

MAINE DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY

MAINE LAND USE PLANNING COMMISSION

**Draft 2021 Multi-Chapter Rulemaking –
PART II: Chapters 3, 4, and 5**

May 12, 2021 Draft

[NOTE: This rulemaking proposes to repeal or repeal and replace each applicable rule. Unofficial redlined versions are included for background purposes only.]

Where necessary, further explanations of some changes have been included in [brackets]. These explanatory notes will not be included in the final rule. Otherwise, a generalized summary of the revisions is provided on the next page.

Summary of Draft 2021 Multi-Chapter Rulemaking – PART II: Chapters 3, 4, and 5

The primary purposes for these revisions include:

- Balance simplicity, clarity, and flexibility without replicating statute;
- Revise visual characteristics to contribute to improved function of the rule – such as formatting, spacing, and an alternating alpha numeric outline structure (e.g., 10.01(A)(1)(a));
- Correct citations and references; and
- Revise the usage of “shall” to more appropriate terminology or phrases.

Otherwise, the following provides a summary of changes unique to a particular chapter.

Chapter 3 – Delegation of Authority to Staff

See page 3 of this packet.

This rulemaking proposes to repeal Chapter 3 and relocate the provisions in Chapter 4. Otherwise, revisions include a variety of clerical edits. Unofficial redlined edits to Chapter 3 as proposed to be incorporated into Chapter 4 are provided on pages 120 through 122.

Chapter 4 – Rules of Practice

See pages 4 through 47 of this packet.

Proposed repeal and replacement of Chapter 4 is focused on a reorganization and reformatting of the rule to greatly improve user conveniences. However, the revisions propose modification of notice requirements, clarify existing practice, and add reference to procedural requirements. Due to the cumulative extent and intricacies of the suggested edits, this rulemaking proposes to repeal and replace Chapter 4. An unofficial redlined version is also included in this packet. A more detailed summary of the changes proposed for Chapter 4 is provided on page 5. Unofficial redlined edits to Chapter 4 are provided on pages 75 through 122.

Chapter 5 – Rules for the Conduct of Public Hearings

See pages 48 through 68 of this packet.

This rulemaking proposes to relocate some provisions from Chapter 5 to Chapter 4, to reorganize Chapter 5, reformat the rule, and includes other clerical edits. Due to the cumulative extent and intricacies of the suggested edits, this rulemaking proposes to repeal and replace Chapter 5. An unofficial redlined version is also included in this packet. A more detailed summary is provided on page 49. Unofficial redlined edits to Chapter 45 are provided on pages 123 through 145.

Department of Agriculture, Conservation and Forestry
MAINE LAND USE PLANNING COMMISSION
22 State House Station, Augusta, Maine 04330. Tel. (207) 287-2631

Delegation of Authority to Staff

Chapter 3 of the Commission's Rules

**[Chapter 3 is proposed to be repealed and the provisions relocated
into the replacement Chapter 4.]**

Effective Date: August 7, 1975

Amended Effective: October 17, 2000

Department of Agriculture, Conservation and Forestry

MAINE LAND USE PLANNING COMMISSION

22 State House Station, Augusta, Maine 04333 Tel. (207) 287-2631

RULES OF PRACTICE

Chapter 4 of the Commission's Rules

[Chapter 4 is proposed to be repealed and replaced with the following.]

Effective Date: May 16, 1975

Amended Effective: [Not yet applicable / available]

Generalized Summary of Proposed Revisions by Topic

Reorganization: The whole chapter is proposed to be reorganized. Specifically, the proposal organizes provisions by activity (*e.g.*, notice, hearings, final action) rather than by process (*e.g.*, applications, petitions, rulemaking), which improves the opportunity for consistency, brevity, and clarity.

Relocation: Proposed repeal of the provisions of Chapter 3 Delegation of Authority to Staff, and relocate each to Chapter 4 as both chapters are instructive and relevant to the other.

Simplification:

- This rule proposes to refer to ‘applicant’ and ‘application’ more generally. Particularly, unless indicated otherwise, reference to an “application” includes: application for permit, petition for amendment of district boundaries, request for a variance, request for an advisory ruling, and request for certification. Similarly, unless indicated otherwise, reference to an “applicant” includes: a person submitting an application for permit, petition for amendment of district boundaries, request for a variance, request for an advisory ruling, and request for certification.
- Revisions propose to consolidate and simplify notice provisions to clarify the rule.

Additions: Revise this rule by adding a number of provisions:

- Right of entry and inspection – clarifying current authority, policy, and expectations;
- Clarify opportunities for pre-application meetings with the Commission (per Public Law 2011 Chapter 682, Section 35);
- Require additional notice in limited situations (*e.g.*, upon significant modification of an application);
- Clarifying existing policy – such as regarding permit amendments, transfers, corrections; and
- Opportunities for voluntary permit surrender and suspension.

