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DEPARTMENT OF ENVIRONMENTAL PROTECTION

Chapter 380: LONG-TERM CONSTRUCTION PROJECTS (SITE LAW)

SUMMARY: These rules describe requirements associated with a long-term construction project, as provided for by 38 M.R.S.A. § 485-A(1-C).

- 1. Applicability.** This chapter describes requirements associated with a long-term construction project. This chapter applies to a development or amendment to a development for which approval is issued on or after the effective date of this chapter. This chapter also applies to a development issued a “planning permit” pursuant to the original Chapter 380 (Effective July 25, 1997) if the permittee requests to modify the permit so as to come under the current Chapter 380, and the department approves the modification. This chapter does not apply to metallic mineral mining or advanced exploration activities.
- 2. Definitions.** As used in this chapter, the following terms have the following meanings.
 - A. Long-term construction project.** A long-term construction project is a project authorized by an individual permit or amendment issued pursuant to the Site Law for construction that either is not anticipated at the time of approval to be substantially completed, or is not substantially completed, within ten years from the date of approval.

A long-term construction project that is not anticipated to be completed within ten years typically occupies large areas of land that will be developed over a significant period of time, such as large-scale mixed-use developments, airports, schools or postsecondary institutions and ski resorts.

- (1) Amendments. An initial long-term construction project and subsequent amendments are considered individually, when determining whether a project is not substantially completed within ten years from the date of approval.
 - (a) For example, if a development is permitted on 10/1/2015, then it would be considered “long-term” if not substantially completed by 10/1/2025, except where amended as provided in (b).
 - (b) If an amendment to a permit was issued on 10/1/2021, then the area subject to the amendment would be considered long-term if not substantially completed by 10/1/2031, and the remainder of the original development would be considered long-term if not substantially completed by 10/1/2025.
- (2) Permit by rule or minor revision. Determination of whether a project is a long-term construction project is not affected by the approval of a modification to the permit by means of a permit by rule or minor revision.

For provisions concerning modifications, which include amendments, minor revisions, and permit by rule, see *General Provisions, Site Location of Development (Site Law)*, 06-096 CMR 371(8).

- B. Substantially completed.** For purposes of this chapter “substantially completed” means that all major construction is completed. Final landscaping, installation of permanent erosion control measures, signage, site clean-up, and similar minor activities may still be underway following substantial completion.

- 3. Standards.** The applicant shall demonstrate that the development meets all applicable standards of 38 M.R.S.A. § 484, and the rules adopted pursuant thereto. Approval is based upon compliance of the entire development with the standards of the Site Law. A proper analysis of the potential primary, secondary and cumulative impacts of a proposed development can be made only when the entire development, including all phases, is considered. However, this determination may be based in part upon specified and limited assumptions as determined appropriate by the department. See also Section 4(B) of this chapter.

4. Procedure

- A. Election.** The applicant for a permit for a long-term construction project may elect to provide specific designs or, alternatively, may choose to specify assumptions for the development or a portion of the development as allowed by the department on a site-specific basis. In either case, the applicant shall provide sufficient information to the department to allow a determination concerning whether standards will be met.

- (1) Specified assumptions. Assumptions that may be specified include but are not limited to: the maximum developed area; the maximum amount of impervious area in each subwatershed, the types and maximum volume of waste, potential impacts to surface water and groundwater, and infrastructure requirements in each subwatershed or other relevant division of the area licensed under the permit. The types of assumptions that may be allowed by the department depend upon the type of proposed development and the site selected.
- (2) Plans. If the applicant elects to specify assumptions, the department may require the submission of specific built-out plans prior to construction, for review and approval, and may include limits in the terms of the permit or place conditions on the permit to address specific aspects of the unspecified future development, including but not limited to stormwater management, water supply, wastewater, groundwater, air emissions, odors, water vapor, storage and handling of potential contaminants, and scenic character.
- (3) Changes. Any changes to the approved assumptions must be submitted to the department for review and approval, and are processed as a minor revision or an amendment as applicable. The permittee seeking a modification of the permit must meet the standards in effect at the time the application for the modification is accepted as complete for processing.

- B. Conformance of future construction with rules.** The permittee of a long-term construction project shall submit periodic construction reports to the Department as described in B(1) and B(2). The permittee shall demonstrate that the following standards are met.

- (1) Five year review. If the permittee has not completed the development by five years from the date the long-term construction permit was issued, the permittee shall review the undeveloped portion of the parcel for habitats of species that are of special concern, threatened, or endangered and for rare natural communities and ecosystems (State rarity rank of S1 through S3) as listed by the Maine Natural Areas Program, as of five years from the date of permit issuance, and as of each date five years thereafter until the development is substantially complete. If any such habitat or species are discovered, the permittee must establish appropriate buffers or take other protective measures acceptable to the department in order to preserve the habitat.

