

LD 1534 An Act To Reform the Land Use and Planning Authority in the Unorganized Territories

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

Sec. 1. 5 MRSA section 935 is hereby amended as follows:

§935. Department of Conservation

1. Major policy-influencing positions. The following positions are major policy-influencing positions within the Department of Conservation. Notwithstanding any other provision of law, these positions and their successor positions are subject to this chapter:

- A.
- A-1.
- B. Deputy Commissioner;
- C. Director, Bureau of Forestry;
- D. Director, Bureau of Geology and Natural Areas;
- ~~E. Executive Director, Maine Land Use Regulation Commission; [1983, c. 729, §4 (NEW).]~~
- F. Director, Bureau of Parks and Lands;
- G. Deputy Director, Bureau of Parks and Lands;
- I. Assistant to the Commissioner for Public Information;
- J. Assistant to the Commissioner; and
- K. State Supervisor, Forest Fire Operations.

Sec. 2. 5 MRSA section §12004-D is hereby amended to read:

§12004-D. Environmental regulation and control

The primary responsibility of environmental regulation and control boards is the protection of the State's natural resources and environment.

The primary powers of these boards include regulation of activities that affect the environment and natural resources of the State, issuance of licenses and permits, setting of standards and procedures, assessment of fees and penalties, holding of hearings and the adoption of rules.

This classification includes the following.

NAME OF ORGANIZATION	RATE OF COMPENSATION	STATUTORY REFERENCE
----------------------	----------------------	---------------------

1.

Maine Land Use Regulation Commission	Legislative Per Diem Plus Expenses: Notwithstanding any limitation on noontime meal expenses in section 12002, subsection 2, for each day in attendance at a commission meeting or hearing, each member is entitled to a meal allowance not to exceed the legislative meal allowance for each session day as provided for in Title 3, section 2.	12 MRSA §683
--	--	---

Sec. 3. 12 MRSA c. 206-A, and the rules, plans and guidance documents adopted pursuant thereto are repealed.

Sec. 4. 12 MRSA, section 8002 is amended as follows:

§8002. Bureau of Forestry; powers and duties

1. **Powers and duties.** The bureau shall:

A. Have the responsibility for the control of forest fires in all areas of the State;

B. Conduct programs to protect the forest, shade and ornamental trees of the State against insects and diseases;

C. Conduct a program of service and community forestry in order to provide advice and assistance on forest management to small woodland owners and municipalities;

D. Provide advice and assistance on utilizing and marketing the wood products of the State, and regulate the utilization and marketing of wood products where authorized;

E. Have the responsibility for management of particular portions of land owned by the State when management is entrusted to the bureau by statute or is transferred by mutual agreement of the bureau and other state agencies; and

F. Conduct information, education, planning and research programs designed to promote the purposes of the bureau as set forth in this Part; and

G. Have the responsibility for the regulation of timber harvesting activities and forest management within the unorganized and deorganized areas of the State.

Sec 5. 30-A MRSA, section 2001 is amended to read:

20-B. Unorganized and deorganized areas. "Unorganized and deorganized areas" includes all unorganized and deorganized townships, plantations that have not received approval under the former Title 12 section 685-A, subsection 4 or under section 7404 of Chapter 304 to implement their own land use controls; municipalities that have organized since 1971 but have not received approval under the former Title 12 section 685-A, subsection 4 or withdrawn from the jurisdiction of the Board under section 7414 to implement their own land use controls; and all

other areas of the State that are not part of an organized municipality except Indian reservations. For the purposes of permitting a community-based offshore wind energy project and structures associated with resource analysis activities necessary for such an intended project, the area of submerged land to be occupied for such a project and resource analysis structures is considered to be in the unorganized or deorganized areas.

Sec. 6. 30-A MRSA, section 2001 is further amended to read:

8. Municipality. "Municipality" means a city or town, except as provided in chapter 225, and in the case of the unorganized and deorganized areas of the State of Maine, the County in which said areas are located. For purposes of this Title 30-A chapters 187, 303, 304 and 305, all of the unorganized and deorganized areas located within a single county, shall collectively be deemed a "municipality".

9. Municipal legislative body. "Municipal legislative body" means:

- A. The town meeting in a town;
- B. The city council in a city; ~~or~~
- C. That part of a municipal government that exercises legislative powers under a law or charter; ~~or~~
- D. In the case of the unorganized and deorganized areas of the State of Maine, the county commissioners of the county in which said areas are located.

10. Municipal officers. "Municipal officers" means:

- A. The selectmen or councilors of a town; ~~or~~
- B. The mayor and aldermen or councilors of a city; ~~or~~
- C. The county commissioners of a county.

11. Municipal official. "Municipal official" means any elected or appointed member of a municipal government, and in the case of the unorganized and deorganized areas of the State of Maine, any elected or appointed member of a county government in which said areas are located.

Sec. 7. 30-A MRSA § 4301(12), is further amended to read:

12. Municipal reviewing authority. "Municipal reviewing authority" means the municipal planning board, agency or office, or if none, the municipal officers, and in the case of the

unorganized and deorganized areas of any county, the county commissioners or a county planning board, agency or office for the unorganized and deorganized areas of that county, created by county charter or ordinance.

Sec. 8. 30-A M.R.S.A Chapter 304, is enacted as follows:

Ch. 304 Land Use Regulation in Unorganized and Deorganized Areas

Subchapter I: GENERAL PROVISIONS

§ 7401. PURPOSE AND APPLICABILITY

A. Purpose. The Legislature finds that it is desirable to extend principles of sound planning, zoning and subdivision control to the unorganized and deorganized areas of the State to achieve the following goals for the benefit of the property owners and residents of the unorganized and deorganized areas of the State: to encourage and provide for residential, recreational, commercial and industrial uses; to prevent the development of unsafe structures; to prevent the despoliation and pollution of water; to conserve, where appropriate, ecological and natural resources; to encourage the well-planned and well-managed multiple use of land and resources; to promote local economies by supporting and promoting forest management; forest products manufacturing; agricultural, industrial, residential and commercial development; energy generation; and groundwater extraction.

B. Applicability. The provisions of this Chapter apply to the unorganized and deorganized areas in any county, and any municipality or plantation that has elected to have the Board provide land use planning, or that has not established its own municipal reviewing authority pursuant to Title 30-A Chapter 187 and sections 4301(12), 7301(10), 7412 and 7414. The following provisions continue to apply to unorganized and deorganized areas in a county, municipality or plantation that has adopted its own municipal reviewing authority pursuant to section 7414:

- (i) Sections 7408(8) – (11), inclusive;
- (ii) sub-chapters 6 and 7, inclusive; and
- (iii) section 7412(B).

§ 7402. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms shall have the following meanings.

- 1. Board.** “Board” means the Land Use Review and Appeals Board created in section 7404.

2. Parcel of land. "Parcel of land" means contiguous land in the same ownership within a township or plantation; except that parcels of land on opposite sides of: (i) any road that existed prior to September 23, 1971; (ii) any tidal waters; or (iii) any flowing waters downstream from the point where such waters drain 25 square miles or more, are considered separate parcels of land for purposes of this chapter.

3. Subdivision. "Subdivision" means the division of a tract or parcel of land into 3 or more lots within any 5-year period that begins on or after September 23, 1971. This definition applies whether the division is accomplished by sale, lease, or the placement of buildings. The term "subdivision" also includes the division of a new structure or structures on a tract or parcel of land into 3 or more dwelling units within a 5-year period, the construction or placement of 3 or more dwelling units on a single tract or parcel of land and the division of an existing structure or structures previously used for commercial or industrial use into 3 or more dwelling units within a 5-year period.

A. In determining whether a tract or parcel of land is divided into 3 or more lots, the first dividing of the tract or parcel is considered to create the first 2 lots and the next dividing of either of these first 2 lots, by whomever accomplished, is considered to create a 3rd lot, unless:

(1) Both dividings are accomplished by a subdivider who has retained one of the lots for the subdivider's own use as a single-family residence that has been the subdivider's principal residence for a period of at least 5 years immediately preceding the 2nd division; or

(2) The division of the tract or parcel is otherwise exempt under this subchapter.

B. The dividing of a tract or parcel of land and the lot or lots so made, which dividing or lots when made are not subject to this subchapter, do not become subject to this subchapter by the subsequent dividing of that tract or parcel of land or any portion of that tract or parcel. The municipal reviewing authority shall consider the existence of the previously created lot or lots in reviewing a proposed subdivision created by a subsequent dividing.

4. Unorganized and deorganized areas. "Unorganized and deorganized areas" include all unorganized and deorganized townships and plantations that are not part of an organized municipality, but do not include Indian reservations.

§ 7403. EXEMPTION FROM SUBDIVISION DEFINITION

In addition to the exemptions and exceptions from subdivision definition or review provided in section 7402(3), a division accomplished by the following does not create a subdivision lot or lots unless the intent of the transfer is to avoid the objectives of this chapter.

1. Partition. A division accomplished by the partition of land held in joint tenancy, tenancy by the entirety or tenancy in common amongst the owners of that land.

2. Condemnation. A division accomplished by condemnation.

3. Court Order. A division accomplished by order of court.

4. Transfer to an abutter. A division accomplished by the transfer of any interest in land to the owners of land abutting that land. If the real estate exempt under this paragraph is transferred within 5 years to another person without all of the merged land, then the previously exempt division creates a lot or lots for the purposes of this subsection.

