LAWS

OF THE

STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND FIFTEENTH LEGISLATURE

THIRD SPECIAL SESSION
October 1, 1992 to October 6, 1992

FOURTH SPECIAL SESSION
October 16, 1992

ONE HUNDRED AND SIXTEENTH LEGISLATURE

FIRST REGULAR SESSION
December 2, 1992 to July 14, 1993

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
OCTOBER 13, 1993

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

J.S. McCarthy Company
Augusta, Maine
1993

PUBLIC LAWS

OF THE

STATE OF MAINE

AS PASSED AT THE

FIRST REGULAR SESSION

of the

ONE HUNDRED AND SIXTEENTH LEGISLATURE

1993

Provides funds to meet the debt service payments related to a $170,000,000 tax anticipation note for fiscal year 1993-94.

Emergency clause. In view of the emergency cited in the preamble, this Act takes effect when approved.

Effective June 16, 1993.

CHAPTER 383

H.P. 1105 - L.D. 1492

An Act Related to the Site Location of Development Laws

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

Sec. 1. 38 MRSA §439-A, sub-§2, as amended by PL 1991, c. 346, §7, is further amended to read:

2. Jurisdiction. Notwithstanding the scope of shoreland areas as identified in section 435, the jurisdiction of municipal shoreland zoning and land use control ordinances adopted under this article may include any structure built on, over or abutting a dock, wharf, pier or other structure extending or located below the normal high-water line of a water body or within ~~any~~ a wetland. Accordingly, municipalities may enact ordinances affecting structures ~~which~~ that extend or are located over the water or are placed on lands lying between high and low waterlines or within wetlands.

Sec. 2. 38 MRSA §481, last ¶, as enacted by PL 1987, c. 346, §1, is amended to read:

The Legislature further finds that noise generated at development sites has primarily a geographically restricted and frequently transient impact ~~which~~ that is best regulated at the municipal level pursuant to a municipality's economic development and land use plans. It is the intent of the Legislature that regulation of noise from developments ~~is~~ be primarily the responsibility of local municipal governments. ~~It is further the intent of the Legislature that any action by the board regulating the effects of noise taken after July 1, 1986, which is inconsistent with section 482-A, shall be reconsidered and amended only on the issue of noise upon the petition of an applicant or intervenor to the permitting action within 180 days of the effective date of rules adopted pursuant to section 482-A.~~

Sec. 3. 38 MRSA §482, sub-§2, as repealed and replaced by PL 1987, c. 812, §§2 and 18, is amended to read:

2. Development that may substantially affect the environment. "Development ~~which~~ that may substantially affect the environment," in this article also called "development," means any federal, state, municipal, quasi-municipal, educational, charitable, residential, commercial or industrial development ~~which~~ that:

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

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

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

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

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

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

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

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

~~This term does not include state highways, state aid highways and borrow pits for sand, fill or gravel of less than 5 acres or when regulated by the Department of Transportation, and such borrow 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.~~

Sec. 4. 38 MRSA §482, sub-§2-A, as enacted by PL 1979, c. 466, §13, is repealed.

Sec. 5. 38 MRSA §482, sub-§2-B, as enacted by PL 1979, c. 466, §13, is repealed and the following enacted in its place:

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

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

B. The bulk sampling, extraction or beneficiation of metallic minerals, not including test sampling

methods conducted in accordance with rules adopted by the department such as test boring, test drilling, hand sampling and digging of test pits with a limited maximum surface opening or methods determined by the department to cause minimal disturbance of soil or vegetative cover; or

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

"Mining activity or advanced exploration" does not include either excavation or grading preliminary to a construction project, unless intended to circumvent this article, or any other mining activity specifically exempted in this Title. An excavation of 5 or fewer acres of land for topsoil, clay or silt must be conducted and reclaimed in accordance with the erosion and sedimentation control standards contained in board rules.

Sec. 6. 38 MRSA §482, sub-§2-C, as corrected by RR 1991, c. 2, §146, is repealed.

Sec. 7. 38 MRSA §482, sub-§2-D, as enacted by PL 1987, c. 812, §§3 and 18, is repealed.

