

Chapter 34: Permits & Other Approvals

In addition to those discussed above, following are the permits and other approvals a project may need to acquire along the path from conception to ribbon-cutting.

ADEQUATE PUBLIC FACILITIES

Some local jurisdictions have adopted adequate public facility ordinances (APFOs). The intent of APFOs is to manage development approvals so that schools, roads, water, sewer and other infrastructure are not overtaxed. Frequently, APFO requirements kick in at the building permit stage. In other words, a building permit would not be issued unless adequate capacity is available to accommodate the students generated by construction of a new home along with other additional service needs.

BUILDING PERMIT

Issuance of a building permit is usually the last step in the development review process. To get to the building permit stage an applicant must have complied with all zoning and subdivision requirements. The building permit focuses on compliance with codes for plumbing, electrical, construction practices, and so forth. In jurisdictions without zoning and subdivision regulations, this may be one of the few permits/approvals required before a project can break ground.

If you just learned about a project and all other permits/approvals have been granted, except for the Building Permit, then the likelihood of resolving your concerns is not good. The applicant has invested a lot of money in getting the project to this final design stage. The reviewing agencies have gone on record as approving the project. Relatively little flexibility remains for making changes. To win your concerns would need to be obvious, substantial, and correctable without major changes to the project.

ENVIRONMENTAL IMPACT STATEMENT

Most development projects are not required to comply with the environmental impact statement (EIS) provisions of the National Environmental Policy Act (NEPA). NEPA only comes into effect when a project involves a major federal action and that action is likely to result in a significant impact.

Examples of a major federal action would include projects where federal funds are used or federal permits are required. NEPA requires that all major federal actions be subjected to three levels of analysis:

- categorical exclusion determination;
- preparation of an environmental assessment/finding of no significant impact (EA/FONSI); and
- preparation of an environmental impact statement (EIS).

Categorical Exclusions apply to specific types of projects where prior analysis has shown that the project type does not cause a significant impact. If a project does not qualify for a categorical

exclusion, but further analysis (an environmental assessment) shows it will not cause harm then a Findings of No Significant Impact (FONSI) is issued. An EIS must be prepared for projects which fail to receive a categorical exclusion or FONSI. For further detail on NEPA go to: <http://www.epa.gov/compliance/nepa/index.html> and <http://ceq.eh.doe.gov/nepa/nepanet.htm>

As of 2003, sixteen states had adopted their own version of NEPA, usually called a State Environmental Quality Act (SEQA) or little NEPA: Arkansas, California, Connecticut, Florida, Hawaii, Indiana, Maryland, Massachusetts, Minnesota, Montana, New York, North Carolina, South Dakota, Virginia, Washington and Wisconsin. Additionally, the State of Pennsylvania was considering the adoption of a SEQA.

Most of the SEQAs only apply to State projects, although some encompass private projects as well. The Washington State Environmental Policy Act (SEPA) process is arguably the most comprehensive with respect to individual development projects.²²⁰ The following [CEDS website](#) publication contains an analysis of a proposed development project for compliance with the Washington state SEPA requirements, [Salmon, Lake Quality, Wetlands & Development Impacts - An Example of CEDS Analysis](#).

EROSION & SEDIMENT CONTROL PLAN APPROVAL

The impact of construction phase erosion and sediment pollution was described in the section of this book on aquatic resources. The U.S. Environmental Protection Agency (EPA) requires the use of erosion and sediment control measures on all construction sites five acres or larger. A number of states and local jurisdictions have also adopted their own erosion and sediment control requirements which may apply to all construction sites, not just those five acres or greater.

In areas where just the EPA requirements are in place the applicant must file a Notice Of Intent (NOI) form. A storm water pollution prevention plan (SWPPP) must be prepared which describes the Best Management Practices (BMPs) which will be used to minimize erosion and sediment pollution. The EPA BMPs requirements can be downloaded from: <http://www.epa.gov/owow/nps/urbanmm/index.html>

If erosion and sediment control is among your concerns then you should obtain the BMP requirements from the EPA site or from your state-local government. Arrange an opportunity to review the applicant's SWPPP. Compare the proposed BMPs with those presented in the EPA, state or local manual. Consider the advice provided in the aquatic resource impact section of this book on maximizing the effectiveness of construction phase controls. Verify that the applicant is taking all steps necessary to protect the aquatic environment.