5. Pre-September 23, 1971 dwellings. The division of a tract or parcel of land into 3 or more lots and upon each of which lots permanent dwelling structures legally existed before September 23, 1971.

6. Security interest or mortgage. The grant of a bona fide security interest or mortgage in an entire lot that has been exempted from the definition of subdivision, or subsequent transfer of that entire lot by the original holder of the security interest or that person's successor in interest.

7. Easement. The grant of a bona fide easement in a lot.

8. Gifts to relatives. A division of land accomplished by gift to a relative by blood, marriage or adoption of the donor or a relative by blood, marriage or adoption of the owner or owners of the corporation, limited liability company, partnership or other entity, of the lot or Parcel of land does not create a subdivision lot if the lot or Parcel of land is not further divided or transferred within 5 years from the date of division.

9. Transfer to governmental entity. A lot or Parcel of land transferred to a plantation, municipality or county of the State, the State or an agency of the State for a public purpose.

10. Transfer to conservation organization. A lot or Parcel of land transferred to a nonprofit, tax-exempt nature conservation organization qualifying under the United States Internal Revenue Code, Section 501(c)(3) is not considered a subdivision lot if the lot or Parcel of land is not further divided or transferred except to another qualifying nonprofit, tax-exempt nature conservation organization or governmental entity.

11. Transfer of lots for forest management, agricultural management or conservation of natural resources. A lot or Parcel of land is not considered a subdivision lot if the following conditions are met:

A. The lot is transferred and managed solely for forest management, agricultural management or conservation of natural resources;

B. The lot is at least 40 acres in size;

C. If the lot is less than 1,000 acres in size, no portion of the lot is located within 250 feet of the unland edge of a coastal or freshwater wetland as defined in Title 38, section 436-A;

D. The original Parcel from which the lot was divided is divided into an aggregate of no more than 10 lots within any 5-year period; and

E. When 3 to 10 lots each containing at least 40 acres in size are created within any 5-year period, a plan is recorded in the applicable registry of deeds. Any subsequent division of a lot created from the original parcel within 10 years of the recording of the plan in the registry of deeds or any structural development unrelated to forest management, agricultural management or conservation creates a subdivision and may not occur without prior commission approval.

12. Unauthorized subdivision lots in existence prior to September 23, 1971 or for at least 20 years. A lot or Parcel of land is not considered a subdivision lot and is exempt from the permit requirement if the subdivision permit has not been obtained and the subdivision has been in existence for 20 or more years. A lot or Parcel of land that when sold or leased created a subdivision requiring a permit under this chapter is not considered a subdivision lot and is exempt from the subdivision permit requirement if: (a) the lot or Parcel of land was depicted on the township or plantation tax map prior to September 23, 1971; (b) the lot or Parcel of land is depicted on a plan filed in the appropriate registry of deeds prior to September 23, 1971; or (c) there is evidence that clearly shows the lot or Parcel of land was platted or used as a separate lot as of September 23, 1971. A lot or Parcel of land is considered a subdivision lot and is not exempt under this subsection if:

A. Approval of the subdivision was denied by the applicable reviewing authority or the Board and record of the decision was recorded in the appropriate registry of deeds;

B. A building permit for the lot or parcel was denied by the applicable reviewing authority or the Board and record of the decision was recorded in the appropriate registry of deeds;

C. The applicable reviewing authority or the Board has filed a notice of violation with respect to the subdivision in the appropriate registry of deeds; or

D. The lot or parcel has been the subject of an enforcement action or order and record of that action or order was recorded in the appropriate registry of deeds.

13. Large Lots Managed for Forest or Agricultural Management Activities or Conservation. A lot transferred or retained following transfer containing at least 5,000 acres is not counted as a lot for the purposes of this subsection, provided the lot is managed solely for the purposes of forest or agricultural management activities or conservation and the lot is not further divided, for a period of at least 5 years. Nothing in this paragraph, however, shall be construed to prohibit public outdoor recreation on the lot.

14. Permit not required. Nothing in this section requires a permit for, or restricts the use of property for, hunting, trapping, fishing or other forms of recreation, use of motorized vehicles on roads and trails or boating and snowmobiling as otherwise permitted by law.

Subchapter 2: LAND USE REVIEW AND APPEALS BOARD

§ 7404. CREATION OF LAND USE REVIEW AND APPEALS BOARD

The Land Use Review and Appeals Board is hereby established to carry out the purposes stated in section 7401 (in this chapter called the "Board"). The Board is charged with implementing this chapter in all of the unorganized and deorganized areas of the State, except as provided in section 7401 and 7414.

The Board shall consist of one county commissioner, or designee, from each of the following counties: Washington, Hancock, Aroostook, Penobscot, Piscataquis, Somerset, Franklin and Oxford, who shall be appointed by the county commissioners of their respective counties. The members of the Board may be removed from the Board by the county commissioners that appointed the member.

§ 7405. BOARD OFFICERS, MEETINGS AND RULES; HEARINGS

The Board shall elect annually, from its own membership, a chair and such other officers it considers necessary. Meetings are held at the call of the chair or at the call of more than 1/2 of the membership. Meetings must be held at a location within the jurisdiction of the Board or other location approved by a majority of the Board. The Board, acting in accordance with the procedures set forth in Title 5, chapter 375, subchapter II, may adopt whatever rules it considers necessary for the conduct of its business. The Board shall keep minutes of all proceedings, which are a public record available and on file in the office of the Board. A quorum of the Board for the transaction of business is 5 members. No action may be taken by the Board unless upon approval by a vote of a majority of members eligible to vote.

Whenever the Board is required or empowered to conduct a hearing pursuant to any provision of law, the hearing may be held and conducted by the Board or by any member of the Board or by any qualified employee or representative of the Board as the Board chair may determine. If the hearing is conducted by a single Board member or qualified employee or representative, the Board member, employee or representative shall report the findings of fact and conclusions to the full Board together with a transcript of the hearing and all exhibits. The findings of fact and conclusions become a part of the record. The Board is not bound by the findings or conclusions when acting upon the record, but shall take action, issue orders and make decisions as if it had held and conducted the hearing itself.

When the Board elects to hold multiple public hearings on any matter under this chapter, all hearings held within a 45-day period are considered one hearing for administrative purposes.

The Board may not hold a public hearing in a location farther than 50 miles from the land that is the subject of the hearing, or in the nearest organized municipality, whichever distance is

greater.

§ 7406. BOARD BUDGET, FINANCING AND STAFF

A. BUDGET.

1. Appellate duties. The Board shall prepare an annual budget for costs and expenses associated with the Board's appellate duties, for each fiscal year, and provide it to the counties, municipalities and plantations over which the Board has appellate duties, by January 1 preceding the beginning of each fiscal year.
2. Planning and Regulation duties. The Board shall prepare an annual budget for costs and expenses associated with the Board's land use planning and regulation services, for each fiscal year, and provide it to the counties, municipalities and plantations for which the Board provides land use planning and regulation services, by January 1 preceding the beginning of each fiscal year.

B. FUNDING.

1. Unorganized territories. Funding for services and activities of the Board must be assessed and allocated to the unorganized and deorganized areas through a fee on the most recent equalized state valuation established by the State Tax Assessor. This fee must be collected through the municipal cost component under Title 36, chapter 115, and paid to the Board.

2. Towns and plantations. A municipality or a plantation in the Board's jurisdiction that elects not to administer land use controls at the local level and receives Board services, including planning, permitting and ensuring compliance, must be assessed a fee equal to the portion of the budget used to serve the Town or Plantation, based on the most recent equalized state valuation established by the State Tax Assessor for that town or plantation or that portion of a town or plantation under the Board's jurisdiction. The State Tax Assessor shall issue a warrant to each such town or plantation no later than March 1st of each year. The warrant is payable on demand. Interest charges on unpaid fees begin on June 30th of each year and are compounded monthly at the interest rate for unpaid property tax as established by the State Tax Assessor for the unorganized territory. For any assessment that remains unpaid as of September 1st of the year in which it is due, state revenue sharing to that town or plantation must be reduced by an amount equal to any unpaid warrant amount plus any accrued interest, until the amount is paid.

3. Fees and Penalties. Fees and penalties collected by the Board in the unorganized and deorganized areas in any fiscal year shall be used to reduce the amounts assessed for the subsequent fiscal year.

Fees and penalties collected by the Board in towns and plantations within the Board's jurisdiction in any fiscal year shall be used to reduce the amounts assessed against such towns and plantations for the subsequent fiscal year.

4. Other sources of funding. The Board may accept contributions of any type from any source to assist it in carrying out its assigned tasks, and make such requirements in respect to the administration of such funds, not inconsistent with this subchapter, as are required as conditions precedent to receiving such funds, federal or otherwise. The Board shall give public notice of all contributions, in the state paper, stating the source, the amount and the purpose of such contributions.

C. STAFFING

The Board may contract with municipal, county, State and Federal Governments or their agencies or other entities to assist in the carrying out of any of its assigned tasks.

The Board shall appoint a director who shall be the principal administrative, operational and executive officer of the Board. The director may attend all meetings of the Board and be permitted to participate fully but shall not be a voting member of the Board.

The Board may employ necessary staff, in addition to the director, to assist in carrying out the purposes and functions of the Board, including enforcement of violations pursuant to section 4452.

