

Chapter 380: PLANNING PERMIT

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

- 1. Definition of planning permit.** A planning permit is an individual permit, issued pursuant to the Site Location of Development Law (Site Law), 38 M.R.S.A. §§ 481-490. It includes approval for future build-out in a delineated area within specified parameters. See 38 M.R.S.A. § 485-A(1-C). It is intended for developments occupying large areas of land that will be constructed over a significant period of time, such as some industrial parks, airports, and resorts. A planning permit may be sought as an optional alternative to individual approvals for specifically described and located projects. A planning permit is not available for metallic mineral mining or advanced exploration activities.
- 2. Standards.** The applicant shall affirmatively demonstrate that the development meets the standards at 38 M.R.S.A. § 484, and the rules adopted pursuant thereto. All resources protected under the Site Law must be identified and protected in the areas proposed for development, although the specific nature and extent of that development may not be known at the time that the permit is issued. The applicant shall identify aspects of the development such as the maximum area of development, the types and maximum volume of waste, procedures for waste disposal, 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 department may place conditions on the permit to address specific aspects of the unspecified future development, including but not limited to noise, storage and handling of potential contaminants, air quality, impact on climate, and scenic character.

Under a planning permit, an activity may not be conducted in an area where the department determines that the activity may have a direct or indirect unreasonable impact on nearby properties, protected natural resources, natural buffer strips, unusual natural areas, historic sites, or wildlife and fisheries, unless measures to mitigate or prevent these impacts for the specific site of the proposed activity have been previously approved by the department. An activity may not be conducted in an area where the department determines that the activity would create an unacceptable risk of unreasonable environmental impact, due to factors including but not limited to steep slopes or highly erodable soils, unless measures to mitigate or prevent the impacts are approved by the department.

Construction or other activities conducted under this chapter must be supervised by the professional that was responsible for design of the activity in order to ensure conformity with the design, unless otherwise approved by the department. The duties of this professional include, but are not limited to, preparation of a site-specific erosion control plan; supervision of the installation and maintenance of erosion control measures employed during construction; and removal of temporary erosion control measures and stabilization of the site.

- 3. Submissions.** A permit is required for all areas of the parcel to be developed. In addition to the submissions referenced elsewhere in rules adopted pursuant to the Site Law, the following items must be submitted.

- A. Map.** A map of the area proposed for licensing under the planning permit, including both areas of specified and unspecified development, meeting the following criteria.

This plan must show all existing facilities at the site, and delineate all watersheds on the parcel that include areas covered under the planning permit, and include information on soil types in those watersheds available from county soil surveys or the equivalent. For any areas covered under the planning permit within which development is proposed, the applicant shall submit more detailed soils information at a mapping class to be determined by the department. The plan must identify areas such as protected natural resources as defined in the Natural Resources Protection Act (NRPA), natural buffer strips, unusual natural areas, archeological and historic sites, and wildlife and fisheries habitat. The contour interval of this plan must be two feet, except in areas of sustained slopes of twenty percent or greater, in which case a five-foot contour interval may be acceptable, as determined by the department. Larger contour intervals may be approved for large developments of two hundred fifty acres or more and relief greater than two hundred feet within the developed area of the parcel. The scale of this plan must be as defined below, unless another scale is specifically approved by the department.

- (1) For developments of 100 acres or less in total area, the scale must be 1 inch equals no more than 100 feet.
- (2) For developments of more than 100 acres but less than 250 acres in total area, the scale must be 1 inch equals no more than 200 feet.
- (3) For developments of 250 acres or more in total area, the required scale must be determined by the department.
- (4) For any development, the department may require more detailed topographic maps in certain areas of concern, and in those areas where development or structures have been localized within smaller areas of a larger parcel. The scale of these maps is determined by the department on a case-by-case basis.

- B. Stormwater management.** Plans at the scale required in 3(A), above, identifying all areas of watersheds most at risk from new development, sensitive or threatened regions or watersheds, and other areas. Stormwater requirements are specified in 38 M.R.S.A. § 420-D, and rules adopted pursuant thereto. The applicant shall provide the following information.

- (1) The existing (pre-development) runoff hydrographs for all watersheds to be included in the planning permit.
- (2) The maximum amount of impervious surface, regrading, and altered cover type in each watershed to be included under the planning permit.
- (3) Determination of the maximum potential increase in runoff, and need for water quality treatment in runoff from the site according to criteria established in department rules. The applicant may choose to design and submit for review plans showing measures to control stormwater quality and quantity so that the standards of department rules will be met, or may choose to delay submission of some or all of those designs until plans for development in those areas of the parcel are more complete. Adequate stormwater management must be provided

for all specified development on the parcel; the department must have approved the specific stormwater management measures for any watershed before any activity under the planning permit begins in that watershed.

