

MAINE LAND USE PLANNING COMMISSION

Department of Agriculture, Conservation, and Forestry



BASIS STATEMENT AND SUMMARY OF COMMENTS

FOR AMENDMENTS TO

CHAPTER 1: GENERAL PROVISIONS

November 9, 2020

Provisionally Adopted

STATUTORY AUTHORITY

1 M.R.S. § 408-A;
5 M.R.S. § 8071(3); and
12 M.R.S. §§ 684, 685-B(2), 685-C(3), and 685-F

FACTUAL AND POLICY BASIS FOR THE RULE AMENDMENT

Pursuant to 12 M.R.S. § 685-C(3), the Maine Land Use Planning Commission has adopted rules to establish a schedule of reasonable fees for the administration of this Chapter. Pursuant to 5 M.R.S. § 8071(3), amendments to those fees are major substantive rules.

General Provisions, Chapter 1 of the Commission's rules establishes a fee schedule for a variety of services offered by the Commission or as otherwise provided by law. The related revisions attempt to create a more equitable method of assessing application fees based on an initial base fee and then additions based on the amount of development proposed. Those projects with larger and more intensive impacts, that are typically more complex, and have applications that consume more staff time, will be required to pay a fee more commensurate with the proposed development.

An itemized description of the revisions is included on page i of the provisionally adopted rule.

PUBLIC NOTICE OF RULEMAKING

At a virtual meeting conducted on July 15, 2020 via Microsoft Teams, the Commission voted to post the proposed Chapter 1 rulemaking revisions to a public hearing and comment period. Legal notice was posted in the State’s consolidated Weekly Rulemaking Notice on August 26, 2020. In addition to the legal notice, the Commission posted notice by e-mail through the State’s GovDelivery system to all individuals wishing to be contacted regarding any proposed changes to the Commission’s rules or regarding any hearing conducted by the Commission. Notice of the proposed revisions was also posted on the agency’s rulemaking webpage.

Due to the 2019 coronavirus (COVID-19), Public Law 2020 Chapter 617, and the need to avoid public gatherings, maintain social distance, and for everyone’s safety, the hearing was conducted through virtual means (*i.e.*, via audio & video conferencing, including a phone-in option). A web-based link to the virtual hearing was included in the legal notice, the GovDelivery notice, and in several locations on the Commissions’ webpages.

The record remained open until October 7, 2020 to allow interested persons to file written statements with the Commission, and for an additional 19 days until October 26, 2020 to allow interested persons to file written rebuttal comments.

COMMENTS AND RESPONSES

Written comments were submitted only by the Commission’s staff. At the public hearing, the Commission received verbal comments only from the Commission’s staff highlighting the previously submitted written comments. The following summarize all comments received

1. *Definitions.*

Definitions proposed for inclusion in Chapter 1 could directly influence other agency rules. Further, the Commission has adopted several rules that include definitions, specifically: Chapter 10, Land Use Districts and Standards; Chapter 11, Administrative Regulations for Hydropower Projects; and Chapter 16, Rules Relating to Large Lot Land Divisions. In light of the existing and evolving relationship between revisions to Chapters 1 and 4, and long-term rulemaking goals, staff recommend the Commission relocate all definitions from its rules as appropriate, into one separate rule.

Excluding Section 1.02 could be achieved by designating the section as reserved.

Commenter(s): Maine Land Use Planning Commission staff

Response: Defining terminology relative to the Commission’s rules is a valuable component to consistent application of the Commission’s authority and responsibilities. It is true that any defined term could implicate, or be implicated by, more than one agency rule, plan, or policy. Consequently, locating definitions adopted by the Commission into one rule will be more concise, easier to maintain, and improve user convenience.

The Commission has adopted several rules that include definitions, specifically: Chapter 10, Land

Use Districts and Standards – over 260 definitions; Chapter 11, Administrative Regulations for Hydropower Projects¹ – 10 definitions; and Chapter 16, Rules Relating to Large Lot Land Divisions² – three definitions. However, while Chapter 11 includes definitions, it is a joint rule with the Maine Department of Environmental Protection (DEP); some definitions in Chapter 11 regard the DEP and others regard the Commission but are instructive to the DEP in administering the rule.

Rather than reserving Section 1.02, all subsequent section numbers and all internal references should be revised accordingly.

Action(s): Exclude definitions from Chapter 1. Specifically, revise Chapter 1 to delete Section 1.02. Further, renumber Section 1.03 to now be Section 1.02, and revise all references to Section 1.03 to instead reference Section 1.02.