Sec. 8. 38 MRSA §482, sub-§2-E, as enacted by PL 1987, c. 812, §§3 and 18, is amended to read:

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

Sec. 9. 38 MRSA §482, sub-§2-F, as enacted by PL 1987, c. 812, §§3 and 18, is amended to read:

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

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

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

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

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

Sec. 10. 38 MRSA §482, sub-§3, as amended by PL 1983, c. 513, §2, is repealed.

Sec. 11. 38 MRSA §482, sub-§3-B, as enacted by PL 1987, c. 812, §§4 and 18, is amended to read:

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

Sec. 12. 38 MRSA §482, sub-§4, as amended by PL 1971, c. 613, §2, is further amended to read:

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

Sec. 13. 38 MRSA §482, sub-§4-B, as affected by PL 1989, c. 890, Pt. A, §40 and amended by Pt. B, §86, is further amended to read:

4-B. Reclamation. "Reclamation" means the rehabilitation of the area of land affected by mining under a plan approved by the department, including, but not limited to, the ~~creation~~ stabilization of ~~lakes or ponds, where practicable~~ slopes and creation of safety benches, the planting of forests, the seeding of grasses and legumes for grazing purposes, the planting of crops for harvest and the enhancement of wildlife and aquatic resources, but not including the filling in of pits; and the filling or sealing of shafts and underground workings with solid materials unless necessary for protection of ground water or safety.

Sec. 14. 38 MRSA §482, sub-§4-C, as enacted by PL 1981, c. 449, §§6 and 9, is repealed.

Sec. 15. 38 MRSA §482, sub-§4-E, as enacted by PL 1987, c. 812, §§6 and 18, is amended to read:

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

Sec. 16. 38 MRSA §482, sub-§4-F, as enacted by PL 1987, c. 812, §§6 and 18, is amended to read:

4-F. Shoreland zone. "Shoreland zone" ~~means all area within 250 feet of the normal high-water line of any~~

~~great pond, river or salt water body, or within 250 feet of the upland edge of a freshwater or coastal wetland~~ has the same meaning as "shoreland areas" in section 435. Terms used within this definition have the same meanings as in section 436-A.

Sec. 17. 38 MRSA §482, sub-§5, as amended by PL 1991, c. 500, §3, is further amended to read:

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

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

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

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

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

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

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

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

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

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

~~A. A building or buildings on a single parcel constructed or erected with a fixed location on or in the ground or 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~~

B. ~~Parking~~ Buildings, parking lots, roads, paved areas, wharves or areas to be stripped or graded and not to be revegetated ~~which causes~~ that cause a total project~~, including any buildings~~ to occupy a ground area in excess of 3 acres. Stripped or graded areas that are not revegetated within a calendar year are included in calculating the 3-acre threshold.

Sec. 19. 38 MRSA §482-A, as amended by PL 1991, c. 66, Pt. A, §17, is repealed.

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

§483-A. Prohibition

No person may construct or cause to be constructed or 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 leased, any development ~~requiring approval under this article~~ that may substantially affect the environment without first having obtained approval for this construction, operation, lease 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.

Sec. 21. 38 MRSA §484, sub-§3, ¶¶A to C are enacted to read:

A. In making a determination under this subsection, the department may consider the effect of noise from a commercial or industrial development. Noise from a residential development approved under this article may not be regulated under this subsection, and noise generated between the hours of 7 a.m. and 7 p.m. or during daylight hours, whichever is longer, by construction of a development approved under this article may not be regulated under this subsection.

B. In determining whether a developer has made adequate provision for the control of noise generated by a commercial or industrial development, the department shall consider board rules relating to noise and the quantifiable noise standards of the municipality in which the development is located and of any municipality that may be affected by the noise.

C. Nothing in this subsection may be construed to prohibit a municipality from adopting noise regulations stricter than those adopted by the board.

