CHAPTER 314

COORDINATION OF LAND USE AND NATURAL RESOURCE MANAGEMENT

SUBCHAPTER 1

LAND AND WATER RESOURCES COUNCIL

§3331. Land and Water Resources Council

(REPEALED)

SECTION HISTORY

PL 1993, c. 721, §C1 (NEW). PL 1993, c. 721, §H1 (AFF). PL 1995, c. 537, §4 (AMD). PL 1995, c. 688, §3 (AMD). PL 1997, c. 393, §A10 (AMD). PL 1997, c. 519, §§A1-3 (AMD). PL 1997, c. 587, §1 (AMD). PL 2001, c. 184, §3 (AMD). PL 2003, c. 689, §B7 (REV). PL 2007, c. 399, §1 (AMD). PL 2007, c. 619, §1 (AMD). PL 2009, c. 652, Pt. A, §1 (AMD). PL 2011, c. 655, Pt. EE, §2 (RP). PL 2011, c. 655, Pt. EE, §30 (AFF).

SUBCHAPTER 2

LAND USE MEDIATION PROGRAM

§3341. Land use mediation program

1. Program established. The land use mediation program is established to provide eligible private landowners with a prompt, independent, inexpensive and local forum for mediation of governmental land use actions as an alternative to court action.
[PL 1995, c. 537, §5 (NEW).]

2. Provision of mediation services; forms, filing and fees. The Court Alternative Dispute Resolution Service created in Title 4, section 18-B shall provide mediation services under this subchapter. The Court Alternative Dispute Resolution Service shall:

A. Assign mediators under this subchapter who are knowledgeable in land use regulatory issues and environmental law; [PL 1995, c. 537, §5 (NEW).]

B. Establish a simple and expedient application process; and [PL 2013, c. 300, §1 (AMD).]

C. Establish a fee for services in an amount not to exceed $175 for every 4 hours of mediation services provided. In addition, the landowner is responsible for the costs of providing notice as required under subsection 7. [PL 1995, c. 537, §5 (NEW).]
[PL 2013, c. 300, §1 (AMD).]

3. Application; eligibility. A landowner may apply for mediation under this subchapter if that landowner:

A. Has suffered significant harm as a result of a governmental action regulating land use; [PL 1995, c. 537, §5 (NEW).]

B. Applies for mediation under subsection 4 within the time allowed under law or rules of the court for filing for judicial review of that governmental action; [PL 1995, c. 537, §5 (NEW).]

C. Has:

(1) For mediation of municipal governmental land use action, sought and failed to obtain a permit, variance or special exception and has pursued all reasonable avenues of administrative appeal; or

(2) For mediation of state governmental land use action, sought and failed to obtain governmental approval for a land use of that landowner's land and has a right to judicial review under section 11001 either due to a final agency action or the failure or refusal of an agency to act; and [PL 1995, c. 537, §5 (NEW).]

D. Submits to the Superior Court clerk all necessary fees at the time of application. [PL 1995, c. 537, §5 (NEW).]

[PL 1995, c. 537, §5 (NEW).]

4. Submission of application for mediation. A landowner may apply for mediation under this subchapter by filing an application for mediation with the Superior Court clerk in the county in which the land that is the subject of the conflict is located. The Superior Court clerk shall forward the application to the Court Mediation Service.

[PL 1995, c. 537, §5 (NEW).]

5. Stay of filing period. Notwithstanding any other provision of law, the period of time allowed by law or by rules of the court for any person to file for judicial review of the governmental action for which mediation is requested under this subchapter is stayed for 30 days beyond the date the mediator files the report required under subsection 12 with the Superior Court clerk, but in no case longer than 120 days from the date the landowner files the application for mediation with the Superior Court clerk.

[PL 1995, c. 537, §5 (NEW).]

6. Purpose; conduct of mediation. The purpose of a mediation under this subchapter is to facilitate, within existing land use laws, ordinances and regulations, a mutually acceptable solution to a conflict between a landowner and a governmental entity regulating land use. The mediator, whenever possible and appropriate, shall conduct the mediation in the county in which the land that is the subject of the conflict is located. When mediating that solution, the mediator shall balance the need for public access to proceedings with the flexibility, discretion and private caucus techniques required for effective mediation.

[PL 1995, c. 537, §5 (NEW).]

7. Schedule; notice; participants. The mediator is responsible for scheduling all mediation sessions. The mediator shall provide a list of the names and addresses and a copy of the notice of the mediation schedule to the Superior Court clerk, who shall mail the notices. The mediator shall include on the list persons identified in the following ways.

A. The landowner and the governmental entity shall provide to the mediator the names and addresses of the parties, intervenors and other persons who significantly participated in the underlying governmental land use action proceedings. [PL 1995, c. 537, §5 (NEW).]

B. Any other person who believes that that person's participation in the mediation is necessary may file a request with the mediator to be included in the mediation. [PL 1995, c. 537, §5 (NEW).]

C. The mediator shall determine if any other person's participation is necessary for effective mediation. [PL 1995, c. 537, §5 (NEW).]

