for mining
or advanced exploration activity.

28 13. Structures within permitted commercial and industrial
30 subdivisions. A person may construct or cause to be constructed,
or operate or cause to be operated, a structure on a lot in a
32 commercial or industrial subdivision approved pursuant to this
article without obtaining approval under this article for that
34 structure, as long as all terms and conditions of the subdivision
permit are met. This subsection applies to commercial or
36 industrial subdivisions approved pursuant to this article on or
after the effective date of this subsection.

38 14. Research and aquaculture leases. Activities regulated
40 by the Department of Marine Resources under Title 12, section
6072 are exempt from the requirements of this article.

42
44 **Sec. 24. 38 MRSA 489-A,** as amended by PL 1991, c. 761, §§1 to
4, is further amended to read:

46 **§489-A. Municipal review of development**

48 The board commissioner may register municipalities for
authority to substitute permits issued pursuant to Title 30-A,
50 chapter 187, subchapter IV, for permits required by section 485-A
under the following conditions.

2 **1. Kinds of projects.** The following kinds of projects may
be reviewed by registered municipalities pursuant to this section:

4 A. ~~Residential and nonresidential subdivisions~~ Subdivisions
6 as described in section 482, subsection 5 of more than 20 or
more acres but less than 100 acres;

8 B. ~~Structures as described in section 482, subsection 6,~~
10 ~~paragraph A, which occupy a ground area in excess of 60,000~~
~~square feet but less than 100,000 square feet;~~

12 C. ~~Structures as described in section 482, subsection 6,~~
14 ~~paragraph A that occupy a total floor area of 100,000 square~~
~~feet or more but less than 150,000 square feet of floor area;~~

16 D. Structures as described in section 482, subsection 6,
18 paragraph B that ~~occupy a ground area~~ in excess of 3 acres
but less than 7 acres ~~of nonrevegetated land;~~ or

20 E. ~~Sand, fill or gravel pit mining operations consisting of~~
22 ~~5 or more acres.~~

24 F. Excavation on more than 5 acres of land for borrow,
26 topsoil, clay or silt, whether alone or in combination as
described in section 482, subsection 2-B.

28 **1-A. Modification.** An application for a modification to a
development reviewed by a municipality pursuant to subsection 1
30 may be reviewed by the municipality as long as:

32 A. The modification will not cause the total area of the
development to exceed an upper area threshold specified in
34 subsection 1; or

36 B. Based upon information submitted by the municipality
concerning the development and modification, the department
38 determines that the modification may be adequately reviewed
by the municipality.

40 In addition, a municipality may modify a permit for a subdivision
42 or structure issued by the department prior to registration of
the municipality pursuant to section 489-A if the area of the
44 upper area modification does not exceed the upper area threshold
provided in subsection 1 except as allowed in paragraph B.

46 **2. Registration.** The board commissioner shall register
48 municipalities to grant permits for projects under subsection 1
if the board commissioner finds that the municipality meets all
50 of the following criteria:

- 2 A. A municipal planning board or reviewing authority is
established;
- 4
- 6 B. A comprehensive plan consistent with Title 30-A, chapter
187 has been adopted with standards and objectives
determined by the department to be at least as stringent as
8 this article;
- 10 C. Subdivision regulations have been adopted that are
consistent with Title 30-A, chapter 187, and determined by
12 the board commissioner to be at least as stringent as
criteria set forth in section 484;
- 14
- 16 D. Site plan review regulations have been adopted with
criteria ~~which are~~ determined by the board commissioner to
be at least as stringent as section 484;
- 18
- 20 D-1. Land use regulations have been adopted that regulate
all ~~sand, fill or gravel pit mining~~ excavation operations
22 ~~consisting of 5 or more acres~~ for borrow, topsoil, clay or
silt, alone or in combination, as described in section 482,
24 subsection 2-B. The regulations must be determined by the
board commissioner to be at least as stringent as the
26 criteria set forth in section 484. An excavation of 5 or
fewer acres of land for topsoil, clay or silt must be
28 conducted in accordance with the most recent revision of the
"Maine Erosion and Sedimentation Handbook for Construction:
Best Management Practices";
- 30
- 32 E. The municipality has adequate resources to administer
and enforce the provisions of its ordinances;
- 34 F. Procedures for public hearing and notification have been
established including:
- 36
- 38 (1) Notice to the commissioner upon receipt of an
application, including a description of the project;
- 40 (2) Notice of issuance and denial to the applicant and
commissioner, including the reason for denial;
- 42
- 44 (3) Public notification of the application and any
hearings; and
- 46 (4) Satisfactory hearing procedures;
- 48 G. Procedures for appeal by aggrieved parties of local
decisions are defined; and
- 50