²²⁰ For further detail on the Washington State Environmental Policy Act process visit: <http://www.ecy.wa.gov/programs/sea/sepa/e-review.html>

FIRE DEPARTMENT

In many localities the fire department will review a proposed development project for any factor with might impede fire suppression. These factors include:

- sufficient water pressure in areas served by public water;
- the need to install a pond, tank or other measures to ensure adequate water is available to fight fires in remote areas;
- proximity to areas subject to wildfires;
- at least two means of accessing a site (many local jurisdictions discourage projects where there would be only one road in and out that might be blocked thus preventing emergency vehicle access);
- the need to require sprinkler systems;
- whether building height or other factors exceeds the capability of fire equipment; and
- minimum response times from the nearest fire station (National Fire Protection Association standard 1710 requires a response time of four minute or less for career fire stations).

Further detail on this topic is provided in the section on *Fire* in Part I of this book.

GRADING PERMIT

A number of local jurisdictions require an applicant to submit a grading plan. If the plan complies with requirements such as erosion and sediment control then a grading permit is issued. The purpose of this permit is to ensure that grading, filling, and site clearance is done in a way which minimizes adverse effects. Through the grading permit review process other issues may be screened, such as checking to see if limits of disturbance will intrude upon aquatic resource buffers or onto adjoining properties, minimizing forest loss or altering viewsheds, and guarding against impacts to historic or archaeological resources.

HIGHWAY ACCESS PERMIT

To connect to an existing local or state road, one may need a highway access permit, even for a new driveway. To obtain the permit the applicant must demonstrate that safety will not be jeopardized. For example, the applicant must demonstrate that the sight-distance criteria presented earlier in this book are met. The applicant may be required to submit a full traffic impact study, especially for larger projects.

If traffic is among the concerns you have about a proposed development project, then contact the agency responsible for the affected roads. The responsible agency will usually be obvious from looking at a map or signs posted along the road. For example, if the road is a state route then it is maintained by the state highway agency. As always, request an opportunity to review any applications and other documents submitted for the proposed access. Compare the information presented in these documents to the agency's criteria for granting an access permit. Discuss any unresolved concerns with agency staff.

HISTORIC RESOURCE REVIEW

This topic was covered in detail earlier in Chapter 11. Many local jurisdictions and state agencies will review proposed development projects for impacts to historic or archaeological resources. Frequently this is done by the planning and zoning staff. The local zoning ordinance may require staff to sign-off on historic resource preservation requirements before a preliminary or final development plan can be approved. An assessment of impacts to historic resources is one of the elements of an EIS. To locate the local historic preservation review office for your area go to the [NPS Heritage Preservation Services website](#).

NPDES POLLUTION DISCHARGE PERMIT

If an applicant proposes to construct a sewage treatment plant or some other new *point* source of pollution then they must comply with the provisions of the National Pollution Discharge Elimination System (NPDES) of the federal Clean Water Act. NPDES permits are not required for most *nonpoint* pollution sources such as septic systems serving individual homes and cropfield runoff.

An NPDES discharge permit must be obtained before a project commences. For the most part, EPA has delegated the authority to states for issuing NPDES discharge permits. To receive a permit the applicant must demonstrate that the discharge will be treated to a level sufficient to prevent a violation of water quality standards. Further information on the NPDES system can be found at: <http://cfpub.epa.gov/npdes/>.

If a project will connect to an existing sewerline then review the compliance history for the plant which treats the wastewater carried by the sewer. Compliance information for existing permitted discharges can be viewed at: <http://www.epa.gov/enviro/html/water.html#PCS>

If the plant is running at or over the design capacity or experienced one or more major violations a year, then these problems should be corrected before further connections are allowed.