~~“1.02 — DEFINITIONS~~

~~For the purposes of this rule, the following terms have the following meaning unless the context indicates otherwise:~~

~~**A. — Amendments:**~~

~~An action to modify a permit, petition, or request for certification previously issued by the Commission, except for minor changes. For the purposes of Chapter 1, amendments are divided into two categories:~~

~~**1. — Minor Amendments** include an action to modify a permit, petition, or certification previously issued by the Commission where the scale or nature of the proposed modification results in a development which is not substantially different from the one which has been approved, examples include but are not limited to:~~

- ~~a. — Expanding existing or approved development which does not increase the total footprint or height of structures, impervious area, or limit of disturbance by more than 20 percent and does not involve a new land use activity for the parcel;~~
- ~~b. — Relocating or reorienting structures, roadways, parking lots, or lot lines for the purpose of reducing nonconformance with the Commission’s dimensional requirements;~~
- ~~c. — Permit transfers (in accordance with Chapter 4 of the Commission’s rules); and~~

¹ Chapter 11 is a joint rule with the Maine Department of Environmental Protection.

² Since the deadline for consideration under Chapter 16 has expired, the rule’s function is now limited to maintaining the standards that were applied to 7 subdivisions reviewed under the rule (*i.e.*, SP 3206-16, SP 3207-16, SP 3222-16, SP 3231-16, SP 3234-16, SP 3241-16, and SP 3242-16).

~~d. Modifications to permit conditions which do not result in a substantially different outcome or impact on natural resources;~~

~~2. Major Amendments include an action to modify a permit, petition, or certification previously issued by the Commission that does not qualify as a minor change or minor amendment.~~

~~**D. Commission:**~~

~~The Maine Land Use Planning Commission.~~

~~**E. Development Costs:**~~

~~All costs of a proposed project including, without limitation, site preparation, building and road construction, installation of wastewater disposal systems and monitoring, and erosion control devices, but does not include the cost of acquiring the land.~~

~~**F. Director:**~~

~~The Director of the Maine Land Use Planning Commission is the principal administrative, operational, and executive employee of the Commission.~~

~~**G. Minor Changes:**~~

~~An action to modify a permit previously issued by the Commission where the revision is a result of:~~

~~1. updating current ownership or indicating a new permit holder;~~

~~2. correcting clerical errors;~~

~~3. clarifying the Commission's decision, which clarification is consistent with the intent of the Commission's decision and does not materially change any findings of fact or conclusions of law;~~

~~4. correcting the dimensions of structures, approving minor variations to the dimensions of structures previously approved, or approving expansions or changes affecting less than 10 percent of a structure or project; or~~

~~5. renewing a permit and extending the deadline for a substantial start or for substantial completion by up to two years.~~

~~**H. Permits:**~~

~~Any approval, license, certification, or other authorization issued by the Commission, including amendments thereto.~~

1.031.02 SCHEDULE OF FEES

...”

[Note: all references to Section 1.03 will be updated to indicate Section 1.02.]

In this instance, locating most agency definitions within one rule will be a two-part process – removal from this Chapter 1 rulemaking; then, a separate rulemaking would be required to

consider a new rule for Commission definitions. The Commission’s staff have assembled a plan that is conducive to the possibility that a new rule could be in effect concurrent with possible final approval of these Chapter 1 revisions. However, the new separate rule could be considered and possibly approved by the Commission, regardless of the outcomes of the Chapter 1 rulemaking.

2. *Footprint of Structures.*

Section 1.03(B)(2)(e) identifies the activity specific fee assessed “per square foot (footprint) of structure.” Chapter 10, Section 10.02(82) defines Footprint as, “The measure of the area in square feet within the exterior limits of the perimeter of a structure. This includes any overhangs, or attached porches or decks whether or not enclosed.” When considering traditional development, these provisions are appropriate and fair, both individually and collectively. However, solar energy generation structures (*i.e.*, solar panels) cast a different perspective upon the traditional application of footprint; as a result, they appear to present the largest example of footprint of structures.

Because consideration of the footprint of a solar panel may be appropriate for other purposes, revision of the footprint definition is not warranted at this time. Instead, staff suggest that a footnote should be added to Section 1.03(B)(2)(e) that modifies how footprint is interpreted for the purposes of applying the fee per square foot (footprint) of structures to solar panels.

Commenter(s): Maine Land Use Planning Commission staff

Response: The Commission concurs with the comment and recommended revision.

Action(s): Revise Chapter 1 in the following manner:

“Section 1.03(B) Fees for Applications, Advisory Rulings, Certifications, and Certificates of Compliance

...

2. Activity Specific Fees.

...

e. Structures: Per square foot (footprint[#]) structures

...

[#] For the purpose of interpreting the provisions of Section 1.03(B)(2)(e) only, “footprint” of solar panels shall be the square footage of all footings and foundations.”