

14. STANDARDS FOR LOCAL SITE LOCATION OF DEVELOPMENT REVIEW

14.1. Intention

These standards are intended to provide a flexible and practical means by which the City of Portland may exercise its police powers to control the location of those developments substantially affecting the local environment in order to ensure that such developments will be located in a manner which will have minimal adverse impact on the natural environment within the development sites and of their surroundings and to otherwise protect the health, safety and general welfare of the people.

14.2. APPLICABILITY

The Planning Board shall review:

- (a) subdivisions;
- (b) structures;
- (c) developments generating passenger car equivalents of between 100-200 per peak hour for compliance with the following standards; and
- (d) metallic mineral mining or advanced exploration activity.

For purposes of this section the following definitions shall be applied by the City of Portland Planning Board:

14.2.1. **Subdivisions.** The subdivision of land into 5 or more lots, other than lots for single-family, detached, residential housing, common areas or open space, to be offered for sale or lease to the general public during any 5-year period, if the aggregate land area includes more than 20 acres; or the division of a parcel of land into 15 or more lots for single-family, detached, residential housing, common areas or open space, to be offered for sale or lease to the general public within any 5-year period, if the aggregate land area includes more than 30 acres. The aggregate land area includes lots to be offered together with the roads, common areas, easement areas and all portions of the parcel of land in which rights or interests, whether express or implied, are to be offered. This definition of "subdivision" is subject to the following exceptions:

- A. Lots of 40 or more acres but not more than 500 acres may not be counted as lots except where:
 - (1) The proposed subdivision is located wholly or partly within the shoreland zone;
- B. Lots of more than 500 acres in size may not be counted as lots;
- C. Five years after a subdivider establishes a single-family residence for

that subdivider's own use on a parcel and actually uses all or part of the parcel for that purpose during that period, a lot containing that residence may not be counted as a lot;

- D. Unless intended to circumvent this article, the following transactions may not be considered lots offered for sale or lease to the general public:
- (1) Sale or lease of lots to an abutting owner or to a spouse, child, parent, grandparent or sibling of the developer if those lots are not further divided or transferred to a person not so related to the developer within a 5-year period, except as provided in this subsection;
 - (2) Personal, nonprofit transactions, such as the transfer of lots by gift, if those lots are not further divided or transferred within a 5-year period or the transfer of lots by devise or inheritance; or
 - (3) Grant of a bona fide security interest in the whole lot or subsequent transfer of the whole lot by the original holder of the bona fide security interest or that person's successor in interest;
- E. In those subdivisions that would otherwise not require site location approval, unless intended to circumvent this article, the following transactions may not, except as provided, be considered lots offered for sale or lease to the general public:
- (1) Sale or lease of common lots created with a conservation easement as defined in Title 33, section 476, provided that the Department of Environmental Protection is made a party;
 - (2) The exception described in paragraph E does not apply, and the subdivision requires site location approval, whenever the use of a lot described in paragraph E changes or the lot is offered for sale or lease to the general public without the limitations set forth in paragraph E; and
- F. The transfer of contiguous land by a permit holder to the owner of a lot within a permitted subdivision is exempt from review hereunder, provided that the land was not owned by the permit holder at the time the Department of Environmental Protection, the MDOT or the City approved the subdivision. Further division of the transferred land must be reviewed under these standards.

For the purposes of this section, a parcel of land is defined as all contiguous land in the same ownership provided that lands located on opposite sides of a public or private road are considered each a separate parcel of land unless that

road was established by the owner of land on both sides of the road subsequent to January 1, 1970. A lot to be offered for sale or lease to the general public is counted, for purposes of determining jurisdiction, from the time a municipal subdivision plan showing that lot is recorded or the lot is sold or leased, whichever occurs first, until 5 years after that recording, sale or lease.

14.2.2. **Structure.** A "structure" means any building, parking lot, road, paved area, wharf or area to be stripped or graded and not to be revegetated that cause a total project to occupy a ground area in excess of 3 acres. Stripped or graded areas that are not revegetated within a calendar year are included in calculating the 3-acre threshold; and

14.2.3. **Passenger car equivalents at peak hour.** "Passenger car equivalents at peak hour" means the number of passenger cars, or, in the case of non-passenger vehicles, the number of passenger cars that would be displaced by non-passenger vehicles, that pass through an intersection or on a roadway under prevailing roadway and traffic conditions at that hour of the day during which the traffic volume generated by the development is higher than the volume during any other hour of the day. A one tractor-trailer combination is the equivalent of 2 passenger cars.