Sec. 22. 38 MRSA §484, sub-§6, as amended by PL 1989, c. 890, Pt. A, §40 and Pt. B, §91, is further amended to read:

6. Infrastructure. The developer has made adequate provision of utilities, including water supplies, sewerage facilities ~~and~~, solid waste disposal~~;~~ and roadways ~~and open space~~ required for the development and the development will not have an unreasonable adverse effect on the existing or proposed utilities~~;~~ and roadways ~~and open space~~ in the municipality or area served by those services ~~or open space. In assessing the 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.~~

Sec. 23. 38 MRSA §484, sub-§8, as enacted by PL 1987, c. 812, §§10 and 18, is repealed.

Sec. 24. 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. 25. 38 MRSA §487-A, sub-§1, as affected by PL 1989, c. 890, Pt. A, §40 and amended by Pt. B, §95, is repealed.

Sec. 26. 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, contructed 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 pursuant to this section ~~shall be~~ are in effect until 90 days after adjournment of the next regular session of the Legislature following enactment of this subsection, unless approved by legislative resolve.

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

~~A. A development that consists only of a subdivision 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~~

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

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

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

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

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

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

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

(7) If the developable land in the parcel not subject to the requirements of subparagraphs (3) and (5) is located wholly or in part in the watershed of any lake 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;

(8) Soil erosion and sedimentation during development of the subdivision ~~is~~ are controlled in accordance with 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;

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

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

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

C. A development consisting only of a residential subdivision of fewer than 30 lots if:

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

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

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

D. Effective November 1, 1993, a development consisting only of a residential subdivision of 15 or fewer lots if:

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

(2) The department has determined that the municipal land use ordinances referred to in subparagraph (1) provide standards for groundwater protection that are at least as stringent as groundwater protection standards contained in rules adopted under this article and the municipality has provided evidence of technical capability as specified in the rule; and

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

A lot in a residential subdivision exempted pursuant to paragraph C or D is no longer counted toward the 30-lot threshold in paragraph C or the 15-lot threshold in paragraph D for purposes of determining jurisdiction more than 5 years after the time a municipal subdivision plan showing the lot is recorded or the lot is sold or leased, whichever occurs first. A residential subdivision is a division of a parcel in which all lots are used for single-family housing or open space.

~~**6. Multi-unit housing exemption.** Developments that consist only of multi-unit housing 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, are exempt from the requirements of this article.~~

7. Exemption for expansion at existing manufacturing facility. New construction ~~that is not a development that may substantially affect the environment~~ at ~~an existing~~ a licensed manufacturing facility is exempt from review under this article provided that the additional disturbed area not to be revegetated does not exceed 30,000 square feet ground area in any calendar year and does not exceed 60,000 square feet ground area in total. When review under this article is required ~~for development~~ at ~~an existing~~ a licensed manufacturing facility, the applicant shall provide plans for the new development, as well as for those activities ~~which~~ that have been undertaken pursuant to this subsection. The permittee shall annually notify the department of new construction conducted during the previous 12 months pursuant to this exemption. The notice must identify the type, location and ground area of the new construction.

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

A. An air emission license is not required under section 590;

B. A waste discharge license is not required under section 413;

C. During any one-hour period, the development will not result in a level of traffic at any intersection, including the development entrance, that equals or exceeds:

(1) Twenty-five vehicles in a left-turn-only lane;

(2) Thirty-five vehicles in a through lane, right-turn lane or a combined through and right-turn lane; or

(3) After multiplying the left-turn volume by 1.5, 35 vehicles in a combined left-turn and through lane or a combined left-turn, through and right-turn lane;

D. All significant wildlife habitats within the development that are mapped or that qualify for mapping under section 480-B, subsection 10 are undisturbed;

E. When the development is located wholly or in part in the watershed of any lake or pond classified GPA under section 465-A, long-term measures to control phosphorus transport are taken in accordance with a phosphorous control plan that is consistent with standards for phosphorus control adopted by the board;

F. Clearing, grading, filling or any other development activity does not occur on sustained slopes in excess of 30%;

G. Soil erosion and sedimentation during construction of the development are controlled in accordance with a plan approved by the municipal reviewing authority with jurisdiction over the location of the development or by the soil and water conservation district for the county in which the development is located;

H. A storm water management system is installed that is capable of detaining or retaining water for infiltration from a storm of an intensity equal to a 25-year, 24-hour storm such that the rate of the flow of storm water from the development does not exceed the rate of outflow of storm water from the development prior to the undertaking of the development unless the storm water is conveyed exclusively in ~~man-made~~ constructed piped or open drainage systems directly into marine waters other than estuarine waters;

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

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

(2) Employed a code enforcement officer; and

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

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

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

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

~~Development which consists only of a subdivision or subdivisions 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, is exempt from the requirements of this article. New construction which is not a "development which may substantially affect the environment" at an existing manufacturing facility is exempt from review under this article provided that the additional disturbed area not to 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 those 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.