2 H. A registration form, provided by the commissioner, has
3 been completed and submitted by the municipality,
4 demonstrating compliance with the criteria under this
5 subsection.

6 2-A. Current requirements. Municipalities registered under
7 this section shall ensure that municipal regulations continue to
8 meet the criteria listed in section 489-A, subsection 2.

10 A. The commissioner shall immediately notify registered
11 municipalities of new or amended regulations adopted by the
12 department pursuant to this article.

14 B. Amendments to municipal regulations must be adopted by
15 the municipality within one calendar year of the effective
16 date of new or amended department regulations and submitted
17 to the commissioner for approval within 45 calendar days of
18 adoption by the municipality.

20 **3. Certification.** A municipality certified by the
21 Department of Economic and Community Development under Title
22 30-A, chapter 191, may be registered if the board commissioner
23 finds the municipality has fulfilled the requirements of
24 subsection 2 and applies to be registered.

26 3-A. Record of review and basis for decision. The
27 municipality shall submit one copy of the record or review and
28 basis of decision for each development or modification of a
29 development approved pursuant to this section within 40 working
30 days of final action by the reviewing authority, unless otherwise
31 approved by the commissioner.

32 **4. Suspension of registration.** If the commissioner finds
33 that a municipality no longer meets the criteria set forth under
34 subsection 2 or 2-A, or is not adequately implementing those
35 requirements, the commissioner may suspend the registration and
36 shall notify the municipality accordingly. The notice must
37 contain findings of fact and conclusions of law. If registration
38 is suspended, the commissioner shall recommend actions for the
39 municipality to come into compliance with this section. The
40 commissioner may waive the suspension for new projects that have
41 received at least one substantive municipal review prior to the
42 suspension of registration.

44 **5. Transition.** Municipalities registered under former
45 section 489 as it existed on October 1, 1975, shall must be
46 certified under this section for one year from the effective date
47 of this section. Thereafter, the municipality must comply with
48 the requirements under subsection 2.

50

2 **6. Central list of pending projects.** The commissioner
shall maintain and make available a list of projects pending
municipal review under this section.

4
6 **7. Technical assistance.** The commissioner and other state
review agencies shall may provide technical assistance to
municipalities upon request for projects reviewed under this
8 section.

10 **8. Application review process.** Upon ~~final-action-by-the~~
~~municipal-reviewing-authority-of-an-application~~ the determination
12 by the municipal reviewing authority that an application for a
permit or permit amendment under this section is complete for
14 processing:

16 A. The municipality shall submit to the commissioner within
14 days of ~~final-action~~ that determination by the municipal
18 reviewing authority, one copy of the project application,
~~one copy of the record of review and action~~ and one copy of
20 the notification form provided by the commissioner;

22 B. The commissioner shall review the application and,
within 45 30 days of ~~final-action-by-the-municipal-reviewing~~
24 ~~authority~~ its receipt, or within 30 days of receipt of any
subsequent amendment to the application, notify the
26 municipality if the department intends to exercise
jurisdiction as provided in subsection 9; and

28 C. If the department does not act within the 45-day 30-day
30 period following receipt of the application or within 30
days of receipt of any amendment to the application, this
32 ~~inaction constitutes approval by the department and the~~
~~municipal permits shall be effective as issued as the~~
34 ~~municipal permit and department permit~~ constitutes a
decision not to exercise jurisdiction as provided in
36 subsection 9.

38 **9. State jurisdiction.** The department shall review
40 projects for registered municipalities if:

- 42 A. The commissioner finds that the project:
- 44 (1) Meets one or more of the criteria set forth in
section 341-D, subsection 2, paragraph A, B or C;
 - 46 (2) Will have a potentially significant environmental
effect; or
 - 48 (3) Could affect more than one municipality.