14.3. STANDARDS

The following standards shall be applied in evaluating subdivisions or site plans as defined above, except where Portland elsewhere has adopted more restrictive standards, the more restrictive standards shall control:

1. **Financial and technical capacity.** The developer has the financial capacity and technical ability to develop the project in a manner consistent with state environmental standards and with the provisions of Portland's Code of Ordinances . The Planning Board may issue a permit that conditions any site alterations upon a developer providing the Planning Board with evidence that the developer has been granted a line of credit or a loan by a financial institution authorized to do business in this State or with evidence of any other form of financial assurance the Planning Board determines to be adequate. The Planning Board shall also assess any such application in accordance with the standards set forth in Chapter 373 of the Maine Department of Environmental Protection Site Law Regulations, as may be amended from time to time.
2. **Traffic movement.** For any development that generates 100 or more passenger car equivalents at peak hour, the developer has made adequate provision for traffic movement of all types into and out of the development area. Before issuing a permit, the Planning Board shall determine that any traffic increase attributable to the proposed development will not result in unreasonable congestion or unsafe conditions on a road in the vicinity of the proposed development. The Department of Transportation or the City of Portland Traffic

Engineer shall provide the Planning Board with an analysis of traffic movement of all types into and out of the development area and with a statement of recommended findings on traffic issues. In making its determination under this subsection, the Planning Board shall consider the analysis and recommendations provided by the City's Traffic Engineer or the Department of Transportation. Traffic movement determinations are subject to the following:

- A. A proposed development that involves fewer than 100 passenger car equivalents at peak hour is not subject to traffic review.
- B. If any project qualifies for review hereunder solely because it generates 100 or more passenger car equivalents at peak hour then the review hereunder shall be limited only to issues relevant to the traffic movement standards in this section. Otherwise, all other standards of review shall be applied.

In all instances the appropriate representative of the municipality or municipalities where the project is located, shall discuss with the applicant the scope of impact evaluation required for the proposed development. The applicant shall provide notice to abutting municipalities.

- C. If a development is located in an area designated as a growth area in a local growth management plan that has been found by the State to be consistent with the growth management program in Title 30-A, chapter 187, the Planning Board shall require improvements to the level of traffic service only if the level of service adjacent to or in the vicinity of the development is or would be level of service E or F, as determined by the City's Traffic Engineer in accordance with the "Highway Capacity Manual" (3rd ed. 1994). In these cases, improvements are limited only to those necessary to mitigate for the foreseeable impacts of the development.
 - D. The Planning Board shall also assess any such application in accordance with the standards set forth in Chapter 374 of the Maine Department of Environmental Protection Site Law Regulations, as may be amended from time to time.
- (3) No adverse effect on the natural environment. The developer has made adequate provision for fitting the development harmoniously into the existing natural environment and that the development will not adversely affect existing uses, scenic character, air quality, water quality or other natural resources in the municipality or in neighboring municipalities. In making a determination under this subsection, the Planning Board shall apply the standards set forth in Chapter 375 of the Maine Department of Environmental Protection Site Law Regulations, as may be amended from time to time.
- (4) Soil types. The proposed development will be built on soil types that are

suitable to the nature of the undertaking. In making a determination under this subsection, the Planning Board shall apply the standards set forth in Chapter 376 of the Maine Department of Environmental Protection Site Law Regulations, as may be amended from time to time.

- (5) Ground water. The proposed development will not pose an unreasonable risk that a discharge to a significant ground water aquifer will occur. In making a determination under this subsection, the Planning Board shall apply the standards set forth in Chapter 500 and 502 of the Maine Department of Environmental Stormwater Management and Direct Watersheds of Waterbodies Most at Risk from New Development Rules as may be amended from time to time.
- (6) Infrastructure. The developer has made adequate provision of utilities, including water supplies, sewerage facilities, solid waste disposal and roadways required for the development and the development will not have an unreasonable adverse effect on the existing or proposed utilities and roadways in the municipality or area served by those services.
- (7) Flooding. The activity will not unreasonably cause or increase the flooding of the alteration area or adjacent properties nor create an unreasonable flood hazard to any structure. In making a determination under this subsection, the Planning Board shall apply the standards set forth in Chapter 500 and 502 of the Maine Department of Environmental Stormwater Management and Direct Watersheds of Waterbodies Most at Risk from New Development Rules as may be amended from time to time.
- (8) Storm water management and erosion and sedimentation control. The proposed development meets the standards for storm water management in 38 MRSA §420-D as amended from time to time (See Exhibit 1) and the standard for erosion and sedimentation control in 38 MRSA §420-C as amended from time to time. In making a determination under this subsection, the Planning Board shall apply the standards set forth in Chapter 500 and 502 of the Maine Department of Environmental Stormwater Management and Direct Watersheds of Waterbodies Most at Risk from New Development Rules, as may be amended from time to time.