- C. Erosion control plan.** A general erosion control plan for the parcel, describing measures to be used to maintain compliance with the standards established at 06-096 CMR 375.5, including but not limited to details of all temporary and permanent erosion control measures to be used at the site, and rates of mulch and seeding appropriate to different times of the year, slopes, and soil conditions.
- D. Solid waste disposal.** A demonstration that the development or off-site utilities have adequate capacity to dispose of the solid waste anticipated to be generated by the development during construction and at full build-out. If solid waste disposal is by an off-site utility, the applicant must submit a letter from the utility stating that it has adequate capacity to handle the maximum volume of solid waste to be sent to the utility at full build-out, presuming full build-out within the year following approval, through at least the next five years, given reasonably anticipated changes in demand on that utility from other sources during that time. If a construction schedule is established as a condition of the permit, an alternate demonstration of adequate capacity may be approved.
- E. Wastewater demonstration.** A demonstration that either the wastewater treatment plant in the area has capacity to handle the maximum volume of wastewater to be generated at full build-out, or that the site soils have the capacity, in the areas proposed for development, to infiltrate the sanitary wastewater to be generated by the parcel at full build-out, without unreasonable adverse impact on surface water quality or groundwater quality. The department may require establishment of setbacks from property boundaries to prevent degradation of groundwater quality on adjacent parcels. If wastewater disposal is by an off-site treatment plant or similar utility, the applicant must submit a letter from the utility stating that it has adequate capacity to handle the maximum volume of wastewater to be generated and discharged to the utility at full build-out, presuming full build-out within the year following approval, through at least the next five years, given reasonably anticipated changes in demand on that utility from other sources during that time. If a construction schedule is established as a condition of the permit, an alternate demonstration of adequate capacity may be approved.
- F. Water supply information.** A demonstration that an existing water supply has adequate capacity to serve the development at full build-out, or that an adequate supply of groundwater or surface water exists on site to supply the development's needs at full build-out, without unreasonable adverse impact on natural resources or either existing or designated uses of groundwater and surface water. If water supply is by an off-site utility, the applicant must submit a letter from the utility stating that it has adequate capacity to supply the maximum volume of water to be required from that utility at full build-out, presuming full build-out within the year following approval, through at least the next five years, given reasonably anticipated changes in demand on that utility from other sources during that time. If a construction schedule is established as a condition of the permit, an alternate demonstration of adequate capacity may be approved.
- G. Groundwater protection plan.** A groundwater protection plan, if the development may handle potential contaminants in excess of normal household quantities. The groundwater protection practices chosen for this plan, as determined to be necessary by the department, may include but

are not limited to equipment design, operational procedures, preventive maintenance, construction techniques, personnel training, spill response capabilities, alternative materials or processes, implementation of new technology, modification of facilities or equipment, spill prevention control and countermeasure plans, best management practices, hazardous waste contingency plans, runoff or infiltration control systems, and siting considerations.

- H. Archeological and historic sites information.** Evidence that the proposed development will not adversely affect an historic site. The applicant must submit archeological surveys if required by the department.
- I. Unusual natural areas information.** Evidence that the proposed development will not adversely affect an unusual natural area, as defined in 06-096 CMR 375.12, and a description of appropriate buffers or other protective measures for unusual natural areas identified. The applicant must submit a survey for the presence of unusual natural areas, covering areas of the parcel to be included in the planning permit, if required by the department.
- J. Traffic analysis.** An analysis of the increase in traffic due to the development at full build-out. A traffic study, if required, must meet the requirements of 06-096 CMR 374, and must demonstrate that traffic in the vicinity of the development will meet the traffic standards of 06-096 CMR 374 at full build-out of the development.
- K. Wildlife and fisheries habitat.** A plan to fully mitigate detrimental impacts on wildlife and fisheries habitat identified on the map submitted under subsection A of this section.

L. Technical Ability

- (1) The applicant shall submit resumes or similar documents detailing the experience and qualifications of full-time, permanent or temporary staff employed or contracted by the applicant who will design, construct, and oversee development. These parties must be responsible for design and implementation. This submission requirement does not apply to temporary workers employed by the applicant for the sole purpose of conducting the physical labor, or to the design of activities based on "off-the-shelf" or other standardized or non-copyrighted designs, or adaptations of designs by staff employed at other facilities owned by the applicant.
 - (2) In the event there are changes in the staff employed for design and supervision, the applicant must supply resumes or equivalent documents for any staff hired or retained to replace those previously employed as part of the annual report.
- 4. Prior review.** After issuance of a planning permit, but prior to any construction, grading, alteration of cover type, or change to any facility, including change in function or use, the applicant must submit for review and approval plans of a stormwater management system for levels of development up to and including the maximum anticipated development in the watershed, and a specific erosion control plan detailing the measures to be used at the site to meet the requirements of 06-096 CMR 375.5 and 38 MRSA § 420-C. These plans must include information on soil types in the specific area proposed for development, at a mapping class to be determined by the department. No construction may be conducted in an area prior to the department's approval of the stormwater management system for that area.

