

Chapter 6

Compliance



The Commission's compliance program consists of four equally important components: education, public assistance, monitoring and enforcement. Since adherence to environmental regulations and zoning provisions is critical if they are to be meaningful, the Commission will administer a balanced program combining concerted education and assistance with vigorous monitoring and enforcement in order to achieve a reasonable degree of adherence to the law.

The task of conducting a compliance program for a geographic area consisting of approximately half of the State of Maine, including many areas that are difficult to access, is complex and difficult, especially given the limited resources available for the program. The Commission will continue its efforts to educate, assist, monitor and enforce, as well as search for additional ways to improve adherence to LURC's regulations considering the limitations of available resources.

6.1 *Education*

An important component of achieving adherence to LURC's regulations and preventing violations and environmental degradation is education. The Commission is committed to helping landowners, real estate agents, foresters, contractors and the general public understand and be aware of LURC's rules so that they can adhere to them. The Commission has developed informational brochures regarding LURC requirements such as the brochure on its vegetation clearing standards. Such brochures are distributed with property tax bills, made available at regional offices or mailed with application or permit materials. LURC staff also offers training sessions on specific technical components of LURC's regulations, such as timber harvesting and road construction, and attends gatherings of associations such as camp-owners' associations to address and answer questions on LURC's zoning and regulations.

The Commission will continue to inform landowners, land managers, contractors, citizens, real estate agents, lawyers, bankers and others concerning the laws and regulations the Commission administers. The Commission will also continue to train field personnel of other agencies in order to supplement the work of its small inspection and enforcement staff. In addition, the Commission is currently exploring the possibility of greater utilization of the internet to provide informational brochures, answers to frequently asked questions, application materials and instructional videos. These actions along with continuing to hold and expand its public outreach sessions will further help to inform the public.

6.2 Community Assistance and Public Participation

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It is the Commission's policy to maximize assistance to and involvement of the communities, individuals and groups which it serves. The Commission has assisted a number of communities in preparing land use plans and zoning ordinances toward the goal of assuming local control of land use regulation. The Commission encourages local land use control for organized communities having the interest and willingness to undertake this work.

Public participation is encouraged in all of the Commission's work through public hearings, Commission meetings, permit application review and other public forums. Public access to all information pertaining to the Commission's actions will be maintained and facilitated.

In the past, the Commission or landowners have occasionally initiated joint field trips or meetings to discuss matters of mutual concern. The Commission will make efforts to ensure there continue to be opportunities for a dialogue with landowners and other interests.

6.3 *Applicant Assistance*

The Commission will work toward assisting applicants in understanding and complying with its processes and requirements. To this end, the Commission will seek to simplify and clarify application procedures wherever possible, while assuring that it addresses the environmental issues of public concern. There are currently two types of expedited permit applications that streamline the application and review process. The Commission is also in the process of initiating online applications to further simplify the process.

The Commission has established five regional offices, enhancing access for assistance to residents of the jurisdiction. From these locations, staff can assist residents with permitting requirements such as the notification and general application processes. Staff can also conduct site visits to assist landowners in assessing property conditions, identifying critical permitting features and exploring options to develop property in a manner consistent with the regulations. The Commission will continue this effort as necessary and as resources (especially staff resources at the regional office level) become available.

To help ensure adherence to the Commission's regulations and its Plan, applicants for subdivision or major development proposals are strongly encouraged by the Commission to meet with the permitting and planning staff prior to fully formulating their proposals. Such pre-application conferences have been extremely helpful in avoiding unnecessary time and expense formulating major development proposals, which may not initially fully comply with the Commission's goals, policies and regulations.

6.4 *Monitoring*

On-site monitoring of development in the jurisdiction is critical to ensuring that education and assistance achieve the goal of adherence to LURC's regulations. Monitoring is also an important tool for heightening and maintaining landowners' awareness and expectation that adherence to LURC's rules is important.

Monitoring efforts are labor intensive and costly, and the Commission has sought to maximize the efficiency of monitoring efforts through the use of self-certification forms. These forms require the permittee to evaluate and certify the adherence of their completed project with the relevant regulations. In some cases, the self-certification process is supplemented with on-site inspections by staff. Due to the volume of permits issued each year and limited staffing and resources, it has been the Commission's practice to require formal certificates of compliance only for approved subdivisions and selected major development projects. In recent years, real estate agents, mortgage lenders and others associated with the conveyance of land have begun to request on-site inspections and certificates of compliance by LURC staff prior to the sale or financing of property. Given the increased interest and significance of on-site inspections and certificates of compliance, the Commission will explore and assess the feasibility and mechanisms to extend the requirement for on-site inspections and certificates of compliance to a broader range of development.

6.5 *Enforcement*

Education, assistance and monitoring all help landowners and others to adhere to the Commission's regulations. However, when adherence does not occur, consistent enforcement is a necessary component in any regulatory program. Each year numerous violations of the Commission's rules and regulations are reported, many of these under the Joint Enforcement Agreement between LURC and the Departments of Environmental Protection, Inland Fisheries and Wildlife, and Conservation. All such violations are reported in turn to the Commission, and significant violations are brought to the Commission for discussion and action.

In 1992, the Commission adopted a compliance and enforcement response policy that has guided staff and the Commission in investigating and responding to alleged violations of LURC regulations. The policy document authorizes staff to resolve minor violations and to negotiate formal administrative settlement agreements to resolve significant violations with the final terms of the settlement subject to approval by the Commission and the Office of the Attorney General ("AG"). This process is designed to be fair while resulting in expeditious and efficient disposition of enforcement matters. In instances where a staff settlement agreement cannot be readily reached, and in cases involving severe violations and/or environmental damage, the Commission refers the violation to the AG for appropriate legal action. The current policy document has served the Commission well, but is in need of updating in order to continue to conduct a meaningful enforcement program.

While the compliance program has increased awareness of the law among the affected public, and numerous violations have been resolved, efforts must continue to improve adherence to LURC's regulations. It should be recognized, however, that staffing and budgetary constraints hinder the agency's ability to effectively investigate and respond to violations. In addition, agency staff has limited resources or authority to address uncooperative violators without seeking assistance from the AG.

New opportunities have been developed to more efficiently address readily resolvable violations, such as the triple application fee for after-the-fact permit applications. Strategies such as this can aid in increasing adherence to regulations and limit the need for further enforcement. However, the Commission will continue to work on addressing violations in a fair and consistent manner. Toward this end, the Commission will pursue the following actions:

- The Commission will continue to hold landowners/managers primarily responsible for assuring that the work of contractors and other operators on their lands is in compliance with the law. Because the independent contractor status of such contractors may impair direct landowner involvement in contractor operations, landowners/managers are strongly encouraged to carefully inform and contractually require adherence of operators in accordance with LURC standards. In addition, landowners/managers may wish to bring contractors involved in violations into discussions with the Commission's staff leading up to a settlement as well as seeking contractor payment of monetary penalties where fair.
- The Commission will make appropriate exceptions to holding landowners/managers primarily responsible for violations on their lands. Such exceptions will be made when the violation occurs entirely by reason of actions of a third party (as in the case of a trespass),

where the landowner/manager has no involvement with the activities and receives no benefit from nor has any contractual or other relationship with the third party.

- In the course of resolving violation matters with landowners through settlement agreements, factors as described in the Commission's compliance and enforcement response policy will be considered in arriving at a just settlement of a violation, including the establishment of a monetary penalty in appropriate cases.
- Although no two violations are identical, an effort will be made to deal similarly with violations involving similar circumstances.