50 In making these findings, the commissioner shall consider
52 all public comments submitted to the department;

2 B. The local reviewing authority for the municipality in
which the project is located petitions the commissioner in
writing; or

4
6 ~~C. The local reviewing authority, in a municipality
adjoining the municipality in which a project is located,
petitions the commissioner in writing; or~~

8
10 D. The proposed project is located in more than one
municipality.

12 State jurisdiction must be exerted if at all, within 45 30 days
of ~~final action by the municipal reviewing authority~~ receipt of
14 the completed project application by the commissioner from the
municipality or within 30 days of receipt of any modification to
16 that application from the municipality.

18 10. Appeal of decision by commissioner to review. An
aggrieved party may appeal the decision by the commissioner to
20 exert or not exert state jurisdiction over the proposed project
to the board. Review and actions taken by the department are
22 subject to appeal procedures governing the department under
section 341-D, subsections 4 and 5.

24
26 10-A. Appeal of decision by commissioner to grant, withhold
or suspend registration. An appeal of the decision by the
28 commissioner to grant, withhold or suspend registration is as
follows.

30 A. The decision of the commissioner to grant, withhold or
suspend the registration may be appealed to the board by a
32 person aggrieved by the decision. The board shall review,
may hold a hearing on and may affirm, amend or reverse the
34 decision of the commissioner when the decision is appealed
within 30 days of issuance of notification of the decision.
36 The board shall give written notice to persons that have
asked to be notified of the commissioner's decision. The
38 board may allow the record to be supplemented if it finds
that the evidence offered is relevant and material in
40 determining whether the municipality no longer meets the
criteria set forth in subsections 2 and 2-A.

42
44 B. The board is not bound by the commissioner's findings of
fact or conclusions of law but may adopt, modify or reverse
46 findings of fact or conclusions of law established by the
commissioner. Any changes made by the board under this
48 paragraph must be based upon the board's review of the
record, any supplemental evidence admitted by the board and
any hearing held by the board.

50
52 A request for reconsideration may be brought according to the
procedures provided in section 341-D, subsection 5.

2 **11. Joint enforcement.** Any person who violates any permit
4 issued under this section is subject to the provisions of section
349, in addition to any penalties which the municipality may
6 impose. Any permits issued or conditions imposed by a local
authority must be enforced by the commissioner and the
municipality that issued the permit.

8
10 **Sec. 25. 38 MRS §490, sub-§2-A,** as affected by PL 1989, c.
890, Pt. A, §40 and amended by Pt. B, §103, is further amended to
12 read:

14 **2-A. Metallic ore mines.** Security is required of a person
engaged in the mining of metallic ores in order to ensure
16 compliance with reclamation, closure and postclosure care
maintenance requirements of the permit and the cleanup and
18 corrective action costs of permitted or accidental releases.
~~However, if the department finds that the person's net worth or~~
20 ~~that of any affiliated person who guarantees performance, as~~
~~shown on audited financial statements, exceeds 5 times the~~
22 ~~estimated costs of reclamation, it may waive this requirement.~~
~~If security is not required, that person or the affiliated person~~
24 ~~guaranteeing performance shall submit to the commissioner~~
~~annually, copies of that person's audited financial statements.~~
26 ~~The commissioner shall review these statements annually and, if~~
~~the commissioner finds at any time that that person's or~~
28 ~~affiliated person's financial capacity is insufficient to secure~~
~~adequately compliance with this chapter, the commissioner shall~~
30 ~~require a bond or other security.~~

32 **Sec. 26. 38 MRS §490-A** is enacted to read:

34 **§490-A. Rescission**

36 The commissioner shall rescind a permit upon request and
application of the permittee if no outstanding permit violation
38 exists and:

40 1. Development other than a subdivision. The permittee has
not constructed or caused to be constructed, or operated or
42 caused to be operated, a development other than a subdivision as
defined at the time of permit issuance; or

44 2. Subdivision. If the development is a subdivision, the
46 permittee has not sold or leased or caused to be sold or leased
more than 4 lots.