[PL 1995, c. 537, §5 (NEW).]

8. Parties to mediation. A mediator shall include in the mediation process any person the mediator determines is necessary for effective mediation, including persons representing municipal, county or state agencies and abutters, parties, intervenors or other persons significantly involved in the underlying governmental land use action. A mediator may exclude or limit a person's participation in mediation when the mediator determines that exclusion or limitation necessary for effective mediation. This subsection does not require a municipality to participate in mediation under this subchapter.

[PL 1995, c. 537, §5 (NEW).]

9. Sharing of costs. Participants in the mediation may share the cost of mediation after the initial 4 hours of mediation services have been provided.
[PL 1995, c. 537, §5 (NEW).]

10. Admissibility. The admissibility in court of conduct or statements made during mediation, including offers of settlement, is governed by the Maine Rules of Evidence, Rule 408(a) for matters subsequently heard in a state court and Federal Rules of Evidence, Rule 408 for matters subsequently heard in a federal court.
[PL 1995, c. 537, §5 (NEW).]

11. Agreements. A mediated agreement must be in writing. The landowner, the governmental entity and all other participants who agree must sign the agreement as participants and the mediator must sign as the mediator.

A. An agreement that requires any additional governmental action is not self-executing. If any additional governmental action is required, the landowner is responsible for initiating that action and providing any additional information reasonably required by the governmental entity to implement the agreement. The landowner must notify the governmental entity in writing within 30 days, after the mediator files the mediator's report under subsection 12, that the landowner will be taking action in accordance with the agreement. [PL 1995, c. 537, §5 (NEW).]

B. Notwithstanding any procedural restriction that would otherwise prevent reconsideration of the governmental action, a governmental entity may reconsider its decision in the underlying governmental land use action in accordance with the agreement as long as that reconsideration does not violate any substantive application or review requirement. [PL 1995, c. 537, §5 (NEW).]
[PL 1995, c. 537, §5 (NEW).]

12. Mediator's report. Within 90 days after the landowner files an application for mediation, the mediator shall file a report with the Superior Court clerk. The mediator shall file the report as soon as possible if the mediator determines that a mediated agreement is not possible. The report must contain:

A. The names of the mediation participants, including the landowner, the governmental entity and any other persons; [PL 1995, c. 537, §5 (NEW).]

B. The nature of any agreements reached during the course of mediation, which mediation participants were parties to the agreements and what further action is required of any person; [PL 1995, c. 537, §5 (NEW).]

C. The nature of any issues remaining unresolved and the mediation participants involved in those unresolved issues; and [PL 1995, c. 537, §5 (NEW).]

D. A copy of any written agreement under subsection 11. [PL 1995, c. 537, §5 (NEW).]
[PL 1995, c. 537, §5 (NEW).]

13. Application. This subchapter applies to final agency actions and failures and refusals to act occurring after July 4, 1996.
[RR 1997, c. 2, §14 (COR).]

14. Repeal.

[PL 2001, c. 184, §4 (RP).]

SECTION HISTORY

PL 1995, c. 537, §5 (NEW). RR 1997, c. 2, §14 (COR). PL 1997, c. 393, §A11 (AMD). PL 2001, c. 184, §4 (AMD). PL 2013, c. 300, §1 (AMD).

SUBCHAPTER 3

NATURAL GAS PIPELINE DISPUTE RESOLUTION PROGRAM

§3345. Disputes involving natural gas pipeline activities

1. Program established. The natural gas pipeline dispute resolution program is established to provide private landowners with a prompt, independent, inexpensive and local forum for mediation of disputes concerning acts or omissions occurring during the construction, maintenance or operation of any natural gas pipelines that result in property damage.
[PL 1999, c. 346, §2 (NEW).]

2. Provision of mediation services; forms, filing and fees. The Court Alternative Dispute Resolution Service created in Title 4, section 18-B, shall provide mediation services under this subchapter. The Court Alternative Dispute Resolution Service shall:

A. Assign mediators under this subchapter who are knowledgeable in land use regulatory issues, property law and environmental law; [PL 1999, c. 346, §2 (NEW).]

B. Establish a simple and expedient application process; and [PL 1999, c. 346, §2 (NEW).]

C. Establish a fee for services in an amount not to exceed $175 for every 4 hours of mediation services provided. The landowner is responsible for the costs of the first 4 hours of mediation and for the costs of providing notice as required under subsection 7. [PL 1999, c. 346, §2 (NEW).]
[PL 1999, c. 346, §2 (NEW).]

3. Application; eligibility. A landowner may apply for mediation under this subchapter if that landowner:

A. Has suffered property damage as a result of an act or omission by a person surveying, constructing, operating or maintaining a natural gas pipeline on, over or under the landowner's land; [PL 1999, c. 346, §2 (NEW).]

B. Applies for mediation under subsection 4:

(1) With respect to any dispute concerning acts or omissions occurring during the construction of the pipeline, within one year of the completion of pipeline construction on the property; or

(2) With respect to any dispute concerning acts or omissions occurring after the construction of the pipeline, within the applicable statute of limitations on the underlying claim; [PL 1999, c. 346, §2 (NEW).]