The Board may establish and maintain one or more offices, designed to provide assistance to the public on permit applications, to provide regional planning assistance to the Board and to carry out such other functions of the Board as appropriate. These offices may be established in locations chosen to provide the maximum benefit to the public while minimizing costs. Historic levels of permitting activity, the convenience of access and the availability and cost of office facilities shall be considered in choosing the office locations. Each office shall be open on a part-time basis at least 2 days a month or as public demand for the services of such office warrants and as resources allow.

Subchapter 3. PLANNING, ZONING, LAND USE STANDARDS

§ 7407. COMPREHENSIVE PLAN

The Board may adopt an official comprehensive plan for the unorganized and deorganized areas of the State located in any county that has not designated a county reviewing authority pursuant to sections 4301(12) and 7501(10) of this Title. The comprehensive plan shall be prepared, adopted, reviewed, certified and periodically revised substantially in accordance with Chapter 187, subchapter II of this Title.

§ 7408. LAND USE DISTRICTS AND STANDARDS

1. Classification and districting of lands. The Board, acting in accordance with the procedures set forth in Title 5, chapter 375, subchapter II and on principles of sound land use planning and development, may determine the boundaries of areas within the unorganized and deorganized areas of the State. The Board, acting in accordance with the procedures set forth in Title 5, chapter 375, subchapter II, may adopt regulations for determining the boundaries of each type of district.

2. Land use standards. The Board, acting on principles of sound land use planning and development, may prepare land use standards prescribing standards for the use of air, lands and waters. Except as provided in this chapter, these standards may be adopted by the Board in accordance with the procedures set forth in Title 5, chapter 375, subchapter II.

In addition to the purposes set forth in section 7401, the land use standards shall be consistent with the goals of the Comprehensive Plan to the extent such a plan is adopted by the Board under Chapter 187, subchapter II of this Title.

3. Considerations, application and exemptions. A land use standard may not deprive an owner or lessee or subsequent owner or lessee of any interest in real estate of the use to which it is lawfully devoted at the time of adoption of that standard. Year-round and seasonal single residences and operating farms in existence and use as of September 23, 1971, while so used, and new accessory buildings or structures or renovations of the buildings or structures that are or may be necessary to the satisfactory and comfortable continuation of these residential and farm uses, except for those located in areas of special flood hazard as defined in the Board's rules.

4. Procedure for adoption or amendment of land use district standards, district boundaries and land use maps.

In addition to the requirements of Title 5, chapter 375, subchapter II, the Board, in adopting or amending any land use district standards, district boundaries and land use maps, shall comply with the public participation and notice requirements of section 4352(1), 4352(9) and 4352(10) of this Title.

5. Conditional and contract rezoning.

In adopting land use district boundaries and district standards, under this section, the Board may include provisions for conditional and contract rezoning, as provided in section 4352(8) of this Title.

6. Special exceptions and variances. The Board may approve the issuance of a special

exception permit in strict compliance with this chapter and the rules and standards adopted pursuant to this chapter.

The Board may grant variances from land use district boundaries and standards solely in accordance with the procedures and approval standards set out in section 4353(4) through (4-C).

7. Public Utility activities. Real estate used or to be used by a public utility, as defined in Title 35-A, section 102, subsection 13, or a person who is issued a certificate by the Public Utilities Commission under Title 35-A, section 122 may be wholly or partially exempted from regulation to the extent that the Board may not prohibit such use but may impose terms and conditions for use consistent with the purpose of this chapter, when, upon timely petition, notice and public hearing, the Public Utilities Commission determines that such exemption is necessary or desirable for the public welfare or convenience. The Public Utilities Commission shall adopt by rule procedures to implement this subsection. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

8. Timber harvesting activities. The Director of the Bureau of Forestry within the Department of Conservation shall exclusively administer and enforce the regulation of timber harvesting and timber harvesting activities occurring within the unorganized and deorganized areas. No other state agency, the Board, any county, municipality or plantation shall adopt zoning or regulation of these activities. For the purposes of this subsection, "timber harvesting" and "timber harvesting activities" have the same meanings as in Title 12, section 8868, subsections 4 and 5.

9. Natural Resource Protection Act. The Department of Environmental Protection shall have exclusive jurisdiction with respect to enforcement and administration of Title 38, Article 5-A for activities in the unorganized and deorganized areas, except for timber harvesting activities referenced above.

10. Wind Energy development. Wind power is a permitted use within those areas in the State's unorganized and deorganized identified in Title 35-A, section 3451(3). The Board, municipality, plantation or county shall not establish land use standards for wind energy development that is within the jurisdiction of the Department of Environmental Protection under Title 38. The Board, municipality, plantation or county may add, but not remove, areas to the expedited permitting area for wind energy development in accordance with Title 35-A, section 3453.

11. Moratorium. A municipality, plantation, county or Board shall not impose a moratorium, or limitations on activities or permitting of activities, except on activities located wholly within the jurisdiction of that municipality, plantation, county or Board.

Subchapter 4. DEVELOPMENT PERMITTING AND ENFORCEMENT

§ 7410-A. SUBDIVISION REVIEW AND APPROVAL

Except as otherwise provided in this chapter, the Board shall review all applications for approval of subdivisions within the unorganized and deorganized areas of the State.

Subdivision application requirements, review procedures and approval standards shall be as provided in Chapter 187, subchapter IV of this Title, except as otherwise amended.

§ 7410-B DEVELOPMENT REVIEW AND APPROVAL

1. Review and approval required. Except as provided in this section or by Board rule:

A. A structure or part of a structure may not be erected, changed, converted or wholly or partly altered or enlarged in its use or structural form without a permit issued by the Board. Normal maintenance or repair may be made to a structure or part of a structure without a permit issued by the Board in locations other than areas of special flood hazard as defined in the Board's rules;

B. A person may not commence development of or construction on any lot, parcel or dwelling unit within any subdivision or sell or offer for sale any interest in any lot, parcel or dwelling unit within any subdivision without a permit issued by the Board; or

C. A person may not commence any construction or operation of any development without a permit issued by the Board.

The Board shall adopt rules prescribing the submittal requirements, application procedures and approval standards for each type of activity for which the Board requires a permit under this section.

2. Approval Standards. Applicants for development review and approval shall comply with this Chapter and the standards adopted by the Board.

3. Exceptions. Except as provided in this section or by Board rule:

A. A permit is not required for the repair and maintenance of an existing road culvert or for the replacement of an existing road culvert, as long as the replacement culvert is:

(1) No more than one standard culvert size wider in diameter than the culvert being replaced;

(2) No more than 25% longer than the culvert being replaced; and

(3) No longer than 75 feet.

Ancillary culverting activities, including excavation and filling, are included in this exemption. A person repairing, replacing or maintaining an existing culvert under this paragraph shall ensure that erosion control measures are taken to prevent sedimentation of the water and that the crossing does not block fish passage in the water course;

B. Except for development projects that are subject to a Concept Plan authorized by the Board or located in a Planned Development District adopted by the Board, a permit or other approval of the Board is not required for a development project that is subject to the jurisdiction of the Department of Environmental Protection under the Site Location of Development Act (Title 38, chapter 3, subchapter 1, Article 6).

C. A permit is not required for a campsite;

D. A permit is not required for an offshore wind energy demonstration project approved by the Department of Environmental Protection pursuant to Title 38, section 480-HH, Notice of the intent to develop and a map indicating the location of the proposed development must be filed with the Board prior to or concurrently with submission of an application to the Department of Environmental Protection pursuant to Title 38, section 480-HH; and

E. A permit or other approval by the Board is not required for a hydropower project that uses tidal or wave action as a source of electrical or mechanical power or is located partly within an organized municipality and partly within an unorganized territory.

4. Delegation to staff. Building Permits shall be delegated to staff. The Board must establish standards by which authority may be delegated to its staff, to approve with reasonable conditions or deny applications submitted. Any person aggrieved by a decision of the staff has the right to a review of that decision by the Board. A request for such a review must be made within 30 days of the staff decision.

5. Approval by Notice. The Board may adopt rules that approve activities in accordance with specified standards and notice to the Board, but without requirement to file an application or receiving specific approval from the Board. These activities must include: driveways; activity adjacent to protected natural resources; intake pipes; replacement of structures; movement of rocks or vegetation; outfall pipes; shoreline stabilization; utility crossing; stream crossing; state transportation facilities; restoration of natural areas; public boat ramps; transfers; permit extension; maintenance dredging; activities in, on or over significant vernal pool habitat; activities in existing development areas located in, or over high or moderate value inland waterfowl and wading bird habitat or shorebird nesting, feeding and staging areas.

§7412. Enforcement, inspection and penalties for violations.

A. Board Enforcement.

No development may be undertaken, except in conformance with this chapter, the standards, rules and orders enacted or issued pursuant to this chapter, and any real estate or personal property existing in violation of such is a nuisance. For the purposes of inspection and to ensure compliance with standards, orders and permits issued or adopted by the Board, persons authorized by the Board may conduct investigations, examinations, tests and site evaluations necessary to verify information presented to it and may obtain access to any lands and structures regulated pursuant to this chapter.

Any person who violates any provision of this chapter, or the terms or conditions of any standards, rules, permits or orders adopted or issued pursuant to this chapter, is subject to a civil penalty, payable to the State, of not more than \$10,000 for each day of the violation.