5. **Prior notification.** After issuance of the permit, but no later than fifteen working days prior to the start of any construction, grading, alteration of cover type, or change to any facility, including change in function or use, in areas of the parcel licensed under the planning permit must submit to the department a letter of notification of the activity. This letter must contain a diagram showing the location of the intended project, a description of the function and dimensions of the proposed project, and details of the sequence of construction. The sequence of construction must specifically describe the installation and removal of erosion control measures and procedures for permanent stabilization of the site, and must be included in the plans used for construction.

The department may provide for construction of certain activities of a minor nature, such as installation of septic systems or water supply wells, changes in road placement within an approved right-of-way, changes in utilities routing, or similar activities, without prior notification. The nature of and any restrictions on these activities will be specified in the permit.

6. **Revision of plan.** By no later than December 31 of each year, the applicant shall submit to the department a revised site plan and accompanying narrative, showing all facilities at the site as of December 31 of that year, and specifically identifying any construction and all other activities conducted under the planning permit. If the site plan comprises several plan sheets, or the construction was conducted in only a small area of a much larger parcel, the applicant need only submit plans for those areas within which applicable construction occurred.

7. **Conformance of proposed construction with rules**

- A. **General.** At least every five years, the planning permit must be reviewed for conformance of future construction with department rules in affect at the time of review, and must be amended to conform with department rules at the time of that review, except as provided in (B) through (E) below. The applicant may apply to modify the permit to eliminate the requirement for any or all of the submissions under this section if the development has attained full build-out as described in the permit.

- B. **Threatened and endangered species and significant wildlife habitat.** The applicant shall review the undeveloped portion of the parcel licensed under the planning permit for habitat of threatened and endangered species at least every five years. If any such habitat or species are discovered, the applicant must establish appropriate buffers, or establish other protective measures acceptable to the department, in order to preserve the habitat.

- C. **Unusual natural areas or historic sites.** In the event that unusual natural areas or historic sites are discovered on abutting parcels, and these areas or sites appear to extend onto that area of the parcel licensed under the planning permit, or if such sites are discovered directly within the project area, the department must be notified by the applicant as soon as possible, and prior to disturbance of those areas. The department may require further evaluation of those areas by the applicant, and may require establishment of buffers or other protective measures, if determined to be necessary by the department.

- D. **Traffic.** Any traffic study required by 3(J), above, must be updated at least every five years, in order to determine if land use changes in the vicinity of the development have significantly altered relevant assumptions in the earlier traffic study. The updated study must demonstrate that traffic

in the vicinity of the development will meet the traffic standards of 06-096 CMR 374 at full build-out of the development.

- E. Solid waste, wastewater disposal, and water supply.** If solid waste disposal, wastewater disposal, or water supply are to be provided by off-site utilities, letters confirming the capacity of the utilities to handle the demand of the development at full build-out must be provided at least every five years.

NOTE: Activities that are regulated under the Natural Resources Protection Act (NRPA) require prior approval pursuant to that law. The applicant with a project constructed over a period of time needs to be aware that the status of some protected natural resources may change. For example, an area may be mapped as, or be discovered to contain, significant wildlife habitat as provided at 38 M.R.S.A. § 480-B(10). Similarly, the location of a stream channel or wetland edge may change.

- 8. Modifications.** A planning permit allows the permittee to make changes within the parameters of the permit. Other changes require a modification.
- 9. Conditions.** The standard conditions specified in Chapter 372.12 apply, except that the standard condition at Section 12(G) of that chapter only applies if the development is planned to be completed within five years.

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, as provided under Section 7(A).

- 10. Inspection.** The department may inspect the site at any time to determine the state of compliance with this section and other applicable rules, and require the applicant to take all measures necessary to correct any noncompliance with those rules.
- 11. Severability.** Should any provision of these rules be declared invalid or ineffective by court decision, the decision shall not invalidate any other provision of these rules.

AUTHORITY: 38 M.R.S.A. Section 341-D(1)

EFFECTIVE DATE: July 25, 1997

BASIS STATEMENT

Chapter 380 implements the planning permit which was added to the Site Location of Development Law (Site Law) under Public Law 1995, Section A-12. The rule establishes the criteria applicable to an alternative approach to current licensing procedures. The planning permit will allow approval of development within a specified area and within specific parameters, although the specific nature and extent of development may not be known at the time a permit may be issued. The location and parameters of a development would be required to meet all of the standards of the Site Law.