48 A rescission is considered a minor revision.

50 **Sec. 27. 38 MRS §562-A, sub-§16-B** is enacted to read:

2 **16-B. Primary sand and gravel recharge area.** "Primary sand
3 and gravel recharge area" means the surface area directly
4 overlying sand and gravel formations that provides direct
5 replenishment of ground water in sand and gravel and fractured
6 bedrock aquifers. The term does not include areas overlying
7 formations that have been identified as unsaturated and are not
8 contiguous with saturated formations.

10 **Sec. 28. 38 MRSA §562-A, sub-§19,** as amended by PL 1991, c.
11 494, §1, is further amended to read:

12 **19. Sensitive geologic areas.** "Sensitive geologic areas"
13 means significant ground water aquifers and primary sand and
14 gravel recharge areas, as defined in this section 482, areas
15 located within 1,000 feet of a public drinking water supply and
16 areas located within 300 feet of a private drinking water supply.

18 **Sec. 29. 38 MRSA §562-A, sub-§19-A** is enacted to read:

20 **19-A. Significant ground water aquifer.** "Significant
21 ground water aquifer" means a porous formation of ice contact and
22 glacial outwash sand and gravel or fractured bedrock that
23 contains significant recoverable quantities of water likely to
24 provide drinking water supplies.

26 **Sec. 30. 38 MRSA §1303-C, sub-§19-B** is enacted to read:

28 **19-B. Primary sand and gravel recharge area.** "Primary sand
29 and gravel recharge area" has the same meaning as in section
30 562-A, subsection 16-B.

32 **Sec. 31. 38 MRSA §1303-C, sub-§27-A** is enacted to read:

34 **27-A. Significant ground water aquifer.** "Significant
35 ground water aquifer" has the same meaning as in section 562-A,
36 subsection 19-A.

38 **Sec. 32. 38 MRSA §1304, sub-§2,** as affected by PL 1989, c.
39 890, Pt. A, §40 and amended by Pt. B, §226, is repealed.

42 **Sec. 33. 38 MRSA §1310-N,** as amended by PL 1991, c. 745, §3,
43 is further amended to read:

44 **§1310-N. Solid waste facility licenses**

46 No person may locate, establish, construct, expand the
47 disposal capacity of or operate any solid waste facility unless
48 approved by the department under ~~the-site-location-of-development~~
49 ~~laws,--chapter-3,--subchapter-I,--article-6--and~~ the provisions of
50

2 this chapter. Where When the proposed facility is located within
the jurisdiction of the Maine Land Use Regulation Commission, in
4 addition to any other requirement, the department shall require
compliance with existing standards of the commission.

6 **1. Licenses.** The department shall issue a license for a
waste facility whenever it finds that:

8 A. The facility will not pollute any water of the State,
10 contaminate the ambient air, constitute a hazard to health
or welfare or create a nuisance;

12 B. In the case of a disposal facility, the facility
14 provides a substantial public benefit; and

16 C. In the case of a disposal facility, the volume of the
18 waste and the risks related to its handling and disposal
have been reduced to the maximum practical extent by
20 recycling and source reduction prior to disposal.

22 **2-A. Aquifer protection.** The department shall may not
issue a license for a solid waste disposal facility when it finds
24 that the proposed facility overlies a significant sand and gravel
aquifer or when the department finds that the proposed facility
26 poses an unreasonable threat to the quality of a significant sand
and gravel aquifer which it does not overlie, or to an underlying
fractured bedrock aquifer.

28 A. "Significant sand and gravel aquifer" is defined as a
30 porous formation of ice-contact and glacial outwash sand and
gravel that contains significant recoverable quantities of
32 water which-are likely to provide drinking water supplies.

34 B. "Fractured bedrock aquifer" is defined as a consolidated
36 rock formation which that is fractured and which that is
saturated and recharged by precipitation percolating through
38 overlying sediments to a degree which that will permit wells
drilled into the rock to produce a sufficient water supply
for domestic use.