OCCUPANCY PERMIT

Once construction of a home or other buildings has been completed the local government will issue a final approval known as an *occupancy permit*. If an applicant has failed to comply with some requirement crucial to the protection of you and your neighbors, then urge the local government to withhold the occupancy permit until the problem is resolved. Of course there must be some logical connection between the unresolved issue and the occupancy permit. For instance, if the applicant were required to install a required visual buffer between your home and a new commercial building, then it would be logical to withhold an occupancy permit. But if local officials had made a decision earlier in the process not to require a buffer then it is less likely you can delay occupancy permit issuance.

SEPTIC SYSTEM PERMIT

The aquatic resource effects of septic systems was covered in detail in a prior section of this book. Before construction may begin on a home or other building served by a septic system, the local health department must certify that the site meets minimum requirements. If the project of concern to you

will be served by a septic system then request an opportunity to review the health department's files. Compare results of percolation tests and other site investigations with the criteria contained in local or state law. Also compare the project with the recommendations given earlier in this book for protecting aquatic resources from septic system impacts. If you feel the criteria have not been met or some unusual condition exists which could cause undue impact, then ask the health department to withhold the septic system permit.

STORMWATER MANAGEMENT PLAN APPROVAL

Once the construction phase is completed, stormwater runoff from rooftops, streets and parking lots introduces a new set of aquatic resource impacts. Many local jurisdictions and some states have enacted laws mandating the use of BMPs to reduce the impact of post-construction stormwater runoff. In other localities, especially towns and cities with a population of 100,000 or more, the EPA Stormwater NPDES Program requires control of runoff impacts from separate storm sewers.²²¹ The portion of this book on aquatic resource impacts described measures to reduce or eliminate stormwater impacts. If stormwater management is required for the project of concern to you then request an opportunity to review the plans. Determine if highly-effective BMPs are proposed. If not then consider encouraging local officials to require these measures, particularly if the project threatens uniquely important or sensitive aquatic resources.

USE OR ZONING PERMIT

The local zoning ordinance will list a number of uses allowed by right or as accessory uses within each zoning district. An *accessory use* is one which is minor and commonly associated with the primary use of properties within a zoning district. Accessory uses should cause few, if any, compatibility problems. An example of an accessory use would be a small shed for storing a mower and other lawn-garden equipment in a zoning district where the primary use is single-family detached homes.

Many jurisdictions require a *use or zoning permit* whenever a property owner wishes to add one of these uses. A gray area emerges when a proposed use does not quite correspond to any of those allowed by right or as an accessory use. Normally, a use permit does not involve notification of adjoining residents. Instead, the property owner submits an application which is reviewed by staff. If the use conforms to applicable regulations then a permit is issued.

WATER & SEWER PLAN AMENDMENT

If a site is located outside the area served by public water and sewer services and the applicant wishes to build at densities greater than those possible with well and septic, then they will need to request an extension of water and sewer lines. Many local jurisdictions have adopted a master water and sewer plan which serves as a critical growth management tool. Extending water and sewer beyond

²²¹ For further detail on EPA's separate storm sewer NPDES program visit: <http://cfpub.epa.gov/npdes/stormwater/munic.cfm>

the areas shown for service in the plan may require an amendment. Frequently, the local council or commissioners must hold a formal public hearing on an amendment request.

If vacant sites exist within the areas where water and sewer lines already exist, then growth should be directed to these locations first before extensions are made to other areas. It would be a waste of tax-dollars to construct new water and sewerlines while existing infrastructure goes underutilized. Similarly, new development should be directed to *redevelopment* sites, such as empty warehouses or abandoned shopping centers. If existing water and sewerlines are fully utilized then the applicant should be required to pay for service extensions.

If a project site is within an area designated for water and sewer service then the applicant may still need an approval to connect, which may go by the name of a water or sewer allocation. Local utilities use allocations to keep track of the commitments made to provide service. The allocation tracking system prevents a utility from committing to services which exceed their capacity.