In addition to the other penalties provided, the Board may, institute any appropriate action, injunction or other proceeding to prevent, restrain, correct or abate any violation hereof or of the orders or standards or rules promulgated hereunder. This action may include, but is not limited to, proceedings to revoke or suspend any Board permit or approval, taken either before the Board itself in accordance with Title 5, section 10004, before the District Court in accordance with Title 4, chapter 5 or, notwithstanding the provisions of Title 4, section 152, subsection 9 or Title 5, section 10051, before the Superior Court as part of an enforcement action brought by the Board.

In addition to any such penalties or remedies provided in this subsection, the court may order restoration of any area affected by any action or inaction found to be in violation of any of the provisions of this chapter or of any order, standard, rule or permit of the Board, or any decree of the court, to the condition of such area prior to the violation. When such restoration is not practicable, the court may order other actions to be taken by the person charged with the violation which are in mitigation of the damage caused by the violation.

A person who willfully or knowingly falsifies any statement contained in a permit application or other information required to be submitted to the Board is in violation of this chapter and subject to the penalties of this chapter.

B. County Enforcement.

In any county that has designated a municipal reviewing authority pursuant to sections 4301(12) and 7501(10) of this Title, violations of any county land use or zoning ordinance, subdivision violation, or violation of a permit issued by the county reviewing authority, shall be enforced by the county concerned, in accordance with section 4452 of this Title. Counties designating a county reviewing authority pursuant to section 4301(12) and 7501(10) shall hire or contract for the services of a county code enforcement officer or other necessary assistance for this purpose. The State of Maine, through its various departments, shall retain concurrent

jurisdiction to prosecute violations of county land use or zoning ordinances, or violations of any permit issued by the county reviewing authority, when such violations also constitute a violation of state law.

§ 7413. Landowner liability for actions of others. An owner, lessee, manager, easement holder or occupant of premises is not subject to criminal sanctions or civil penalties or forfeitures for a violation of laws or rules enforced by the Board if that person provides substantial credible evidence that the violation was committed by another person other than a contractor, employee or agent of the owner, lessee, manager, easement holder or occupant. This subsection does not prevent the Board or a court from requiring an owner, lessee, manager, easement holder or occupant of premises to remediate or abate environmental hazards or damage or to reimburse the Board for the cost of remediation or abatement. An owner, lessee, manager, easement holder or occupant of premises is subject to criminal sanctions or civil penalties or forfeitures for failure to comply with a lawful administrative order or court order to remediate or abate environmental hazards or damage.

A. The Board shall investigate substantiated allegations by an owner, lessee, manager, easement holder or occupant that the violation was caused by another person.

B. If an owner, lessee, manager, easement holder or occupant is subjected to criminal sanctions or civil penalties or forfeitures, or if such a person is required to remediate or abate environmental hazards or damage as a result of violations by another person, the owner, lessee, manager, easement holder or occupant has a cause of action against the actual violator to recover all damages and costs, including attorney's fees, incurred in connection with the environmental damage, and all costs, including attorney's fees, incurred in bringing the action to recover.

§ 7414. Withdrawal from Board jurisdiction. A municipality, plantation or county may assume jurisdiction from the Board for land use planning and regulation for unorganized and deorganized areas within its borders at any time upon written notice to the Board. This withdrawal notice shall specify the effective date of such withdrawal. Until otherwise adopted, amended or rejected in whole or in part, by an affirmative vote of the municipality, plantation or County Commissioners electing to assume jurisdiction from the Board, the rules, regulations, districts and plans pursuant to pursuant to Section 7408 shall continue in full force and effect. Counties that adopt the existing Board comprehensive land use plan and rules, must review the plan and rules and adopt amendments to the plan and incorporate the rules into an ordinance within one year.

However, the Board shall retain all its authority over land areas that are subject to a Concept Plan, Resource Plan or Planned Development District that was authorized or adopted by the

former Maine Land Use Regulation Commission created pursuant to Title 12 MRSA chapter 206-A, or the Board, unless the owner of the land area consents to transferring this authority to the county. A municipality, plantation or county shall comply with the terms of Concept Plans, Resource Plans and Planned Development Districts that are in existence when the authority to administer land use controls is assumed under this subchapter, and may not change the terms without the advance written consent land owner.

A county may vote to rescind its decision to withdraw unorganized and deorganized areas from the jurisdiction of the Board, which shall take effect on the first day of the fiscal year following the vote.

Subchapter 5: Miscellaneous Provisions

§ 7420. Schedule of fees. The Board shall adopt rules in accordance with Title 5, chapter 375, subchapter 2 to establish a schedule of reasonable fees for the administration of this chapter. Amendments to those rules adopted after October 1, 2005 are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

No approval, certificate, special exception or variance may be issued unless or until such fees established by the Board have been paid in full, nor may any action be taken on proceedings before the Board unless or until preliminary fees have been paid in full.

§ 7421. Additional powers and duties. In order to implement this chapter, the Board may, in addition to its powers and duties previously authorized in this chapter:

A. Adopt rules to interpret and carry out this chapter in accordance with Title 5, chapter 375, subchapter II, unless otherwise provided by this chapter;

B. Have the power to compel attendance of witnesses, and require production of evidence;

C. Designate or establish such regional offices as it deems necessary;

D. Designate or request other appropriate agencies to receive application, provide assistance, investigations and make recommendations;

E. By rule allow joint hearings to be conducted with other appropriate agencies;

F. Execute contracts and other agreements to carry out its purposes.

§ 7422. Adjustments of assessing practices. Upon adoption of district boundaries and land use standards, a certified copy of each official land use map, delineating district boundaries, and

associated land use standards shall be filed with the State Tax Assessor or such agency or entity which performs the assessing of such municipality, plantation, unorganized or deorganized areas.

§ 7423. Time periods. In computing the period of time to perform any act under these rules, the first day on which an act may be performed shall not be included but the last day of the period shall be included unless it is a Saturday, Sunday or holiday in which event the period shall be extended until the next business day.

A holiday is any day appointed as such by the President or Congress of the United States, or the Governor or Legislature of the State of Maine.

§ 7424. Representation in court. The Board may authorize certified employees of the Board to serve civil process and represent the Board in District Court in the prosecution of violations of those laws enforced by the Board and set forth in Title 4, section 152, subsection 6-A. Certification of these employees must be as provided under Title 30-A, section 4453.

§ 7425. Operating a personal watercraft. Operating a personal watercraft is prohibited on the following categories of great ponds:

A. Great ponds located entirely or partly within the jurisdiction of the Board that are identified in an official comprehensive land use plan adopted by the Board pursuant to subsection 1 as being not accessible within 1/4 mile by 2-wheel drive vehicles, with less than one development unit per mile, and at least one outstanding resource value:

B. Great ponds located entirely or partly within the jurisdiction of the Board that are identified in an official comprehensive land use plan adopted by the Board as being accessible within 1/4 mile by 2-wheel drive vehicles, with less than one development unit per mile, with 2 or more outstanding resource values in fisheries, wildlife, scenic or shore character:

C. Great ponds and smaller ponds located entirely or partly within the jurisdiction of the Board that are identified in an official comprehensive land use plan adopted by the Board as being not accessible within 1/2 mile by 2-wheel drive vehicles, with no more than one noncommercial remote camp and with a cold water game fishery; and

The Board shall implement this subsection by rule adopted in accordance with section 7406. Rules adopted to implement this subsection are routine technical rules pursuant to Title 5, chapter 375, subchapter II-A.

This section does not apply to any waters subject to regulation under An Act to Implement the Maine Indian Claims Settlement pursuant to Title 30, part 4, chapter 601.

Subchapter 6: BOARD APPELLATE DUTIES

§ 7426. PLANNING, ZONING, ORDINANCE APPEAL

The Board shall hear and decide the appeals of any party aggrieved by the decision of a county reviewing authority established in accordance with section 4301(12) and 7501(10) of this Title, involving questions of, land use planning, zoning, or ordinances that apply to the unorganized and deorganized areas. For this purpose, the Board shall have the same powers and authority of a municipal zoning board of appeals established pursuant to section 4353 of this Title, except that all such appeals shall be heard and decided on an intermediate appellate basis only, and not as *de novo* appeals.

The Board shall hear and decide appeals of any land owners aggrieved by a decision of the county commissioners adopting a comprehensive plan, district or ordinances that apply to the unorganized and deorganized areas. For this purpose, the Board shall conduct a *de novo* review of the decision to determine whether it is unduly inconsistent with plans, districts or ordinances in adjacent counties, or places an undue hardship on the land owner.

The Board shall have authority to grant variances from zoning ordinance provisions enacted by any county with respect to the unorganized and deorganized areas of that county due to hardship or to allow handicap access, utilizing the variance criteria of section 4353, subsections 4 and 4-A. The Board may also grant other variances as provided in section 4353, subsections 4-B and 4-C, when authorized by county zoning ordinance.

Members of the Board appointed, elected or designated from that county in which the land subject to the appeal is located shall excuse themselves from the appeal.

Any party aggrieved by a decision of the Board pursuant to this section may take a further appeal to the Superior Court in accordance with Rule 80B, Maine Rules of Civil Procedure.

§ 7427. SUBDIVISION AND PERMITTING APPEALS

The Board shall hear and decide the appeals of any party aggrieved by the decision of a county reviewing authority established in accordance with section 4301(12) and 7501(10) of this Title, involving an application for approval of any subdivision or land use permit within the unorganized and deorganized townships of that county under Chapter 187, subchapter 4 of this

Title. For this purpose, the Board shall have the same powers and authority of a municipal board of appeals established pursuant to section 2691 of this Title, except that all such appeals shall be heard and decided on an intermediate appellate basis only, and not as *de novo* appeals.