40 C. In determining whether or not the proposed facility
42 poses an unreasonable threat to the quality of a significant
sand and gravel aquifer or to an underlying fractured
44 bedrock aquifer, the department shall require the applicant
to provide:

46 (1) A thorough hydrogeological assessment of the
48 proposed site and the contiguous area including any
classified surface waters, significant sand and gravel
50 aquifers and fractured bedrock aquifers which that

2 could be affected by the proposed facility during
normal operation or in the event of unforeseen
4 circumstances including the failure of any engineered
barriers to ground water flow. The assessment must
6 include a description of ground water flow rates, the
direction of ground water flow in both the horizontal
8 and vertical directions, and the degree of dilution or
attenuation of any contaminants that may be released
10 from the proposed site and flow toward any classified
surface water, significant sand and gravel aquifer or
fractured bedrock aquifer.

12 ~~2-B. -- Traffic movement. -- In addition to any requirements
under section 482, the department may not issue a license for a
14 solid waste facility when it finds that the developer has not
made adequate provision for traffic movement of all types into,
16 out of or within the proposed solid waste facility. -- The
department shall consider traffic movement both on-site and
18 off-site. -- In making its determination, the department shall
20 consider the following factors:~~

22 A. -- Vehicular weight limits;

24 B. -- Road construction and maintenance standards;

26 C. -- Vehicle types;

28 D. -- Public safety and congestion on any public or private
road traveled by vehicles transporting waste to or from the
30 proposed facility; and

32 E. -- Other relevant factors.

34 ~~The department shall establish vehicle weight limits for any
vehicle transporting solid waste to or from the proposed
36 facility. -- The department shall base the vehicle weight limits on
the road construction and maintenance standards of the roads
38 likely to be traveled by vehicles transporting solid waste to or
from the proposed facility.~~

40 **2-D. Setback requirements for transfer stations.** The
42 department may not issue a permit or a license for a municipal
solid waste transfer station unless the location of the handling
44 site conforms to the following setback requirements.

46 A. For a transfer station on an island that is not
connected to the mainland by a road, there is no setback
48 requirement. The department shall review the proposed
location of the handling site and determine whether the
50 property setbacks proposed by the developer are reasonable

2 and compatible with the abutting land uses. To the fullest
3 extent possible, the department shall ensure that the
4 handling site of a transfer station on an island is located
5 in a manner that minimizes any adverse impact on the island
6 residents.

7 B. For all other transfer stations, the handling site may
8 not be within 250 feet of any abutting property boundary,
9 unless:

10 (1) The department finds the abutting property to be a
11 conforming use. If the department finds an abutting
12 property to be a conforming use, the handling site may
13 be within 250 feet of the boundary but not within 250
14 feet of any permanent structure on that abutting
15 property; or

16 (2) The municipality obtains the written permission of
17 all property owners within 250 feet of the proposed
18 handling site.

19 This subsection does not apply to transfer station permit or
20 license renewals.

21 **2-E. Automobile dismantling, recycling and salvage**
22 **operations.** The department may not issue a license for a solid
23 waste facility that is larger than 3 acres in size and that is
24 the location of automobile dismantling, recycling and salvage if
25 the automobile dismantling, recycling and salvage operations take
26 place within 100 feet of a well that serves as a public or
27 private water supply. This prohibition does not include a
28 private well that serves only the facility or the owner's or
29 operator's abutting residence.

30 **2-F. Siting standards.** The department shall issue a
31 license for a new or expanded solid waste facility when it finds
32 that the following standards, in addition to any other
33 requirements of this chapter, have been met.

34 A. The applicant has the financial and technical ability to
35 develop the project in a manner consistent with state
36 environmental standards and with the provisions of this
37 chapter.

38 B. The applicant has made adequate provision for traffic
39 movement of all types into, out of and within the proposed
40 solid waste facility. The department shall consider traffic
41 movement both on site and off site. In making its
42 determination, the department shall consider the following
43 factors:

- 2 (1) Vehicular weight limits;
4 (2) Road construction and maintenance standards;
6 (3) Vehicle type;
8 (4) Public safety and congestion on any public or
10 private road traveled by vehicles transporting waste to
 or from the proposed facility; and
12 (5) Other relevant factors.

14 C. The applicant has made adequate provision for fitting
16 the proposed solid waste facility harmoniously into the
18 existing natural environment and the proposed solid waste
20 facility will not unreasonably adversely affect existing
 uses, scenic character, air quality, water quality or other
 natural resources in the municipality or in neighboring
 municipalities.