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

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

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

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

Sec. 27. 38 MRSA 489-A, as amended by PL 1991, c. 761, §§1 to 4, is further amended to read:

§489-A. Municipal review of development

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

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

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

~~B. Structures as described in section 482, subsection 6, paragraph A, which occupy a ground area~~

~~in excess of 60,000 square feet but less than 100,000 square feet;~~

~~C. Structures as described in section 482, subsection 6, 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;~~

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

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

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

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

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

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

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

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

A. A municipal planning board or reviewing authority is established;

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 this article;

C. Subdivision regulations have been adopted that are consistent with Title 30-A, chapter 187, and determined by the ~~board~~ commissioner to be at least as stringent as criteria set forth in section 484;

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;

D-1. Land use regulations have been adopted that regulate all ~~sand, fill or gravel pit mining~~ excavation operations ~~consisting of 5 or more acres~~ for borrow, topsoil, clay or silt, alone or in combination, as described in section 482, subsection 2-B. The regulations must be determined by the ~~board~~ commissioner to be at least as stringent as the criteria set forth in section 484. An excavation of 5 or fewer acres of land for topsoil, clay or silt must be conducted and reclaimed in accordance with the erosion and sedimentation control standards contained in board rules;

E. The municipality has adequate resources to administer and enforce the provisions of its ordinances;

F. Procedures for public hearing and notification have been established including:

(1) Notice to the commissioner upon receipt of an application, including a description of the project;

(2) Notice of issuance and denial to the applicant and commissioner, including the reason for denial;

(3) Public notification of the application and any hearings; and

(4) Satisfactory hearing procedures;

G. Procedures for appeal by aggrieved parties of local decisions are defined; and

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

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

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

B. Amendments to municipal regulations must be adopted by the municipality within one calendar year of the effective date of new or amended department regulations and submitted to the com-

missioner for approval within 45 calendar days of adoption by the municipality.

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

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

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

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

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

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

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

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

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

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

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

A. The commissioner finds that the project:

(1) Meets one or more of the criteria set forth in section 341-D, subsection 2, paragraph A, B or C;

(2) Will have a potentially significant environmental effect; or

(3) Could affect more than one municipality.

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

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

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

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

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

10. Appeal of decision by commissioner to review. An aggrieved party may appeal the decision by the commissioner to exert or not exert state jurisdiction over the proposed project to the board. Review and actions taken by the department are subject to appeal

procedures governing the department under section 341-D, subsections 4 and 5.

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

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

B. The board is not bound by the commissioner's findings of fact or conclusions of law but may adopt, modify or reverse findings of fact or conclusions of law established by the commissioner. Any changes made by the board under this 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.

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

Sec. 28. 38 MRSA §490, sub-§2-A, as affected by PL 1989, c. 890, Pt. A, §40 and amended by Pt. B, §103, is further amended to read:

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

Sec. 29. 38 MRSA §490-A is enacted to read:

§490-A. Recission

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

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

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

A rescission is considered a minor revision.

Sec. 30. 38 MRSA §562-A, sub-§16-B is enacted to read:

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

Sec. 31. 38 MRSA §562-A, sub-§19, as amended by PL 1991, c. 494, §1, is further amended to read:

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

Sec. 32. 38 MRSA §562-A, sub-§19-A is enacted to read:

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

Sec. 33. 38 MRSA §1303-C, sub-§19-B is enacted to read:

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

Sec. 34. 38 MRSA §1303-C, sub-§27-A is enacted to read:

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

Sec. 35. 38 MRSA §1304, sub-§2, as affected by PL 1989, c. 890, Pt. A, §40 and amended by Pt. B, §226, is repealed.