Any party aggrieved by a decision of the Board pursuant to this section may take a further appeal to the Superior Court in accordance with Rule 80B, Maine Rules of Civil Procedure.

Subchapter 7: APPEAL OF LAND USE DECISIONS OF THE BOARD

§ 7428. APPEALS

Parties aggrieved by final actions of the Board may appeal therefrom in accordance with Title 5, chapter 375, subchapter 7. This right of appeal, with respect to any Board action to which this right may apply, shall be in lieu of the rights provided under Title 5, section 8058, subsection 1.

Any party aggrieved by a decision of the Board pursuant to this section may take a further appeal to the Superior Court in accordance with Rule 80B, Maine Rules of Civil Procedure.

Sec. 9. 30-A MRSA chapter 301, § 7059, is further amended to read:

~~Plantations who choose not to use county land use planning, zoning and land regulation, are subject to chapter 187 regarding planning and land use powers and duties in the same manner as a town or city, except as otherwise provided in chapter 187. A Plantation may, by vote of the plantation meeting, elect to exercise land use planning and regulation powers, in accordance with chapters 187 and 304.~~

Any Plantation planning or land use ordinance related to buildings and equipment must comply with section 7060.

Sec. 10. 30-A MRSA c. 301, § 7060, is further amended to read:

1. Ordinances regulating buildings and equipment required. Plantations adopting planning and zoning shall adopt ordinances:

A. Regulating the design, construction materials and construction of new buildings and additions to and alterations of existing buildings; regulating the alteration, demolition,

maintenance, repair, use, change of use, safety features, light, ventilation and sanitation facilities of all buildings; regulating the installation, alteration, maintenance, repair and use of all equipment in or connected to all buildings; and requiring permits and establishing reasonable permit fees for all of the operations mentioned in this paragraph;

B. Establishing adequate standards for all features of means of exit, fire protection, fire prevention, accident prevention and structural safety of buildings that are used occasionally or regularly for public assembly; compelling the owners to make improvements to bring these buildings up to the established standards; requiring the owner or lessee of a building used for public assembly that is regulated by an ordinance authorized by this section and operated with the intent of financial gain to obtain a permit for which a fee may be imposed commensurate with its size or capacity; and requiring the owner or lessee of such a building to file a plan showing all safety features as a condition precedent to the issue of a permit or the further use of one already issued.

(1) The building official shall send a written order to the owner or lessee of a building used for public assembly requiring any conditions that exist in violation of an ordinance to be corrected within 30 days after the order is sent.

(2) After the 30-day period expires, the owner or lessee is strictly liable for all injury caused by the failure to correct the violations and the building official shall order the building vacated.

(3) As used in this section, "building used for public assembly" means a room or space in or on any structure that is used for the gathering of 100 or more persons for any purpose and includes any room or space on the same level, above or below, that has a common entrance; and

C. Requiring persons, other than a dealer licensed by the State with a sales tax certificate issued by the State Tax Assessor, who intend to construct or locate in the plantation new manufactured housing, as defined in section 4358, subsection 1, to provide:

(1) A bill of sale indicating the name, address, dealer registration number and sales tax certificate number of the person who sold or provided the manufactured housing to the buyer locating the housing in the plantation; or

(2) Certification of payment of the sales tax in accordance with Title 36, section 1760, subsection 40 and Title 36, section 1952-B.

~~In any plantation which requires a permit for manufactured housing, the permit is deemed to be not approved or valid until payment of the sales tax has been certified with the assessors or the Maine Land Use Regulation Commission.~~

Sec. 11. 30-A MRS.A chapter 305, § 7501, is further amended to read:

The county commissioners of each county may provide or contract for the provision of the following municipal services for the residents of the unorganized and deorganized areas in their county:

1. Fire protection. Fire protection other than forest fires;

2. Solid waste. Solid waste management;

3. Roads and bridges. Construction, repair and maintenance of roads and bridges, including snow removal, except that the county commissioners may not expend money for improvements, maintenance or snow removal on any privately owned road within the unorganized territory in which the county has not acquired any property interest. The county commissioners may enact an ordinance to establish road standards for the purpose of preserving, protecting and maintaining roads in which the county has acquired a property interest;

4. Polling places. Establishment of polling places under Title 21-A, section 632;

5. Administrative services. Coordination of services provided, payment of expenses, administration of the unorganized territory fund. The amount charged for administrative services may not exceed 5% of the budget for the unorganized territory established under section 7503 for the year;

5-A. Watershed districts. Participation in watershed management districts organized under Title 38, chapter 23;

6. Other services. Any other service that a municipality may provide for its inhabitants and that is not provided by the State;

7. Law enforcement. Law enforcement;

8. Enhanced 9-1-1 service. Assigning and maintaining physical addresses specifically for the purpose of statewide enhanced 9-1-1 service. The county commissioners may enact an ordinance to establish the addressing standards and, pursuant to that ordinance, may assign road names to existing and proposed roads and property numbers to existing and proposed year-round and seasonal dwellings or structures and may install signs designating road names; and

9. Animal control. Animal control services. The county commissioners may enact an ordinance for the purpose of animal control. The county commissioners shall give 14 days notice of the meeting at which the ordinance is to be proposed in the manner provided for town meetings.

10. Land use planning, zoning and regulation. The county commissioners may, with respect to the unorganized and deorganized areas located in that county, enact, in accordance with Chapter 187, all plans, regulations and ordinances necessary and appropriate to regulate land use and development within said unorganized and deorganized areas. The county

commissioners may enter into inter-local agreements with other counties, or municipalities, to share land use planning, zoning and regulatory functions. Counties enacting land use or zoning ordinances for the unorganized and deorganized areas within that county shall designate a county reviewing authority under section 4301(12) and shall assume responsibility for the enforcement of such county ordinances and any permits issued thereunder, in accordance with section 4452.

Sec. 12. 30-A MRSA section 7504, paragraph 1 is amended to read:

1. Authority. The county commissioners of each county may impose a service fee on recipients of eligible services, as described in subsection 2, provided in the unorganized territory.
2. Eligible services. For the purposes of this section, eligible services include:
 - A. Solid waste management;
 - B. Structural fire protection;
 - C. Ambulance and emergency medical services;
 - D. Law enforcement;
 - E. Animal control; and
 - F. Other services provided to property owners or residents in a limited geographic area; and
 - G. Land use planning and regulation.

Sec. 13. 35-A MRSA section 3451(3) and (8) are amended to read:

3. Expedited permitting area. "Expedited permitting area" means:

A. The organized areas of the State in their entirety, but not including waters subject to tidal influence, so that the edge of the area that is subject to tidal action during the highest tide level for the year in which an activity is proposed as identified in tide tables published by the United States Department of Commerce, National Oceanic and Atmospheric Administration, National Ocean Service defines the boundary of the expedited permitting area on lands abutting waters subject to tidal influence; and

B. The following specific places within the State's unorganized and deorganized areas; as defined by Title 12, section 682, subsection 1, that are identified by rule by the Maine Land Use Regulation Commission in accordance with this chapter.

i. Entire townships and plantations. The following entire townships and plantations: Albany Twp., 17802; Alder Stream Twp., 07801; Argyle Twp., 19801; Bald Mountain Twp., 12 R3, 25805; Baring Pt., 29040; Barnard Twp., 21030; Batchelders Grant Twp., 17805; Benedicta Twp., 03050; Big Moose Twp., 21801; Blake Gore, 25811; Blanchard Twp., 21040; Brookton