22 D. The proposed solid waste facility will be built on soil
24 types that are suitable to the nature of the undertaking and
 will not cause unreasonable erosion of soil or sediment.

26 E. The proposed solid waste facility will not pose an
28 unreasonable risk that a discharge to a significant ground
 water aquifer will occur.

30 F. The applicant has made adequate provision for utilities
32 including water supplies, sewerage facilities, solid waste
34 disposal and roadways required for the project, and the
 proposed solid waste facility will not have an unreasonable
 adverse effect on the existing or proposed utilities and
36 roadways in the municipality or area served by those
 services.

38 **3. Public benefit determination.** The department shall
40 determine the public benefit of a proposed facility according to
 the following provisions.

42 A. Prior to the initial adoption of the state plan, the
44 department shall find that a proposed facility provides a
46 substantial public benefit when the applicant demonstrates
 that the facility is designed, located and will be operated
 so that it is consistent with and meets the needs identified
 in the capacity needs analysis under former section 1310-O.

48 B. Subsequent to the initial adoption of the state plan and
50 for those facilities not subject to chapter 24, subchapter

2 IV, the department shall employ a rebuttable presumption of
public benefit.

4 C. Subsequent to the adoption of the state plan and for
those facilities subject to chapter 24, subchapter IV, the
6 agency shall determine whether or not the proposed facility
meets the requirements of section 2157.

8
10 **5. Recycling and source reduction determination.** The
department shall find that the provisions of subsection 1,
12 paragraph C, are satisfied when the applicant demonstrates that
all requirements of this subsection have been satisfied.

14 A. The proposed solid waste disposal facility will accept
solid waste which that is subject to recycling and source
16 reduction programs, voluntary or otherwise, at least as
effective as those imposed by this chapter and other
18 provisions of state law.

20 (1) The department shall attach this requirement as a
standard condition to the license of a solid waste
22 disposal facility governing the future acceptance of
solid waste at the proposed facility.

24 B. The applicant has shown consistency with the recycling
26 provisions of the state plan.

28 **6. Terms and compliance schedules.** Licenses are issued
under the terms and conditions as the department ~~may prescribe~~
30 prescribes, and for a term not to exceed 5 years. The department
may establish reasonable time schedules for compliance with this
32 article and rules adopted by the board. Notwithstanding any
rules adopted pursuant to this section, licensed or unlicensed
34 municipal solid waste landfills operating on December 31, 1991
may continue to operate until December 31, 1992, unless the
36 commissioner finds that continued operation of a landfill poses
an immediate hazard to the public health or the
38 environment, including, without limitation, a threat to a public
or private water supply.

40
42 **6-A. Relicensing.** Notwithstanding subsection 6, a transfer
station or a recycling facility licensed under this chapter is
not subject to relicensing unless the standards in effect at the
44 time the previous license was issued are changed or if the
facility significantly changes its operation. For the purposes
46 of this subsection, a transfer station includes any associated
area or use that is permitted by the license, such as areas used
48 to burn or chip wood or brush and areas used to store or handle
white goods or tires, but does not include any associated wood
50 waste or demolition debris landfills.

2 **7. Criminal or civil record.** The department may refuse to
4 grant a license under this article if it finds that the applicant
6 or, if the applicant is other than a natural person, any person
8 having legal interest in the applicant has been found guilty of a
criminal or civil violation of laws administered by the
department or other laws of the State, other states, the United
States or another country.

10 **8. Exemption.** The disposal of construction and demolition
12 debris, land clearing debris and wood wastes is exempt from the
requirements of this chapter when:

14 A. The disposal facility is less than one acre in size;

16 B. The disposal facility is located on the same parcel of
18 property where the waste is generated; and

20 C. Only one exempt disposal facility is located on a single
22 parcel of property, except that additional disposal
24 facilities on the same parcel that are less than one acre in
26 size and that were in existence prior to the effective date
of this subsection do not require a license under this
chapter if no additional waste is disposed of in those
additional facilities after the effective date of this
subsection.

28 **Sec. 34. 38 MRSA §1319-R, sub-§§7 and 8** are enacted to read:

30 **7. Criteria for facility development.** In addition to other
32 criteria established by law or rule for facilities under this
34 section, the following criteria for facility development apply to
an application for treatment, storage and disposal facilities for
hazardous waste.

