Chapter 373: FINANCIAL AND TECHNICAL CAPACITY STANDARDS OF THE SITE LOCATION OF DEVELOPMENT ACT

**SUMMARY**: This chapter includes rules adopted pursuant to the “financial capacity” and “technical ability” standard of the *Site Location of Development Act*, 38 M.R.S. §484(1). The rules elaborate on the statutory standards, set forth the information that must be submitted pursuant to each standard, and explain the Department’s authority to impose conditions on a permit issued.

**1. Introduction.** This chapter relates to the financial capacity and technical ability standard of the *Site Location of Development Act* (Site Law). 38 M.R.S. §484(1). To obtain a Site Law permit an applicant must demonstrate the financial capacity and technical ability to design, construct, operate and maintain the development in compliance with state environmental standards and the terms and conditions of the permit.

**2. Financial Capacity**

**A. Standard.** The applicant shall have financial capacity to design, construct, operate, and maintain the development in a manner consistent with state environmental standards and the provisions of the Site Law. The applicant must have the financial capacity for all aspects of the development, and not solely the environmental protection aspects. Evidence of financial capacity must be provided prior to a decision on an application, except, pursuant to 38 M.R.S. §484(1), the Department may defer a final finding on financial capacity by placing a condition on a permit that requires the permittee to provide final evidence of financial capacity before the start of any site alterations.

**B. Submissions.** The application for approval of a proposed development must include evidence that affirmatively demonstrates that the developer has the financial capacity to design, construct, operate, and maintain the proposed development, except in cases in which the Department defers a final determination as set forth in Section 2 (A) above. Evidence to demonstrate financial capacity must include, but is not limited to, the following information.

(1) **Cost estimates**. Accurate and complete cost estimates of the development, including all proposed phases. The itemization of major costs may include, but is not limited to, the cost of the following activities: land purchase, erosion control, roads, sewers, structures, water supply, utilities, pollution abatement, landscaping, and restoration of the site, if applicable.

(2) **Time schedule**. The time schedule for construction of all phases proposed.

(3) **Evidence of funds**. Evidence such as the following:

1. **Letter of commitment or intent to fund**. A letter from a financial institution, governmental agency, or other funding entity indicating a commitment to provide to the applicant a specified amount of funds and the uses for which the funds may be utilized. In cases where funding is required but there can be no commitment of money until approvals are received, an applicant may submit a letter of "intent to fund" from an appropriate funding institution indicating the amount of funds intended to be provided to the applicant and the specified uses for which the funds are intended.

In cases where one or more limited liability corporations are part of the applicant’s corporate structure, evidence must be submitted describing the applicant’s corporate structure, and demonstrating that the proposed financing is clearly linked from the financing institution to the applicant.

(b) **Self-financing**

(i) The most recent corporate annual report or financial statements indicating availability of sufficient funds to finance the development together with material explaining the report, and evidence that funds have been set aside for the proposed development. The financial information in any annual report and any financial statement should be audited, or an explanation provided why audited reports are not available.

(ii) Copies of bank statements of accounts held by the applicant or other evidence indicating that funds are available and have been set aside for the proposed development.

(c) **Government agency**

(i) Evidence that funds to complete the development have been included in an approved budget, that the expenditure of funds has been approved by the appropriate legal entity such as the municipality or the Legislature, that the issuance of bonds has been approved to cover the cost of the development, or that grant money has been obtained to cover development costs.

(ii) In cases where funding is required but there can be no commitment of money until approvals are received, a detailed plan outlining how funds for the development will be obtained and evidence that legal authority exists to implement the plan.

(d) **Non-profit organization**

(i) Evidence that funds to complete the development have been included in an approved budget and that grant money or other funds have been obtained to cover the development costs.

(ii) In cases where funding is required but there can be no commitment of money until approvals are received, a detailed plan outlining how funds for the development will be obtained, including projections for and status of any fund raising.

(4) **Phased development**. In cases of phased development or long term construction projects, the department may find that the applicant has demonstrated adequate financial capacity to comply with department requirements provided (a) the applicant has demonstrated financial capacity for a separate first phase, and (b) the permit is conditioned to require that evidence of financial capacity adequate for review and approval be submitted to the Department prior to construction of each subsequent phase. Construction of each subsequent phase may not begin prior to approval of financial capacity for that phase.

(5) **Certificate of Good Standing**. If the applicant is a registered corporation in Maine, provide a Certificate of Good Standing (available from the Secretary of State).

**C. Terms and Conditions.** The Department may, as a term or condition of approval, establish any reasonable requirement to ensure that the developer has and will maintain the financial capacity to meet permit requirements and state environmental standards, such as the following.

(1) **Performance bond**. Requiring the posting of a performance bond to ensure that the development is constructed, operated and maintained, and the site restored, if applicable, in compliance with the permit requirements and state environmental standards.

(2) **Phased development**. Prior to the start of the first phase of construction and each subsequent phase, the permittee shall provide a cost estimate for that phase as well as evidence that the applicant has been granted a sufficient line of credit or a loan by a financial institution authorized to do business in this State or evidence of any other form of financial assurance determined by this Chapter to be adequate by the Department for review and approval.

(3) **Dedication of funds**. Prior to the start of construction, the permittee shall submit to the Department for review and approval final financial arrangements demonstrating that funds are still available and have been specifically dedicated to the proposed development costs.

**3. Technical Ability**

**A. Standards.** The developer shall have the technical ability to design, construct, operate, and maintain the proposed development in a manner consistent with the permit and state environmental standards.

(1) **Capability**. Project personnel must be capable of properly designing, installing, operating and maintaining the proposed project in accordance with state environmental standards.

(2) **Adaptation**. If the applicant's technical personnel have never before designed, constructed, and operated a development like the one proposed, competent engineering and field operational personnel must be available who can adapt their training and experience to accomplish the required tasks.

(3) **Prior conduct**. The Department may consider evidence regarding the developer's prior conduct as a measure of willingness and ability to meet all terms and conditions of approval established by the Department.

**B. Submissions**. The application for approval of a proposed development must include evidence that affirmatively demonstrates that the developer has the technical ability to design, construct, operate and maintain the proposed development, including but not limited to the following information.

(1) **Experience and training**. A statement of the developer's prior experience or appropriate training, or both, relating to the nature of the proposed development.

(2) **Personnel**. A description of the types of personnel who will be used to design, construct, operate, and maintain the proposed development, including but not limited to resumes, or similar documents describing experience with similar projects.

**C. Terms and Conditions**. The Department may, as a term or condition of approval, establish any reasonable requirement to ensure that the developer has the technical ability to design, construct, operate and maintain the development in a manner consistent with the permit and state environmental standards, such as the following.

(1) **Professional assistance**. The permittee shall employ a capable professional engineer or other professional knowledgeable and experienced in the disciplines necessary to ensure that state environmental standards are met.

(2) **Training program**. The permittee shall implement a training program for the appropriate personnel to acquaint them with the operation and maintenance of pollution control equipment, and with state environmental control standards.

(3) **Third-party inspector (3PI)**. The permittee shall retain the services of a third-party inspector in accordance with the Department’s third party inspection program, if required by the Department.

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