§1371-A. Limitations on construction and excavation near burial sites

1. Known burial sites. Construction or excavation near a known burial site or within the boundaries of an established cemetery must comply with any applicable land use ordinance concerning burial sites or established cemeteries, whether or not the burial site or established cemetery is properly recorded in the deed to the property. In the absence of local ordinances, construction or excavation may not be conducted within 25 feet of a known burial site or within 25 feet of the boundaries of an established cemetery, whichever is the greater, whether or not the burial site or established cemetery is properly recorded in the deed to the property, except:

A. When the construction or excavation is performed pursuant to a lawful order or permit allowing the relocation of bodies; or [RR 2009, c. 2, §27 (COR).]

B. When necessary for the construction of a public improvement, as approved by the governing body of a municipality or, in the case of a state highway, by the Commissioner of Transportation. [RR 2009, c. 2, §28 (COR).]

C. [PL 2009, c. 310, §1 (NEW); MRSA T. 13 §1371-A, sub-§1, ¶C (RP).]

A municipality may enforce this subsection or any local ordinance concerning burial sites or established cemeteries pursuant to Title 30-A, section 4452, including the assessment of civil penalties.

In the event of any violation of this subsection, the Attorney General may seek to enjoin a further violation, in addition to any other remedy.
[RR 2009, c. 2, §§27, 28 (COR).]

2. Undocumented burial site. The following procedures apply to construction or excavation that threatens an undocumented or unmarked burial site.

A. Whenever any person has knowledge that excavation or other construction activity may disturb or is disturbing a burial site, that person shall notify the local code enforcement officer by providing an affidavit and any other evidence of the location of the burial site. [PL 1991, c. 412, §2 (NEW).]

B. Upon receipt of proper notification, the code enforcement officer shall issue a stop-work order to the person or entity responsible for the activity that threatens to disturb the burial site. [PL 1991, c. 412, §2 (NEW).]

C. Before the construction activity may continue, the excavator or person who owns the land shall notify the Director of the Maine Historic Preservation Commission and the president of any local historical society of the probable location of the burial site. The excavator or the person who owns the land shall also arrange, at that person's own expense, for appropriate investigation to determine the existence and location of graves. [PL 1991, c. 412, §2 (NEW).]

D. When the investigation is complete, if no human remains are discovered, the person responsible for the investigation shall notify the code enforcement officer of the results and the code enforcement officer shall revoke the stop-work order if satisfied that the investigation is complete and accurate. [PL 1991, c. 412, §2 (NEW).]

E. If a burial site is discovered, excavation or construction may not continue except in accordance with subsection 1 and other applicable provisions of state law. [PL 1991, c. 412, §2 (NEW).]
[PL 1991, c. 412, §2 (NEW).]

3. Application. This section applies only to burial sites and established cemeteries containing the bodies of humans.
[PL 2007, c. 112, §3 (AMD).]

SECTION HISTORY

PL 1991, c. 412, §2 (NEW). PL 2007, c. 112, §§2, 3 (AMD). PL 2009, c. 310, §1 (AMD). RR 2009, c. 2, §§27, 28 (COR).

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