Sec. 36. 38 MRSA §1310-N, as amended by PL 1991, c. 745, §3, is further amended to read:

§1310-N. Solid waste facility licenses

No person may locate, establish, construct, expand the disposal capacity of or operate any solid waste facility unless approved by the department under ~~the site location of development laws, chapter 3, subchapter I, article 6 and~~ the provisions of this chapter. ~~Where~~ When the proposed facility is located within the jurisdiction of the Maine Land Use Regulation Commission, in addition to any other requirement, the department shall require compliance with existing standards of the commission.

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

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

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

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

2-A. Aquifer protection. The department ~~shall~~ may not issue a license for a solid waste disposal facility when it finds that the proposed facility overlies a significant sand and gravel aquifer or when the department finds that the proposed facility 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.

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

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

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

(1) A thorough hydrogeological assessment of the proposed site and the contiguous area including any classified surface waters, significant sand and gravel aquifers and fractured bedrock aquifers ~~which~~ that could be affected by the proposed facility during normal operation or in the event of unforeseen circumstances including the failure of any engineered barriers to ground water flow. The assessment must include a description of ground water flow rates, the direction of ground water flow in both the horizontal and vertical directions, and the degree of dilution or attenuation of any contaminants that may be released from the proposed site and flow toward any classified surface water, significant sand and gravel aquifer or fractured bedrock aquifer.

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

~~A. Vehicular weight limits;~~

~~B. Road construction and maintenance standards;~~

~~C. Vehicle types;~~

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

~~E. Other relevant factors.~~

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

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

A. For a transfer station on an island that is not connected to the mainland by a road, there is no setback requirement. The department shall review the proposed location of the handling site and determine whether the property setbacks proposed by the developer are reasonable and compatible with the abutting land uses. To the fullest extent possible, the department shall ensure that the handling site of a transfer station on an island is located in a manner that minimizes any adverse impact on the island residents.

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

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

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

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

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

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

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

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

(1) Vehicular weight limits;

(2) Road construction and maintenance standards;

(3) Vehicle type;

(4) Public safety and congestion on any public or private road traveled by vehicles transporting waste to or from the proposed facility; and

(5) Other relevant factors.

C. The applicant has made adequate provision for fitting the proposed solid waste facility harmoniously into the existing natural environment and the proposed solid waste 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.

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

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

F. The applicant has made adequate provision for utilities including water supplies, sewerage facilities, solid waste 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 roadways in the municipality or area served by those services.

G. The project will not unreasonably cause or increase the flooding of the alteration area or adjacent properties nor create an unreasonable flood hazard to a structure.

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

A. Prior to the initial adoption of the state plan, the department shall find that a proposed facility provides a 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.

B. Subsequent to the initial adoption of the state plan and for those facilities not subject to chapter 24, subchapter IV, the department shall employ a rebuttable presumption of public benefit.

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

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

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

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

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

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

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 time the previous license was issued are changed or ~~if~~ the facility significantly changes its operation. For the purposes of this subsection, a transfer station includes any associated area or use that is permitted by the license, such as areas used 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 waste or demolition debris landfills.

7. Criminal or civil record. The department may refuse to grant a license under this article if it finds that the applicant or, if the applicant is other than a natural person, any person 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.

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

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

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

C. Only one exempt disposal facility is located on a single parcel of property, except that additional disposal facilities on the same parcel that are less than one acre in 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.

Sec. 37. 38 MRSA §1319-R, sub-§§7 and 8 are enacted to read:

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

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

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

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

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

E. The applicant will provide adequately for traffic movement of all types into, out of or within the project area. The department shall consider traffic movement both on site and off site including public safety and congestion along waste conveyance

transportation routes. The Department of Transportation shall provide the department with an analysis of traffic movement of all types into, out of or within the project area.

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

G. The project will not unreasonably cause or increase the flooding of the alteration area or adjacent properties nor create an unreasonable flood hazard to a structure.