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For purposes of this paragraph, “habitats of species that are of special concern, threatened or endangered” are as defined in *No Adverse Environmental Effect Standard of the Site Location Law*, 06-096 CMR 375(9)(B)(1) and (15)(B)(1)(a)(i) – (iii).

(2) Ten year review. If the permittee has not completed the development by ten years from the date the long-term construction permit was issued, the permittee shall do the following at ten years from the date of permit issuance, and as of each date ten years thereafter until the development is substantially complete.

(a) Demonstrate that construction during the period from ten to twenty years following permit issuance is in conformance with the rules in effect as of ten years from permit issuance. Following this pattern, the permittee must ensure that remaining construction is in conformance with current rules every 10 years following permit issuance, until the development is substantially complete.

The department may waive this requirement for a particular 10-year review, for a particular development or class of developments for which the department determines the change in rules to be insignificant. The waiver does not require rulemaking.

(b) Demonstrate that the requirements of *Financial Capacity and Technical Ability Standard of the Site Location Law*, 06-096 CMR 373 are still met for any portion of the development that is not substantially complete.

5. Submissions. An application for a proposed long-term construction project must include evidence that demonstrates that the standards of the Site Law and rules adopted pursuant thereto are met. In addition, evidence must be provided demonstrating that the following standards are met.

A. Identification of areas and resources protected under the Site Law and rules. If specified assumptions for the development or portion of the development rather than specific designs are provided, then the applicant must identify all areas protected under the Site Law and rules in all areas proposed for development, although the specific nature and extent of that development activity may not be known at the time that the permit is issued. If the development is within the viewshed of a scenic resource, the applicant must provide sufficient information concerning the entire development to allow the department to make a finding that scenic standards will be met.

B. Five year review. The permittee of a long-term construction project shall conduct a survey of the undeveloped part of the parcel for habitats of species that are of special concern, threatened, or endangered, and for rare natural communities and ecosystems (State rarity rank of S1 through S3) as listed by the Maine Natural Areas Program, as of five years from the date of permit issuance, and as of each date five years thereafter until the development is substantially completed. If any such habitat or species is discovered, the permittee must demonstrate the establishment of appropriate buffers or other protective measures acceptable to the department in order to preserve the habitat. These buffers shall be shown on as-built plans of the development completed within the five year period.

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C. Ten year review. The permittee of a long-term construction project shall demonstrate that portions of the development not yet constructed will be in compliance with standards in effect at the time of the ten year review, including but not limited to:

- (1) An evaluation of the conformance of future construction with department rules in effect at the time of the evaluation, to the extent that rules have been adopted or amended in the previous ten years period following issuance of the permit, unless this requirement is waived by the department.
- (2) Identification and delineation of any previously unidentified areas and resources protected under the Site Law and rules.
- (3) Demonstration that the requirements of *Financial Capacity and Technical Ability Standard of the Site Location Law*, 06-096 CMR 373 are still met for any portion of the development that is not substantially complete. See the submission requirements at Chapter 373(2)(C) and (3)(C).

6. Conditions

A. Standard conditions. The standard conditions specified in Chapter 372 apply to long-term construction permits. However, compliance with the periodic reporting requirements of sections 5(B) and 5(C) above shall constitute a renewal of the permit for the purposes of Chapter 372 Section 12(F).

B. Special conditions. The department may, as a term or condition of approval, establish any reasonable requirement to ensure that the proposed development will proceed in accordance with the Site Law and rules, including periodic review of the yet underdeveloped portions of the project under department rules applicable at the time of review, such as requiring the following.

- (1) Changes to specified assumptions. Any changes to the approved specified assumptions regarding lot development and stormwater management, water supply, wastewater, groundwater, air emissions, odors, or water vapor described in this Order shall be submitted to the Bureau of Land Resources for review and approval.
- (2) Wastewater discharges. All wastewater discharges must be sanitary in nature with strength of 250 mg/L or less for both biological oxygen demand (BOD) and total suspended solids (TSS).

7. Inspection. The department may inspect the site at any time to determine the state of compliance with this section and other applicable laws or rules, and the permittee must take all measures necessary to correct any noncompliance with applicable law and rules.

8. Modification prior to or following substantial completion of construction. The granting of a permit is dependent upon and limited to the proposals, plans, and specific assumptions contained in the application and supporting documents submitted and affirmed to by the applicant. Any variation from these plans, proposals, and supporting documents must be submitted to the department for review and approval prior to implementation.

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AUTHORITY: 38 M.R.S.A. § 341-D(1-B) and § 485-A(1-C)

REPEALED AND REPLACED: