



MAWS

Maine Association of Wetland Scientists

P.O. Box 361: Augusta, Maine: 04330 www.mainewetlands.org

The Maine Association of Wetland Scientists was founded in 1990 in order to promote the profession and understanding of wetland science in Maine, and to protect the public interest by maintaining high professional standards. The organization promotes and participates in educational programs pertaining to the study of wetland science and advancing the profession of wetland science for the Association's membership and the public. To that end, the organization supports and contributes to the expansion of wetland science research and development and promotes policies that contribute to the protection and sound stewardship of wetland resources.

March 20, 2013

125th Maine State Legislature
Environment and Natural Resource Committee
Senator James A. Boyle
Representative Joan W. Welsh
100 State House Station
Augusta, Maine 04333

**Re: Maine Association of Wetland Scientists Public Statement on LD 695
Sec. 1. 38 MRSA §488, sub-§29 SLODA Exemption for New Construction At
or Modification of Existing Development**

Dear Co-Chairs Senator Boyle & Representative Welsh and members of the Environment and Natural Resources (ENR) Committee:

On behalf of the Executive Committee (EC) of the Maine Association of Wetland Scientists (MAWS), we respectfully submit comments regarding LD 695, which is a Maine Department of Environmental Protection (MDEP) Site Location of Development Act (SLODA) exemption for new construction at, or modification of, existing development that has an existing SLODA permit. At this time, MAWS is neither for nor against this proposed legislation, but would like to comment to the ENR on the proposed legislation and present a potential alternative to the legislation using existing permitting avenues.

According to LD 695, *"This bill exempts from review, under the laws governing site location of development, new construction at or modification of an existing licensed development that is permitted if the additional disturbed area not to be revegetated does not exceed 20,000 square feet of ground area in any calendar year and does not exceed 40,000 square feet of ground area in total and the construction or modification does not involve a division of the parcel of land".*

The permittee will be required to notify the MDEP annually of activities that took place in the previous 12 months under this exemption and the notification will include plans of the activity certified by a professional engineer. We understand that other MDEP licensing requirements, such as Stormwater and Natural Resources Protection Act, will not be affected by this legislation.

There are both positive and negative aspects of this proposed legislation.

If adopted as written, this proposed legislation could potentially undermine existing natural resource protections, and protections on the public and neighboring uses. Consider an industrial development that obtains a SLODA permit in 2013. Through discussions with MDEP during the SLODA process, it is required that a wider than normal buffer between the industrial activity and a Significant Wildlife Habitat be maintained due to exceptionally high noise emissions from the facility. During MDEP public hearings on the project, the abutting residential landowners also request a wide wooded buffer due to noise emissions. These protections are agreed on, and the facility is granted a SLODA permit. In 2015, the facility is constructed and under new ownership, who uses different consultants. Using the proposed exemption, the new owners expand the facility towards the Significant Wildlife Habitat (although not so close as to trigger NRPA permitting), and towards the abutting residences. Because there was no subsequent review process by the MDEP prior to the activity, protections that were agreed to during the initial SLODA process were lost.

This is just one of many scenarios that could be considered where an exemption to pre-activity review by the MDEP is detrimental to the protections that the SLODA was designed to safeguard.

However, we recognize the need for a more streamlined permitting process, especially for minor modifications/activities at an existing facility. To this end, we call your attention to an existing process that is meant to streamline the SLODA permitting process for existing facilities that have an existing SLODA permit, the MDEP **Minor Revision Application**, which is for use with SLODA, Natural Resources Protection Act, and Stormwater Projects. The form reads, "*This form shall be used for minor revisions to a project that has received a previous Site Law (SLODA), NRPA or Stormwater Law permit from the Department, where the revision(s) significantly decreases or eliminates an environmental impact, does*

not significantly expand the project, does not change the nature of the project or does not modify any Department findings with respect to any licensing criteria. If significant changes are proposed, than an amendment application will be required by the Department”.

The MDEP Minor Revision Application does not specify the Department criteria used to determine the threshold between a minor revision and an amendment. We propose that if the thresholds discussed in LD 695 are acceptable to the Board, a “minor revision” be defined to include the language in LD 695, as follows:

29. Exemption for new construction at or modification of existing development. New construction at or modification of an existing licensed development that is permitted pursuant to this article can be permitted through the Minor Revision Application (strike: *is exempt from review under this article*) if:

A. The additional disturbed area not to be revegetated does not exceed 20,000 square feet ground area in any calendar year and does not exceed 40,000 square feet ground area in total (MAWS comment: or limits as determined by the Board and Department); and

B. The construction or modification does not involve a division of the parcel of land.

The permittee shall submit a MDEP Minor Revision Application for the activity that meets A. and B. above (strike: *annually notify the department of any new construction or modification undertaken during the previous 12 months that is governed by this subsection*). The Minor Revision Application (strike: The Notice) must identify the type, location and ground area of the new construction or modification. At the time of submission of the Application (strike: of the annual notification), the permittee shall provide to the department development plans, certified by a professional engineer, for new construction or modification governed by this subsection.

Clearly defining the limits of a “minor revision” for any SLODA, NRPA or Stormwater project would serve both the needs of the MDEP to protect the environment and citizens, and facility owners to streamline the permitting process. With definition, the legislature could also mandate timelines for processing of these applications, which would make the permitting process more transparent for potential permittees.

Thank you for considering our comments on LD 695. We would be happy to attend the work session to discuss our suggestions and answer any questions you may have regarding any of the proposed changes to natural resource law in Maine.

Respectfully Submitted,

The Executive Committee of the Maine Association of Wetland Scientists

Rich Jordan, President
Sarah Watts, Program Chair
Laura Lapierre, Ethics Chair
Steve Knapp, Secretary
Kaitlin Nickerson, Membership
Past President, Jeff Simmons
Tim Forrester, Treasurer
Rodney Kelshaw, Chair, Legislative Committee

Author and Presenter:



Aleita Burman, MAWS Legislative Committee Member