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

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

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

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

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

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

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

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

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

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

7. Flooding. The project will not unreasonably cause or increase the flooding of the alteration area or adjacent properties nor create an unreasonable flood hazard to a structure.

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

Sec. 39. 38 MRSA §1478, sub-§§1 and 2, as affected by PL 1989, c. 890, Pt. A, §40 and as amended by Pt. B, §272, are further amended to read:

1. Notice. ~~Any~~ A person intending to construct or operate a low-level radioactive waste storage or disposal facility shall ~~file a preliminary notice with~~ notify the commissioner and the municipality in ~~accordance with section 485-A, subsection 1 and section 487-A, subsection 1~~ writing of the nature and location of the proposed facility, together with other information the board may by rule require.

2. Hearings. The board shall hold hearings on the proposed facility in accordance with section ~~486-A~~ 1478-A. Subject to the requirements of Title 5, section 9057, ~~any~~ a person who resides within the State is entitled to be heard. The hearings must, at a minimum, address the following issues:

A. The technical feasibility of the proposed waste disposal or storage facility;

B. The environmental impact of the proposed waste disposal or storage facility on the surrounding area;

C. The social impact of the proposed waste disposal or storage facility on the surrounding area;

D. The economic impact of the proposed waste disposal or storage facility on the surrounding area; and

E. Whether the proposed facility will satisfy requirements under section 413, waste discharge li-

censes; section 590, air emission licensing; section 1304, licenses for waste facilities, and rules adopted pursuant to that section; and any other applicable laws administered by the department.

Sec. 40. 38 MRSA §1478, sub-§4, as enacted by PL 1983, c. 500, §5, is amended to read:

4. Findings; recommendations. Notwithstanding any requirement of chapter 3, subchapter I, Article 6, within 90 days after adjournment of the hearings, the board shall make findings of fact and conclusions derived from those findings. Based upon those findings and conclusions, the board shall issue an order denying permission for construction and operation of the facility on grounds stated in section ~~484~~ 1304 or rules adopted by the board pursuant to that section, or shall recommend to the Legislature granting that permission, subject to any terms and conditions ~~deemed~~ determined appropriate. ~~Any~~ A favorable recommendation ~~shall~~ must be transmitted to the Legislature, together with the supporting findings and conclusions, for action under section 1479.

Sec. 41. 38 MRSA §1478-A is enacted to read:

§1478-A. Hearings; orders; construction suspended

The following provisions govern hearings held by the board pursuant to section 1478, subsection 2.

1. Hearings. The board shall solicit and receive testimony to determine whether the proposed facility will meet the standards established in section 1304 and rules adopted pursuant to that section.

2. Developer; burden of proof. At the hearings held pursuant to section 1478, the burden is upon the person proposing the facility to demonstrate affirmatively to the board that each of the standards for approval established in section 1304 or rules adopted pursuant to that section has been met and that the public's health, safety and general welfare will be adequately protected.

3. Findings of fact; order. After the board adjourns any hearings held under this section, the board shall make findings of fact and issue its order in accordance with section 1478.

4. No construction pending order. A person may not undertake construction of a low-level radioactive waste facility until the facility is approved pursuant to section 1478.

5. Continuing compliance; air and water pollution. A person securing approval for a facility in accordance with section 1478 shall maintain the financial capacity and technical ability to meet the State's air and water pollution control standards until that person has complied with those standards.

6. Transcripts. A complete verbatim transcript must be made of all hearings held pursuant to this section.

Sec. 42. Transition. This transition provision applies to sections 1 to 28 of this Act.

1. For purposes of determining jurisdiction, this Act does not apply to a development for which a permit was required under the Maine Revised Statutes, Title 38, chapter 3, subchapter I, article 6 prior to the effective date of this Act, except that a development permitted as a conversion prior to the effective date does not require a permit modification for any activity unless the activity itself constitutes a development that may substantially affect the environment, as defined in Title 38, section 482, subsection 2.

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

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

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

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

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

4. Municipalities registered under the Maine Revised Statutes, Title 38, section 489-A are considered registered under Title 38, chapter 3, subchapter I, article 6 as amended by that Act but must meet the requirements of this article as amended by this Act.

See title page for effective date.