WATER APPROPRIATION PERMIT

If a project will require water pumped from an aquifer or a surface source (lake, river, etc.) then they may need to apply for an appropriation permit from a state agency. Occasionally, local approval is required as well. Frequently, these permits are issued by the state natural resources or environmental agency. To obtain a permit the applicant must demonstrate that the quantity of water requested is truly needed and that the withdrawal will not adversely affect other users or the environment.

In eastern states water appropriation law is based upon the riparian use doctrine which allows those owning property adjoining a water body to make reasonable use of the water as long as it does not interfere with the rights of other riparian property owners.

In the west the prior appropriation doctrine is more common. This doctrine states that the first person to make beneficial use of water retains control of the water in perpetuity. In some states, like California, both doctrines apply.

WELL PERMIT

In addition to (or in-lieu of) a water appropriation permit local or state government may require an applicant to obtain a well permit before drilling commences. The permit will carry with it specifications on how the well is to be constructed to prevent contamination. For example, the driller may be required to extend the well a foot above ground so surface runoff cannot flow in through the top. Also, the applicant maybe required to case the well in solid pipe from the surface to bedrock or the first layer of impermeable clay. Grouting with concrete may be required to further seal the well from contamination. Some states require the driller to submit a completion report for each well they construct. These reports can provide a wealth of valuable information about groundwater conditions,

geology and the vulnerability of wells to contamination from septic systems and other sources. The state or U.S. Geological Survey can also provide information on groundwater conditions.²²²

WETLAND PERMIT

The federal Clean Water Act prohibits dredging or the placement of fill within *waters of the United States*, which includes all our tidal waters, flowing waters (streams and rivers), lakes, ponds and wetlands. The upstream limit of *Waters of the US* extends to the head of intermittent stream flow.²²³ The U.S. Army Corps of Engineers (USACE)²²⁴ is the lead agency on wetland permits, though a number of states and local governments also regulate dredging and filling in wetlands and other waters.

The USACE has two broad categories for wetland permits: general and individual. General permits cover relatively minor activities which individually have minimal impact but could have a considerable effect cumulatively. Individual permits are required for activities with more substantial impact. For example, a proposal to construct a bridge across a small stream might qualify for a general permit whereas a proposal to build a road crossing impacting an acre or two of wetlands would not.

General permits vary from state-to-state. So check with your district USACE office to obtain detail on general permits.²²⁵

Before the USACE can issue a wetland permit your EPA regional office or the state environmental protection agency must grant a [Water Quality Certification](#) for the project. The WQC certifies that the proposed activities will not violate applicable water quality standards.

At first it might seem obvious what is a wetland. But in reality wetland identification gets a bit complex, particularly when attempting to decide where a wetland starts and ends. The bible on wetland identification is the USACE *1987 Wetland Delineation Manual*.²²⁶ For larger development sites a USACE official will walk the area and prepare a *jurisdictional delineation* showing where dredging-filling would require a Corps permit.

²²² Visit the U.S. Geological Survey at: <http://www.usgs.gov/>

²²³ An intermittent stream carries water for more than just the period immediately after a rainfall-snowmelt-runoff event but less than year-round. Intermittent streams are shown as a broken blue line on topographic maps.

²²⁴ For further information on U.S. Army Corps of Engineers wetland permitting visit: <http://www.usace.army.mil/public.html#Regulatory>

²²⁵ To locate the USACE district for your area visit: <http://www.usace.army.mil/where.html#Divisions>

²²⁶ The U.S. Army Corps of Engineers Wetland Delineation Manual can be downloaded at: <http://www.wes.army.mil/el/wetlands/pdfs/wlman87.pdf>

If an applicant has proposed activities in areas which may be waters of the U.S., then contact the USACE district office for your area as well as any state or local agencies regulating activities in streams, wetlands and other waters. Request an opportunity to review project files. Discuss any unresolved concerns you have with agency staff. If you are dissatisfied with the results of these discussions then go on to the next section of this book on strategy options.