Twp., 29801; Carroll Plt., 19080; Carrying Place Twp., 25860; Cary Plt., 03090; Centerville Twp., 29080; Chase Stream Twp., 25816; Chester, 19100; Codyville Plt., 29110; Concord Twp., 25818; Connor Twp., 03802; Cove Point Twp., 21805; Cox Patent, 03803; Cross Lake Twp., 03899; Cyr Plt., 03140; Dennistown Plt., 25090; Drew Plt., 19160; Dudley Twp., 03804; Dyer Twp., 29803; E Twp., 03160; East Moxie Twp., 25821; Edmunds Twp., 29804; Fletchers Landing Twp., 09804; Forest City Twp., 29806; Forest Twp., 29805; Forkstown Twp., 03805; Fowler Twp., 29807; Freeman Twp., 07808; Garfield Plt., 03220; Glenwood Plt., 03230; Grand Falls Twp., 19250; Grindstone Twp., 19802; Hamlin, 03250; Hammond, 03260; Harfords Point Twp., 21811; Herscycotown Twp., 19803; Hibberds Gore, 15801; Highland Plt., 25150; Hopkins Academy Grant Twp., 19804; Indian Stream Twp., 25828; Jim Pond Twp., 07811; Johnson Mountain Twp., 25829; Kibby Twp., 07812; Kingman Twp., 19808; Kingsbury Plt., 21110; Lake View Plt., 21120; Lambert Lake Twp., 29809; Lexington Twp., 25831; Macwahoc Plt., 03360; Marion Twp., 29810; Mason Twp., 17811; Mattamiscontis Twp., 19810; Mayfield Twp., 25835; Milton Twp., 17812; Misery Gore Twp., 25837; Misery Twp., 25836; Molunkus Twp., 03806; Moosehead Junction Twp., 21816; Moro Plt., 03430; Mount Chase, 19450; Moxie Gore, 25838; Nashville Plt., 03440; No. 14 Twp., 29330; North Yarmouth Academy Grant Twp., 03807; Ormeville Twp., 21821; Osborn, 09230; Oxbow Plt., 03500; Parkertown Twp., 17814; Parlin Pond Twp., 25839; Perkins Twp., 07818; Perkins Twp. Swan Island, 23801; Pleasant Ridge Plt., 25250; Prentiss Twp., T4 R4 NBKP, 25843; Prentiss Twp., T7 R3 NBPP, 19540; Rangelev Plt., 07160; Reed Plt., 03540; Saint Croix Twp., 03808; Saint John Plt., 03570; Sandbar Tract Twp., 25848; Sandy Bay Twp., 25850; Sandy River Plt., 07170; Sapling Twp., 25851; Schoeis Plt., 19550; Silver Ridge Twp., 03809; Squapan Twp., 03810; Squartown Twp., 25854; Summit Twp., 19812; T1 R5 WELS, 03816; T1 R6 WELS, 19815; T10 R3 WELS, 03829; T10 R6 WELS, 03830; T10 SD, 09806; T11 R3 NBPP, 29817; T11 R4 WELS, 03833; T13 R5 WELS, 03856; T14 R5 WELS, 03867; T14 R6 WELS, 03868; T15 R5 WELS, 03879; T15 R6 WELS, 03880; T16 MD, 09807; T16 R4 WELS, 03889; T16 R5 WELS, 03890; T16 R6 WELS, 03891; T17 R3 WELS, 03897; T17 R4 WELS, 03898; T18 ED BPP, 29818; T18 MD BPP, 29819; T19 ED BPP, 29820; T19 MD BPP, 29821; T2 R4 WELS, 03817; T2 R8 NWP, 19817; T2 R9 NWP, 19819; T22 MD, 09808; T3 Indian Purchase Twp., 19806; T3 R3 WELS, 03818; T3 R4 WELS, 03819; T3 R9 NWP, 19823; T4 R3 WELS, 03820; T6 R6 WELS, 19829; T7 R5 WELS, 03821; T7 R6 WELS, 19832; T7 SD, 09803; T8 R3 NBPP, 29815; T8 R3 WELS, 03822; T8 R4 NBPP, 29816; T8 R5 WELS, 03823; T8 R6 WELS, 19835; T9 R3 WELS, 03824; T9 R4 WELS, 03825; T9 R5 WELS, 03826; T9 SD, 09805; TA R2 WELS, 03813; TA R7 WELS, 19814; Taunton & Ravnham Academy Grant, 25803; TC R2 WELS, 03814; TD R2 WELS, 03815; The Forks Plt., 25320; Trescott Twp., 29811; Unity Twp., 11801; Upper Molunkus Twp., 03811; Washington Twp., 07827; Webbertown Twp., 03812; Webster Plt., 19600; West Forks Plt., 25330; Williamsburg Twp., 21827; and Winterville Plt., 03680;

ii. Portions of townships and plantations. The following portions of townships and plantations: that portion of Adamstown Twp., 17801, north of Route 16; Bald Mountain Twp., T4 R3, 25806, excluding areas of Boundary Bald Mountain above 2,700 feet in elevation; a 146.6-acre parcel in the northeast corner of the Chain of Ponds, 07803, along the border with Canada; the portion of Coplin Plt., 07040, north of Route 16; the portion of Dallas Plt., 07050, north of Route 16; the portion of Ebecmee Twp., 21853, east of Route 11; the portion of Kossuth Twp., 29808, north of Route 6; the portion of Lang Twp., 07813, north of Route 16; the portion of Lincoln Plt., 17160, north of Route 16; the portion of Long A Twp., 19809, east of Route 11;

the portion of Long Pond Twp., 25833, south of Long Pond and Moose River; the 487.5-acre area above the 2,040-foot elevation around Green Top in Lynchtown Twp., 17810; the portion of Rockwood Strip T1 R1 NBKP, 25844, south of Moose River, Little Brassua Lake and Brassua Lake; the portion of Rockwood Strip T2 R1 NBKP, 25845, south of Little Brassua Lake and Brassua Lake; the portion of Salem Twp., 07820, south of Route 142; the portion of Sandwich Academy Grant Twp., 25849, south of Moose River, Little Brassua Lake and Brassua Lake; that portion of Skinner Twp., 07822, composed of the 193.3-acre area that follows the ridge to Kibby Mountain, bounded on the east and west by the 2,820-foot contour, on the south by the town line and on the north by the line from the 2,820-foot contour through the 3,220-foot contour from Kibby Mountain; the portion of Soldiertown Twp., T2 R7 WELS, 19811, east of the East Branch Penobscot River; the portion of T1 R8 WELS, 19816, south of Millinocket Lake; the portion of T1 R9 WELS, 21833, southeast of Ambajejus Lake; T24 MD BPP, 29822, excluding a one-mile buffer around Mopang Stream; the 51.9-acre area in T25 MD BPP, 29823, encompassing Black Brook and Black Brook Pond, and the area northeast of Holmes Falls Road; the portion of T3 R7 WELS, 19821, east of the Sebocis River and East Branch Penobscot River; the portions of T4 Indian Purchase Twp., 19807, area northeast of North Twin Lake and south of Route 11; the portion of T4 R7 WELS, 19824, east of the Sebocis River; the portion of T4 R9 NWP, 21845, east of Route 11; the portion of T5 R7 WELS, 19827, east of the Sebocis River; and the portion of T6 R7 WELS, 19830, east of the Sebocis River; and

iii. Coastal islands in unorganized and deorganized area. All islands located in waters subject to tidal influence that are within the unorganized and deorganized areas of the State.

8. Primary siting authority. "Primary siting authority" means:

A. ~~The Department of Environmental Protection, in the case of an expedited wind energy development subject to the department's jurisdiction pursuant to Title 38, chapter 3, subchapter 1, article 6, including, but not limited to, a development subject to the department's jurisdiction pursuant to Title 38, section 488, subsection 9; or~~

~~B. The Maine Land Use Regulation Commission, in the case of an expedited wind energy development subject to the Maine Land Use Regulation Commission's jurisdiction pursuant to Title 12, chapter 206-A.~~

Sec. 14. 35-A MRSA section 3453, is further amend to read:

§3453. Additions to the expedited permitting area.

The Land Use Review and Appeals Board, created pursuant to Title 30-A MRSA chapter 304 or municipal reviewing authority Maine Land Use Regulation Commission may, by rule adopted in accordance with Title 5, chapter 375, may add, but not remove, a specified place in the State's unorganized or deorganized areas to the expedited permitting area. In order to add a specified place to the expedited permitting area, the Board or municipal reviewing authority Maine Land

~~The Regulation Commission~~ must determine that the proposed addition to the expedited permitting area:

1. **Geographic extension.** Involves a logical geographic extension of the currently designated expedited permitting area;
2. **Meets state goals.** Is important to meeting the state goals for wind energy development established in section 3404; and
3. **Principal values and goals.** ~~If applicable, w~~Would not compromise the principal values and the goals identified in the comprehensive land use plan, ~~if any,~~ adopted by the Board or municipal reviewing authority. ~~Maine Land Use Regulation Commission pursuant to Title 12, section 685-G.~~

~~Rules adopted by the Maine Land Use Regulation Commission pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.~~

Sec. 15, 38 MRSA chapter 3, § 435, is further amended to read:

To aid in the fulfillment of the State's role as trustee of its waters and to promote public health, safety and the general welfare, it is declared to be in the public interest that shoreland areas be subject to zoning and land use controls. Shoreland areas include those areas within 250 feet of the normal high-water line of any great pond, river or saltwater body, within 250 feet of the upland edge of a coastal wetland, within 250 feet of the upland edge of a freshwater wetland except as otherwise provided in section 438-A, subsection 2, or within 75 feet of the high-water line of a stream. The purposes of these controls are to further the maintenance of safe and healthful conditions; to prevent and control water pollution; to protect fish spawning grounds, aquatic life, bird and other wildlife habitat; to protect buildings and lands from flooding and accelerated erosion; to protect archaeological and historic resources; to protect commercial fishing and maritime industries; to protect freshwater and coastal wetlands; to control building sites, placement of structures and land uses; to conserve shore cover, and visual as well as actual points of access to inland and coastal waters; to conserve natural beauty and open space; and to anticipate and respond to the impacts of development in shoreland areas.

It is further declared that, in accordance with Title 12, section 402, certain river and stream segments, as identified in the Department of Conservation's 1982 Maine Rivers Study and as specifically delineated in section 437, are significant river segments and deserve special shoreland zoning controls designed to protect their natural and recreational features.

Zoning ordinances adopted pursuant to this article need not depend upon the existence of a zoning ordinance for all of the land and water areas within a municipality, or in case of the unorganized and deorganized areas within a particular county, notwithstanding Title 30-A,

section 4503, as it is the intention of the Legislature to recognize that it is reasonable for municipalities to treat shoreland areas specially and immediately to zone around water bodies rather than to wait until such time as zoning ordinances may be enacted for all of the land within municipal or as defined above, county boundaries.

All existing municipal ordinances dealing with subjects of this section currently in effect and operational on April 18, 1986, are declared to be valid and shall continue in effect until rescinded, amended or changed according to municipal ordinance, charter or state law.