36 A. The applicant has the financial capacity and technical
38 ability to develop the project in a manner consistent with
state environmental standards.

40 B. The applicant has provided adequately for fitting the
42 project harmoniously into the existing natural environment
44 and has ensured that the project will not adversely affect
existing uses, scenic character, air quality, water quality
46 or other natural resources in the municipality or in
neighboring municipalities.

48 C. The proposed project does not pose an unreasonable risk
50 that a discharge to significant ground water aquifer will
occur.

2 D. The project will be built on soil types suitable to the
3 nature of the undertaking and will not cause unreasonable
4 erosion of soil or sediment.

5 E. The applicant will provide adequately for traffic
6 movement of all types into, out of or within the project
7 area. The department shall consider traffic movement both
8 on site and off site including public safety and congestion
9 along waste conveyance transportation routes. The
10 Department of Transportation shall provide the department
11 with an analysis of traffic movement of all types into, out
12 of or within the project area.

13 F. The applicant has provided adequately for utilities
14 including water supplies, sewerage facilities, solid waste
15 disposal and roadways required for the project and has
16 ensured that the project will not have an unreasonable
17 adverse effect on the existing or proposed utilities and
18 roadways in the municipality or area served by those
19 services.

20
21 8. Prohibition. The department may not issue a license for
22 a hazardous waste disposal facility or any commercial hazardous
23 waste facility if the proposed facility overlies a significant
24 ground water aquifer or a primary sand and gravel recharge area.

25 Sec. 35. 38 MRSA §1319-X is enacted to read:

26
27 §1319-X. Criteria for development of waste oil storage facilities
28 and biomedical waste facilities

29 The following criteria for facility development apply to an
30 application for a waste oil storage facility or a new or
31 substantially modified biomedical waste treatment or disposal
32 facility in addition to other criteria established by law or rule
33 for those facilities.

34
35 1. Financial capacity. The applicant has the financial
36 capacity and technical ability to develop the project in a manner
37 consistent with state environmental standards.

38
39 2. No adverse effect on the natural environment. The
40 applicant has provided adequately for fitting the project
41 harmoniously into the existing natural environment and the
42 project will not adversely affect existing uses, scenic
43 character, air quality, water quality or other natural resources
44 in the municipality or in neighboring municipalities.

45
46 3. Ground water. The proposed project does not pose an
47 unreasonable risk that a discharge to a significant ground water
48 aquifer will occur.

2 4. Soil types and erosion. The project will be built on
3 soil types suitable to the nature of the undertaking and will not
4 cause unreasonable erosion of soil or sediment.

6 5. Traffic movement. The applicant has provided adequately
7 for traffic movement of all types into, out of or within the
8 project area. The department shall consider traffic movement
9 both on site and off site, including safety and congestion along
10 waste conveyance transportation routes. The Department of
11 Transportation shall provide the department with an analysis of
12 traffic movement of all types into, out of or within the project
13 area.

14 6. Infrastructure. The applicant has provided adequately
15 for utilities including water supplies, sewerage facilities,
16 solid waste disposal and roadways required for the project and
17 the project will not have an unreasonable adverse effect on the
18 existing or proposed utilities and roadways in the municipality
19 or area served by those services.

22 The department may not issue a license for a waste oil
23 storage facility if the proposed facility overlies a significant
24 ground water aquifer or a primary sand and gravel recharge area.

26 **Sec. 36. 38 MRSA §1478, sub-§1**, as affected by PL 1989, c.
27 890, Pt. A, §40 and amended by Pt. B, §272, is further amended to
28 read:

30 **1. Notice.** Any person intending to construct or operate a
31 low-level radioactive waste storage or disposal facility shall
32 file a preliminary notice with the commissioner and the
33 municipality in accordance with section 485-A, subsection 1 and
34 ~~section 487-A, subsection 1.~~

36 **Sec. 37. Transition.** This transition provision applies to
37 sections 1 to 26 of this Act.

38 **1.** For purposes of determining jurisdiction, this Act does
39 not apply to a development for which a permit was required under
40 this article prior to the effective date of this Act.

