

5. Variance. The commissioner shall establish, by rule, standards to permit activities that exceed the standards set forth under subsection 2. In developing standards, the commissioner shall consider the unique characteristics of a site and any related economic hardship which would result from noncompliance with these standards.

[1989, c. 555, §10 (NEW) .]

6. Transfer or sale of property. Upon sale or other transfer of ownership of land that has been harvested, the transferee becomes responsible for the regeneration requirements on the site. The transferor shall disclose in writing to the transferee the regeneration requirements of this section at, or prior to, the time of sale or transfer. Failure of the transferor to comply with the disclosure requirement shall result in the transferor being responsible for compliance with the regeneration requirements of subsection 1.

[1989, c. 555, §10 (NEW) .]

7. Application. This section applies to all forest lands within the State, including land in municipal and state ownership. Except as provided in subsection 7-A, only state-owned or operated research forests or industrially owned research forests certified by the commissioner are exempt from these requirements.

[2001, c. 339, §4 (AMD) .]

7-A. Exemption for outcome-based forestry areas. An outcome-based forestry area designated under section 8003, subsection 3, paragraph Q is exempt from the requirements of this section if specifically exempted in the agreement establishing the outcome-based forestry area.

[2013, c. 542, §5 (AMD) .]

8. Relationship to municipal rules and regulations. Nothing in this subchapter may be construed to preempt or otherwise limit the existing authority of municipalities to regulate harvesting, except that municipalities regulating timber harvesting shall adopt definitions for forestry terms used in their ordinances that are consistent with definitions in section 8868 and with forestry terms adopted by the commissioner pursuant to this subchapter. Municipal timber harvesting ordinances adopted before September 1, 1990 must meet this standard of compliance with definitions no later than January 1, 2001.

A municipality may not adopt an ordinance that is less stringent than the minimum standards established in this section and in rules adopted by the commissioner to implement this section and section 8867-B. A municipality may not adopt or amend an ordinance that regulates timber harvesting unless the process set out in this subsection is followed in the development and review of the ordinance.

A. A licensed professional forester must participate in the development or amendment of the ordinance. [1999, c. 263, §1 (AMD) .]

B. A meeting must take place in the municipality during the development or amendment of the ordinance between representatives of the department and municipal officers and officials involved in developing the ordinance. Discussion at the meeting must include, but is not limited to, the forest practices goals of the municipality. At this meeting and subsequently, the department shall provide guidance to the municipality on how the municipality may use sound forestry practices to achieve the municipality's forest practices goals. [1999, c. 263, §1 (AMD) .]

C. The municipality shall hold a public hearing to review a proposed ordinance or ordinance amendment at least 45 days before a vote is held on the ordinance. The municipality shall post and publish public notice of the public hearing according to the same general requirements of posted and published notice for zoning ordinance public hearings as provided by Title 30-A, section 4352, subsection 9.

In addition, when a municipality proposes to adopt or amend a timber harvesting ordinance pursuant to its home rule authority as provided by Title 30-A, section 3001, the municipality shall mail notice of the hearing by first-class mail at least 14 days before the hearing to all landowners in the municipality at

the last known address of the person on whom a property tax on each parcel is assessed. In the case of a timber harvesting ordinance or amendment that applies only to certain zones or land use districts in the municipality, the municipality may meet the requirements of this paragraph by mailing notice only to those landowners whose land is in a zone or land use district or immediately abutting the affected zone or land use district.

Mailed notice to individual landowners is not required under this subsection for any type of amendment to an existing local land use ordinance merely to conform that ordinance to the minimum timber harvesting guidelines required by Title 38, section 439-A, as those guidelines may be subsequently amended, or to conform any timber harvesting ordinance to the requirements of this section for conformity of definitions when the proposed amendments do not substantially change any previously established timber harvesting standards adopted pursuant to home rule authority.

The municipal officers shall prepare and file with the municipal clerk a written certificate indicating those landowners to whom the notice was mailed and at what addresses, when it was mailed, by whom it was mailed and from what location it was mailed. The certificate constitutes prima facie evidence that notice was sent to those landowners named in the certificate.

Any action challenging the validity of the adoption or amendment of a municipal timber harvesting ordinance based on the municipality's alleged failure to comply with the landowner notice requirement must be brought in Superior Court within 90 days after the adoption of the ordinance or amendment. The Superior Court may invalidate an ordinance or amendment only if the landowner demonstrates that the landowner was entitled to receive a notice under this section, that the municipality failed to send the notice as required, that the landowner had no knowledge of the proposed ordinance or amendment and that the landowner was materially harmed by that lack of knowledge. [1999, c. 263, §1 (AMD) .]

D. The municipal clerk shall notify the department of the time, place and date of the public hearing and provide the department with a copy of the proposed ordinance that will be reviewed at the hearing at least 30 days before the date of the hearing. [1999, c. 263, §1 (AMD) .]

E. At the public hearing, representatives of the department must be provided an opportunity to present and discuss for the municipality's information any reports, articles, treatises or similar materials published by acknowledged experts in the field of sound forestry or silvicultural management to the extent such information is relevant to the proposed ordinance or ordinance amendment.

The proposed ordinance or ordinance amendment may be revised after the public hearing. The ordinance or amendment must be submitted to the legislative body of the municipality in accordance with the procedures the municipality uses for adopting ordinances. [1999, c. 263, §1 (NEW) .]

F. Municipal timber harvesting ordinances may not be unreasonable, arbitrary or capricious and must employ means appropriate to the protection of public health, safety and welfare. [1999, c. 263, §1 (NEW) .]

G. All direct costs incurred by a municipality associated with landowner notification requirements and other required public notice must be paid to the municipality in accordance with a distribution schedule established under Title 30-A, section 5685, subsection 5. All direct costs incurred by a municipality in order to comply with this subsection for the amendment of ordinances adopted before September 1, 1990 must be paid to the municipality in accordance with a distribution schedule established under Title 30-A, section 5685, subsection 5. [1999, c. 263, §1 (NEW) .]

[2003, c. 335, §3 (AMD) .]

9. Centralized listing of municipal ordinances. The bureau shall maintain for informational purposes a statewide centralized listing of municipal ordinances that specifically apply to forest practices.