C. With respect to any claim regarding future crop deficiency, provides notice to the entity against whom the claim is made at least 30 days prior to the crop harvest in order to allow the entity to assess crop deficiency; [PL 1999, c. 346, §2 (NEW).]

D. Has submitted a claim in writing to the entity responsible for the property damage and afforded that entity at least 10 business days to respond but failed to reach a satisfactory agreement of settlement with that entity within that time period; and [PL 1999, c. 346, §2 (NEW).]

E. Submits to the Superior Court clerk all necessary fees at the time of application. [PL 1999, c. 346, §2 (NEW).]
[PL 1999, c. 346, §2 (NEW).]

4. Submission of application for mediation. A landowner may apply for mediation under this subchapter by filing an application for mediation with the Superior Court clerk in the county in which the land that is the subject of the conflict is located. The Superior Court clerk shall forward the application to the Court Alternative Dispute Resolution Service.
[PL 1999, c. 346, §2 (NEW).]

5. Stay of filing period. Notwithstanding any other provision of law, the period of time allowed by law or by rules of the court for any person to file for judicial review in any state court of any claim

related to a dispute for which mediation is requested under this subchapter is stayed for 40 days beyond the date the mediator files the report required under subsection 12 with the Superior Court clerk, but in no case longer than 130 days from the date the landowner files the application for mediation with the Superior Court clerk.
[PL 1999, c. 346, §2 (NEW).]

6. Purpose; conduct of mediation. The purpose of a mediation under this subchapter is to facilitate a mutually acceptable solution to a dispute in accordance with applicable principles of property law and the terms of any easement.

The mediator, whenever possible and appropriate, shall conduct the mediation in the county in which the land that is the subject of the conflict is located.
[PL 1999, c. 346, §2 (NEW).]

7. Schedule; notice; participants. The mediator is responsible for scheduling all mediation sessions. The mediator shall provide the names and addresses of the landowner and the entity with whom the landowner has a dispute and a copy of the notice of the mediation schedule to the Superior Court clerk, who shall mail the notices.
[PL 1999, c. 346, §2 (NEW).]

8. Parties to mediation. A mediator shall include in the mediation process any person the mediator determines is necessary for effective mediation. A mediator may exclude or limit a person's participation in mediation when the mediator determines that exclusion or limitation necessary for effective mediation. Participation in the mediation process is voluntary for all parties and may not be compelled by the mediator or any other person.
[PL 1999, c. 346, §2 (NEW).]

9. Sharing of costs. Participants in the mediation may share the costs of mediation after the initial 4 hours of mediation services have been provided.
[PL 1999, c. 346, §2 (NEW).]

10. Admissibility. The admissibility in court of conduct or statements made during mediation, including offers of settlement, is governed by the Maine Rules of Evidence, Rule 408(a) for matters subsequently heard in a state court and Federal Rules of Evidence, Rule 408 for matters subsequently heard in a federal court.
[PL 1999, c. 346, §2 (NEW).]

11. Agreements. A mediated agreement must be in writing. The landowner and the entity with whom the landowner is in dispute must sign the agreement as participants and the mediator must sign as the mediator.
[PL 1999, c. 346, §2 (NEW).]

12. Mediator's report. Within 90 days after the landowner files an application for mediation, the mediator shall file a report with the Superior Court clerk. The mediator shall file the report as soon as possible if the mediator determines that a mediated agreement is not possible. The report must contain:

A. The names of the mediation participants; [PL 1999, c. 346, §2 (NEW).]

B. The nature of any agreements reached during the course of mediation and what further action is required of any person; [PL 1999, c. 346, §2 (NEW).]

C. The nature of any issues remaining unresolved and the mediation participants involved in those unresolved issues; and [PL 1999, c. 346, §2 (NEW).]

D. A copy of any written agreement under subsection 11. [PL 1999, c. 346, §2 (NEW).]

The terms of any mediated agreement are enforceable in the Superior Court. If the parties fail to reach a mediated settlement, any party may file an appropriate civil action for remedies in accordance with applicable law.

[PL 1999, c. 346, §2 (NEW).]

SECTION HISTORY

PL 1999, c. 346, §2 (NEW).

The State of Maine claims a copyright in its codified statutes. If you intend to republish this material, we require that you include the following disclaimer in your publication:

All copyrights and other rights to statutory text are reserved by the State of Maine. The text included in this publication reflects changes made through the Second Regular Session of the 129th Maine Legislature and is current through October 1, 2020. The text is subject to change without notice. It is a version that has not been officially certified by the Secretary of State. Refer to the Maine Revised Statutes Annotated and supplements for certified text.

The Office of the Revisor of Statutes also requests that you send us one copy of any statutory publication you may produce. Our goal is not to restrict publishing activity, but to keep track of who is publishing what, to identify any needless duplication and to preserve the State's copyright rights.

PLEASE NOTE: The Revisor's Office cannot perform research for or provide legal advice or interpretation of Maine law to the public. If you need legal assistance, please contact a qualified attorney.