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An Act To Foster Economic Development by Improving Administration of the Laws Governing Site Location of Development and Storm Water Management

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

Sec. 1. 38 MRSA §420-D, sub-§9, as amended by PL 2009, c. 602, §1, is further amended to read:

9. Rules. ~~Rules~~ With the exception of minor clerical corrections and technical clarifications that do not alter the substance of requirements applying to projects, rules adopted pursuant to this section after January 1, 2010 and before January 1, 2012 are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A. Any rules adopted by the department pursuant to this section on or after January 1, 2012 are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A, except that those rules that qualify as state mandates pursuant to the Constitution of Maine, Article IX, Section 21 are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 2. 38 MRSA §482, sub-§5, as amended by PL 1997, c. 603, §2, is further amended to read:

5. Subdivision. A "subdivision" is the division of a parcel of land into ~~5~~10 or more lots to be offered for sale or lease to the general public during any 5-year period, if the aggregate land area includes more than ~~20~~40 acres; except that when all lots are for single-family, detached, residential housing, common areas or open space a "subdivision" is the division of a parcel of land into ~~15~~30 or more lots to be offered for sale or lease to the general public within any 5-year period, if the aggregate land area includes more than ~~30~~60 acres. The aggregate land area includes 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 offered. This definition of "subdivision" is subject to the following exceptions:

C. Lots of 40 or more acres ~~but not more than 500 acres~~ 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 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 parcel and actually uses all or part of the parcel for that purpose during that period, a lot 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, if those lots are not further divided or transferred within a 5-year period or the transfer of lots by devise or inheritance; 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;

F. In those subdivisions that would otherwise not require site location approval, unless intended to circumvent this article, the following transactions 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~~ as long as the department is made a party; and

H. The transfer of contiguous land by a permit holder to the owner of a lot within a permitted subdivision is exempt from review under this article, ~~provided that~~ as long as the land was not owned by the permit holder at the time the department approved the subdivision. Further division of the transferred land must be reviewed under this article.

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 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. 3. 38 MRSA §482, sub-§6, as amended by PL 1993, c. 383, §18 and affected by §42, is further amended to read:

6. Structure. A "structure" means:

B. Buildings, parking lots, roads, paved areas, wharves or areas to be stripped or graded and not to be revegetated that cause a total project to occupy a ground area in excess of 310 acres. Stripped or graded areas that are not revegetated within a calendar year are included in calculating the 3-
aere10-acre threshold.

Sec. 4. 38 MRS §484, sub-§3, ¶H is enacted to read:

H. In making a determination under this subsection regarding a development's effects on existing uses, scenic character or protected natural resources, as defined by section 480-B, subsection 8, the department shall apply the same standards as provided in rules adopted pursuant to the Natural Resources Protection Act.

Sec. 5. 38 MRS §489-E, as enacted by PL 2009, c. 602, §3, is repealed and the following enacted in its place:

§ 489-E. Rulemaking

Rules adopted by the department pursuant to this article are routine technical rules except that rules adopted by the department after January 1, 2010 pursuant to section 484, subsections 1, 3, 4, 4-A, 5, 6 and 7 are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

SUMMARY

This bill revises the thresholds for review by the Department of Environmental Protection pursuant to the laws governing site location of development by changing the definitions of "subdivision" and "structure." It ensures consistency between the laws governing site location of development and the Natural Resources Protection Act in standards pertaining to a development's effects on existing uses, scenic character and protected natural resources. The bill also provides that rules adopted by the department after January 1, 2010 pursuant to the laws governing site location of development and storm water management are major substantive rules as defined in the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A, with certain limited exceptions in the rules governing storm water management for minor clerical corrections and technical clarifications.