42 **2.** Unless a subdivision has been proposed or created prior
43 to the effective date of this Act:

46 **A.** A lot that is offered for sale or lease to the general
47 public 5 years or more prior to the effective date of this
48 Act, and still offered on that date, is no longer counted
49 for purposes of determining jurisdiction as of that date;

2 B. A lot that is first offered for sale or lease to the
3 general public within 5 years prior to the effective date of
4 this Act, and still offered on that date, is no longer
5 counted for purposes of determining jurisdiction more than 5
6 years after the date of the first offering; and

8 C. Up to 4 lots offered prior to the effective date of this
9 Act may be exempted if they meet the requirements of the
10 Maine Revised Statutes, Title 38, section 488, subsection 5,
11 paragraph C.

12 3. A permit issued by the department for a development
13 within unorganized territory, other than a permit for metallic
14 mineral mining or advanced exploration activity, may be modified
15 by the Maine Land Use Regulation Commission. Modification of a
16 permit for a metallic mineral mining or advanced exploration
17 activity requires approval by the department and the Maine Land
18 Use Regulation Commission.

20 4. Municipalities registered under the Maine Revised
21 Statutes, Title 38, section 489-A are considered registered under
22 this article as amended by this Act but must meet the
23 requirements of this article as amended by this Act.

24 **Sec. 38. Effective date.** The repeal of the Maine Revised
25 Statutes, Title 38, section 487-A, subsections 2, 3 and 4, the
26 amendment of Title 38, section 488, first paragraph and the
27 enactment of Title 38, section 488, subsection 11 take effect on
28 the effective date of rules or amendments to rules adopted by the
29 Board of Environmental Protection that specifically address the
30 scenic impacts of transmission lines.
31

34 STATEMENT OF FACT

36
37
38 The bill eliminates permitting thresholds and standards
39 determined redundant or of low priority by the Department of
40 Environmental Protection. These thresholds include conversion of
41 an existing structure, multi-unit housing, drilling or excavating
42 natural resources where the area affected is in excess of 60,000
43 square feet and structures with a 60,000 square foot ground area
44 or 100,000 square foot floor area. In addition, the bill raises
45 the threshold for topsoil, clay and silt mining to 5 acres as
46 long as best management practices are followed for excavations
47 under 5 acres. The bill eliminates notification requirements for
48 hazardous activities.

50 Exemptions are added for certain residential subdivisions in
municipalities with approved growth management programs,

2 developments other than metallic mineral advanced exploration or
3 mining activities in unorganized areas, certain roads and
4 railroad tracks, gas pipelines, transmission lines meeting scenic
5 impact standards and certain farm and fire ponds. The standard
6 addressing open space is deleted. The exemption for certain
7 borrow pits regulated by the Department of Transportation is
8 deleted.

9
10 Clarifying provisions include the following: clarification
11 of the 5-year subdivision clock, specification of permitting
12 requirements for structures within commercial subdivisions,
13 clarification of the homestead exemption and specification of
14 appeal procedures for municipal delegation suspension decisions.
15 Certain site law definitions are amended to be consistent with
16 definitions used in the natural resources protection laws and
17 mandatory shoreland zoning laws. A provision is added that
18 allows municipalities with delegated authority to modify
19 permits. Additional modification of the municipal delegation
20 provisions shifts oversight of individual developments by the
21 Department of Environmental Protection from the end to the
22 beginning of the municipal review process.

23
24 Additional provisions address minor revisions, rescissions,
25 requirements that municipalities with delegated authority update
26 ordinances, deletion of discretionary net worth testing for
27 metallic mineral mining activities and amendment of the
28 reclamation definition to accord with common practice.

29
30 This bill also moves certain provisions of the site laws
31 into appropriate sections of the oil discharge prevention,
32 pollution control and waste management laws and makes revisions
33 appropriate to those programs. These provisions include
34 definitions pertaining to aquifers and criteria for hazardous
35 waste, waste oil and biomedical waste facilities that have been
36 previously adopted in rules pursuant to the Maine Revised
37 Statutes, Title 38, chapter 13, subchapters I and I-A. This bill
38 also enacts new prohibitions on the siting of waste facilities in
certain sensitive geologic areas.