For the purposes of this chapter, "municipal" and "municipalities" means the land area of a particular plantation, town or city, and in the case of the unorganized and deorganized areas of the State of Maine, the unorganized and deorganized areas located within a particular county. For purposes of this Title 38 MRSA, all of the unorganized and deorganized areas located within a single county, shall be deemed a "municipality" within the meaning of Title 38.

Sec. 16. 38 MRSA § 438-A, is further amended to read:

§438-A. Municipal authority; state oversight

With respect to all shoreland areas described in section 435, municipalities shall adopt zoning and land use control ordinances pursuant to existing enabling legislation, under home rule authority and in accordance with the following requirements. The deadline for municipalities to adopt a shoreland zoning ordinance meeting the minimum guidelines adopted by the Board of Environmental Protection is extended to July 1, 1992.

Notwithstanding other provisions of this article, the regulation of timber harvesting and timber harvesting activities in shoreland areas must be in accordance with section 438-B and rules adopted by the Commissioner of Conservation pursuant to Title 12, section 8867-B.

1. Land use guidelines. In accordance with Title 5, chapter 375, subchapter II, the Board of Environmental Protection shall adopt, and from time to time shall update and amend, minimum guidelines for municipal zoning and land use controls that are designed to carry out the legislative purposes described in section 435 and the provisions of this article. These minimum guidelines must include provisions governing building and structure size, setback and location and establishment of resource protection, general development, limited residential, commercial fisheries and maritime activity zones and other zones. Within each zone, the board shall prescribe uses that may be allowed with or without conditions and shall establish criteria for the issuance of permits and nonconforming uses, land use standards and administrative and enforcement procedures. These guidelines must also include a requirement for a person issued a permit pursuant to this article in a great pond watershed to have a copy of the permit on site while work authorized by the permit is being conducted. The board shall comprehensively

review and update its guidelines and shall reevaluate and update the guidelines at least once every 4 years.

A. Minimum guidelines adopted by the board under this subsection may not require the issuance of a municipal permit for the repair and maintenance of an existing road culvert or for the replacement of an existing road culvert, as long as the replacement culvert is:

(2) Not more than 25% longer than the culvert being replaced; and

(3) Not longer than 75 feet.

Ancillary culverting activities, including excavation and filling, are included in this exemption. A person repairing, replacing or maintaining an existing culvert under this paragraph shall ensure that erosion control measures are taken to prevent sedimentation of the water and that the crossing does not block fish passage in the water course.

1-A. Minimum guidelines; limitations. The minimum guidelines adopted under subsection 1 may not require a municipality, in adopting an ordinance, to:

A. Treat an increase in hours or days of operation of a nonconforming use as an expansion of a nonconforming use; or

B. Treat as a single lot, 2 or more contiguous lots, at least one of which is nonconforming, owned by the same person or persons on the effective date of the municipal ordinance and recorded in the registry of deeds if the lot is served by a public sewer or can accommodate a subsurface sewage disposal system in conformance with state subsurface wastewater disposal rules, and:

(1) Each lot contains at least 100 feet of shore frontage and at least 20,000 square feet of lot area; or

(2) Any lots that do not meet the frontage and lot size requirements of subparagraph (1) are reconfigured or combined so that each new lot contains at least 100 feet of shore frontage and 20,000 square feet of lot area.

For purposes of this paragraph the term "nonconforming" means that a lot does not meet the minimum standards for lot area and shore frontage required by municipal ordinances adopted pursuant to this article.

1-B. Notification to landowners. This subsection governs notice to landowners whose property is being considered for placement in a resource protection zone.

A. In addition to the notice required by Title 30-A, section 4352, subsection 9, a municipality shall provide written notification to landowners whose property is being considered by the municipality for placement in a resource protection zone. Notification to landowners must

be made by first-class mail to the last known addresses of the persons against whom property tax on each parcel is assessed. The municipal officers shall prepare and file with the municipal clerk a sworn, notarized certificate indicating those persons to whom notice was mailed and at what addresses, and when, by whom and from what location notice was mailed. This certificate constitutes prima facie evidence that notice was sent to those persons named in the certificate. The municipality must send notice not later than 14 days before its planning board votes to establish a public hearing on adoption or amendment of a zoning ordinance or map that places the landowners' property in the resource protection zone. Once a landowner's property has been placed in a resource protection zone, individual notice is not required to be sent to the landowner when the zoning ordinance or map is later amended in a way that does not affect the inclusion of the landowner's property in the resource protection zone.

B. In addition to the notice required by this Title or by rules adopted pursuant to this Title, the board shall provide written notification to landowners whose property is being considered by the board for placement in a resource protection zone. Notification to landowners must be made by first-class mail to the last known addresses of the persons against whom property tax on each parcel is assessed. The board shall prepare and file with the commissioner a sworn, notarized certificate indicating those persons to whom notice was mailed and at what addresses, and when, by whom and from what location notice was mailed. This certificate constitutes prima facie evidence that notice was sent to those persons named in the certificate. The board must send notice not later than 30 days before the close of the public comment period prior to formal consideration of placement of the property in a resource protection zone by the board. Upon request of the board, the municipality for which the ordinance is being adopted shall provide the board with the names and addresses of persons entitled to notice under this subsection. Notification and filing of a certificate by the department are deemed to be notification and filing by the board for purposes of this section.

C. Any action challenging the validity of an ordinance based on failure by the board or municipality to comply with this subsection must be brought in Superior Court within 30 days after adoption or amendment of the ordinance or map. The Superior Court may invalidate an amended ordinance or map if the appellant demonstrates that the appellant was entitled to receive notice under this subsection, that the municipality or board failed to send notice as required, that the appellant had no knowledge of the proposed adoption or amendment of the ordinance or map and that the appellant was materially prejudiced by that lack of knowledge. This paragraph does not alter the right of a person to challenge the validity of any ordinance or map based on the failure of a municipality to provide notice as required by Title 30-A, section 4352, subsection 9 or the failure of the board to provide notice as required by this Title.

2. Municipal ordinances. In accordance with a schedule adopted by the board and acting in accordance with a local comprehensive plan, municipalities shall prepare and submit to the commissioner zoning and land use ordinances that are consistent with or are no less stringent than the minimum guidelines adopted by the board and, for coastal communities, that address the

coastal management policies cited in section 1801. When a municipality determines that special local conditions within portions of the shoreland zone require a different set of standards from those in the minimum guidelines, the municipality shall document the special conditions and submit them, together with its proposed ordinance provisions, to the commissioner for review and approval.

Notwithstanding section 435, a municipality may limit to 75 feet the shoreland zone around a freshwater wetland that has not been rated by the Department of Inland Fisheries and Wildlife as having moderate or high value provided that the municipality applies the requirements of this article regarding streams as defined under section 436-A to any outlet stream from any freshwater wetland.

3. Commissioner approval. Municipal ordinances, amendments and any repeals of ordinances are not effective unless approved by the commissioner. In determining whether to approve municipal ordinances or amendments, the commissioner shall consider the legislative purposes described in section 435, the minimum guidelines and any special local conditions which, in the judgment of the commissioner, justify a departure from the requirements of the minimum guidelines in a manner not inconsistent with the legislative purposes described in section 435. Recognizing that the guidelines are intended as minimum standards, the commissioner shall approve a municipal ordinance that imposes more restrictive standards than those in the guidelines. If an ordinance or an amendment adopted by a municipality contains standards inconsistent with or less stringent than the minimum guidelines, the commissioner, after notice to the municipality, may approve the proposed ordinances or amendment with conditions imposing the minimum guidelines in place of the inconsistent or less stringent standard or standards. Those conditions are effective and binding within the municipality and must be administered and enforced by the municipality. If the commissioner fails to act on any proposed municipal ordinance or amendment within 45 days of the commissioner's receipt of the proposed ordinance or amendment, the ordinance or amendment is automatically approved. Any application for a shoreland zoning permit submitted to a municipality within the 45-day period is governed by the terms of the proposed ordinance or amendment if the ordinance or amendment is approved under this subsection. A municipality may appeal to the board a decision of the commissioner under this subsection.

4. Failure to adopt ordinances. If the commissioner determines, after notice to a municipality, that the municipality has failed to adopt ordinances as required under this article or that an ordinance that the municipality has adopted does not satisfy the requirements and purposes under this article, and that the commissioner is unable to make the ordinance consistent with the minimum guidelines by the imposition of conditions, as set forth in subsection 3, then the commissioner shall request and the board may adopt, acting in accordance with Title 5, chapter 375, subchapter II, suitable ordinances, or suitable provisions of ordinances, on behalf of the municipality. ~~Notwithstanding subsections 2 and 3, if the board determines that special water quality considerations on a great pond warrant more restrictive standards than those contained in~~

~~the minimum guidelines; the board may adopt the additional standards for all municipalities outside the jurisdiction of the Maine Land Use Regulation Commission, which about these waters.~~ Following adoption by the board, these ordinances or provisions are effective and binding within the municipality and must be administered and enforced by that municipality. The board may adopt modifications to ordinances adopted pursuant to this subsection. Preparation and notice of proposed modifications, prior to consideration by the board, may be initiated by the commissioner.

5. Exemptions. Any areas within a municipality that are subject to nonmunicipal zoning and land use controls may be exempted from the operation of this section upon a finding by the commissioner that the purposes of this chapter have been accomplished by nonmunicipal measures.

6. Variances.

6-A. Variances. A copy of a request for a variance under an ordinance approved or imposed by the commissioner or board under this article must be forwarded by the municipality to the commissioner at least 20 days prior to action by the municipality. The material submitted must include the application and all supporting information provided by the applicant. The commissioner may comment when the commissioner determines that the municipal issuance of the variance would not be in compliance with the requirements of state law for a zoning variance or that the variance would undermine the purposes stated in section 435. These comments, if submitted by the commissioner prior to the action by the municipality, must be made part of the record and must be considered by the municipality prior to taking action on the variance request.

7. Exclusion of recreational boat storage buildings. Notwithstanding subsection 3, the exclusion of recreational boat storage buildings from the definition of "functionally water-dependent uses" is deemed to be incorporated into each municipal shoreland zoning ordinance on the effective date of this subsection, regardless of any prior approval of the ordinance by the commissioner.

Sec. 17. 38 MRSA § 488-A(9), is further amended to read:

~~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, an oil terminal facility or an offshore wind power project with an aggregate generating capacity of 3 megawatts or more that is not a community-based offshore wind energy project as defined in Title 42, section 682, subsection 19, is exempt from the requirements of this article.~~

~~A. If a development is located in part within an organized area and in part within an area subject to the jurisdiction of the Maine Land Use Regulation Commission, that portion of the development within the organized area is subject to review under this article if that portion is a development pursuant to this article. That portion of the development within the jurisdiction of the commission is exempt from the requirements of this article except as provided in paragraph B. [2005, c. 330, §19 (NEW).]~~

~~B. If a development is located as described in paragraph A, the department may review those aspects of a development within the jurisdiction of the Maine Land Use Regulation Commission if the commission determines that the development is an allowed use within the subdistrict or subdistricts for which it is proposed pursuant to Title 12, section 685-B. A permit from the Maine Land Use Regulation Commission is not required for those aspects of a development approved by the department under this paragraph. [2005, c. 330, §19 (NEW).]~~

~~Review by the department of subsequent modifications to a development approved by the department is required. For a development or part of a development within the jurisdiction of the Maine Land Use Regulation Commission, the director of the 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.~~

9. Development within unorganized and deorganized areas. A development located within an unorganized or deorganized area, and that is subject to a Concept Plan, Resource Plan or Planned Development District approved or adopted by the former Land Use Regulation Commission or the Land Use Review and Appeals Board pursuant to Title 30-A chapter 304, or any other state or county authority, is exempt from the requirements of this article A.

Sec. 18. 38 MRSA § 361-A, is further amended to read:

3. Municipality. "Municipality" means a city, town, plantation or unorganized township in the case of the unorganized and deorganized areas of the State of Maine, the county in which said areas are located. For purposes of this Title 38, all of the unorganized and deorganized areas located within a single county, shall be deemed a "municipality" within the meaning of Title 38.

Sec. 19. 38 MRSA § 480-E-1, is repealed.

~~Review by the department of subsequent modifications to a development approved by the~~

department is required, except that the ~~County Commissioners~~ Maine Land Use Regulation Commission shall issue modifications to permits issued by the department pursuant to this article prior to September 18, 1999. The ~~Maine Land Use Regulation Commission~~ shall process these permits and modifications in accordance with the provisions of Title 12, sections 681 to 689 and rules and standards adopted under those sections. ~~[2005, c. 330, §14 (NEW).]~~

The ~~Maine Land Use Regulation Commission~~, in consultation with the department, shall annually review land use standards adopted by the commission to ensure that the standards afford a level of protection consistent with the goals of this article, the goals of Title 12, chapter 206-A and the commission's comprehensive land use plan. ~~[2005, c. 330, §14 (RPR).]~~

Sec. 20. Transfer of authority from LURC to Counties.

a. Transition Advisory Board.

i. Assistance to counties. The Transition Advisory Board is established to assist the counties and the Land Use Review and Appeals Board on matters related to transferring authority over land use planning and regulation in the unorganized and deorganized areas from the Maine Land Use Regulation Commission to the Board. With respect to the counties and the Board, the Transition Advisory Board is strictly advisory and may not require or otherwise direct a county or the Board to perform or not perform any action. The Transition Advisory Board shall have five members appointed by the Governor. Members of the Transition Advisory Board are not entitled to compensation of any kind, including reimbursement of expenses.

ii. Rulemaking. The Transition Advisory Board shall review and propose revisions to the Maine Land Use Regulation Commission's rules, regulations, plans and guidance documents, and the Maine Land Use Regulation Commission shall adopt such proposed revisions, on or before June 30, 2012. Such revisions are routine technical rules within the meaning of Title 5 section 807L.

b. State responsible for seamless transfer. All applications, petitions, projects, permits, opinions, decisions and approvals pending before LURC, shall be transitioned to the Board, the appropriate state agency, county or its designated municipal reviewing authority, in a reasonable and timely manner so that no delay to the applicant ensues. The Board, the appropriate state agency, county or its designee shall take administrative notice of all evidentiary records and hearings on pending applications. Any costs incurred, whether by the counties, applicant or otherwise, due to the failure of LURC to comply with the requirements of this section, shall be paid for by the State of Maine.

c. Organization of the Land Use Review and Appeals Board. County Commissioners shall appoint members to the Board by December 31, 2011.

d. Transfer of authority to County. County Commissioners that decide by an affirmative vote to assume authority over land use in the unorganized and deorganized area within the county before the effective date of this Act, shall provide written notice to the Transition Advisory Board, LURC and the Board of the date on which it intends to assume this authority. County commissioners may appoint a planning board prior to this date. Upon assuming authority, County Commissioners may adopt the existing LURC comprehensive land use plan, district and standards and rules, or may adopt a new comprehensive plan and land use ordinances using the procedures in Title 30-A, chapter 187. Counties that adopt the existing LURC comprehensive land use plan and rules, must review the plan and rules and adopt amendments to the plan and incorporate the rules into an ordinance within one year.

e. Interim Land Use Districts and Standards. Until otherwise adopted, amended or rejected in whole or in part, by an affirmative vote of the Board in accordance with Title 30-A, chapter 304, sub-chapter 3, the rules, regulations, districts and plans adopted by the Land Use Regulation Commission in effect on the Effective Date shall continue in full force and effect. The Board must initially review the plan and rules and adopt amendments to the plan and rules within one year.

f. Transition funding. The county commissioners may apply by January 1, 2012 for a counties' pro-rata share of the LURC component of the 2011-2012 budget to cover costs associated with the land use planning, zoning and land regulation with respect to the unorganized and deorganized areas located in that county. The county commissioners may enter into inter-local agreements with other counties, regional councils of governments, municipalities, or other entities to share land use planning, zoning and regulatory functions and with other government agencies for these purposes. Funding for each county pursuant to this section shall not exceed the amount previously budgeted to LURC based on a pro-rata budget allocation per county making the request. LURC's budget shall be reduced by all amounts allocated to the counties pursuant to this section.

g. Sunset provision. The Transition Advisory Board shall cease to exist on or before June 30, 2012.

Sec. 21. Prior permits, approvals and decisions. All permits, approvals and decisions of the Maine Land Use Regulation Commission pursuant to 12 M.R.S.A. c. 206-A prior to the June 30, 2012 are hereby ratified and shall and do hereby remain in full force and effect. Any permit, approval and decision of LURC pursuant to 12 M.R.S.A. c. 206-A, that has been appealed or is pending on appeal, before any federal, state or local agency or court, are hereby ratified and shall and do hereby remain in full force and effect subject to the final court or agency decision on the

appeal. If a matter is pending in court, the Attorney General shall continue to represent the relevant agency in that appeal.

LURC shall have delivered all pending petition, applications, permits, decision and approvals, pursuant to § 14(b) above to the appropriate state agency of jurisdiction, counties or the Board, as applicable, no later than June 30, 2012, but in no event shall the delivery by LURC result in any delay to an applicant. All other LURC materials shall be delivered to the State Archives on or before June 30, 2012. The state agency, Board or county, as applicable, shall take administrative notice of all filings, records, testimony, evidence and proceedings submitted in each pending application.

Sec. 22. Effective date. Those sections of this Act that repeal Title 12, chapter 206-A and those sections that amend portions of Titles 5, 12, 30-A, 35-A, 36 and 38, shall take effect, with respect to each county, the sooner of: the date the county commissioners designate in advance to LURC or June 30, 2012. In the event a county fails to so designate by this date, areas within the unorganized and deorganized areas within that county shall be subject to the jurisdiction of the Board.

SUMMARY

This bill restores local control. It repeals the Maine Land Use Regulation Commission and provides that planning and regulatory functions formerly undertaken by LURC, after June 30, 2012, if not sooner, may be undertaken by individual counties, groups of counties, or by the county-based Land Use Review and Appeals Board. The bill empowers local communities and landowners, and gives them a voice in how their unorganized and deorganized are regulated and administered. The bill gives counties an array of options for land use planning, zoning and permitting in the unorganized and deorganized areas. The Board is comprised of 8 county commissioners, one each from Aroostook, Oxford, Franklin, Somerset, Piscataquis, Penobscot, Hancock and Washington counties. The bill pays for itself through existing tax revenues and the municipal cost component for services. The bill provides for more unified regulation of statewide resources; i.e. Site Law and NRPA would be regulated entirely by DEP; timber harvesting by the Maine Forest Service. The bill provides during the transition

period and thereafter until otherwise amended or rejected by the counties, that existing LURC regulation and zoning stay in place.