Clerical Edits:

- Revise visual characteristics to contribute to improved function of the rule – *such as formatting, spacing, and an alternating alpha numeric outline structure (e.g., 4.02,A,1,a,(1),(a),(i))*;
- Correct citations and references – *such as proper citation to Maine statutes (M.R.S.), to reflect changes within this and other concurrent rulemaking proposals, etc.*

Table of Contents

4.01	SCOPE OF RULES	8
4.02	ADMINISTRATIVE PROVISIONS.....	9
	A. Computation of Time	9
	B. Public Access to Information	10
	C. Right to Inspection and Entry	11
	D. Signatures.....	11
4.03	MEETINGS.....	12
	A. Pre-Application and Pre-Submission Meetings with COMMISSION Staff	12
	B. Pre-Application Meetings with the Commission	13
	C. Site Visit with the Commission	14
	D. Commission Meetings.....	14
4.04	NOTICES.....	15
	A. General Provisions	15
	B. Notice Requirements.....	16
	C. Notice Contents.....	19
4.05	APPLICATIONS, REQUESTS, AND RULEMAKING	20
	A. General Provisions	20
	B. Advisory Rulings	25
	C. Use Notifications.....	26
	D. Permit Applications.....	26
	E. Applications for Zone Change	28
	F. Requests for Certification	29
	G. Rulemaking	32
4.06	HEARINGS	35
	A. When to Hold a Hearing	35
	B. Cancellation or Change of Hearing.....	36
4.07	FINAL ACTION	37
	A. (RESERVED)	37
	B. Staff Decisions	37
	C. Commission Decisions.....	37
	D. Corrections.....	38

E.	Amendments	38
F.	Expiration.....	39
G.	Renewals	40
H.	Re-application.....	40
I.	Transfer	40
J.	Revocation, Suspension, and Surrender.....	41
K.	Appeals	42
4.08	DELEGATION OF AUTHORITY TO STAFF	45
A.	Purpose and Scope	45
B.	Delegation of Authority	45
C.	Exceptions.....	46

4.01 SCOPE OF RULES

Except as otherwise provided herein or by other applicable provisions of law, these rules are applicable to procedures before the Commission including:

- A. the adoption and amendment of rules;
- B. the processing of applications for permits, including special exception permits, required pursuant to 12 M.R.S. § 685-B and as provided by 12 M.R.S. § 685-A(10);
- C. the processing of variances as provided by 12 M.R.S. § 685-A(10);
- D. the processing of petitions for changes in land use standards pursuant to 12 M.R.S. § 685-A(7-A), or petitions for any rulemaking pursuant to 5 M.R.S. § 8055;
- E. the processing of petitions for adoption or amendment of district boundaries pursuant to 12 M.R.S. § 685-A(7-A) (hereinafter referred to as applications for zone change);
- F. the processing of requests for certifications pursuant to 12 M.R.S. §§ 685-B(1-A)(B-1) and (B-2);
- G. the delegation of certain authority to the Commission's staff; and
- H. other procedural requirements.

Unless indicated otherwise, reference to an "application" includes: an application for a permit, an application for zone change, a request for a variance, a request for an advisory ruling, or a request for certification. For the purposes of this chapter, unless indicated otherwise, reference to an "applicant" includes: a person submitting an application for a permit or zone change, or submitting a request for a variance, an advisory ruling, or certification. As to a request for certification, the "applicant" may include the person proposing development, not the Maine DEP.

4.02 ADMINISTRATIVE PROVISIONS

A. COMPUTATION OF TIME

1. Days Included.

In computing any period of time prescribed by statute or regulations of the Commission, the day of the act or event, after which the designated period of time begins to run, is not to be included. The last day of the period so computed is to be included unless it is a Saturday, Sunday, or legal holiday in which event the period must run until the end of the next day which is not a Saturday, Sunday or legal holiday. A holiday is any day designated as such by the President or Congress of the United States, or the Legislature of the State of Maine.

2. Receipt of Materials.

In regard to any time period or deadline for the filing of any submission or for service of any paper, that filing or service is complete:

- a. Upon the Commission, when the Commission receives the submission or paper by mail, in-hand delivery, email, or any other means specified by the Commission; or
- b. Upon a party, when the submission or paper is sent to the party or the party's attorney, by mail, in-hand delivery, by email, or by delivery to the recipient's office.

3. Acceptance of Materials After Expiration of the Time Period.

The Commission, for good cause shown, may at any time in its discretion:

- a. With or without motion or notice, order the period extended if request thereof is made before the expiration of the period originally prescribed or as extended by a previous order; or
- b. Upon request made after the expiration of the prescribed period, allow the act to be done where the failure to act was the result of excusable neglect.

B. PUBLIC ACCESS TO INFORMATION

1. Availability of Documents.

In accordance with 1 M.R.S. § 408-A, the Commission must make available to any person for inspection by appointment during normal business hours, at no charge, and for copying at a reasonable fee, in paper or digital form, public records, including the following:

- a. All agency plans, rules, policies, and guidance documents;
- b. All current land use guidance maps;
- c. All applications, including all related or resulting:
 - (1) forms and information submitted in support of any proposal;
 - (2) correspondence to or from the Commission, including any attachments thereto concerning any application or request;
 - (3) written comments received from governmental agencies or any other person;
 - (4) staff recommendations on applications; and
 - (5) all permits, certifications, advisory rulings, and other orders issued by the Commission;
- d. The approved minutes of Commission meetings, including the vote of each Commission member on each motion or vote;
- e. Transcripts of all hearings, where available; and recordings of all hearings where transcripts have not been produced;
- f. All other documents and information required to be available by the Constitution of Maine or statute.

2. Confidentiality.

The Commission will keep confidential any record, plan, report or other information only in consultation with the Attorney General's Office regarding an enforcement proceeding or other litigation, or other matters where such confidentiality may be provided by law.

C. RIGHT TO INSPECTION AND ENTRY

1. The right to inspection and entry of lands and structures is provided in 12 M.R.S. § 685-C(8).
 2. As applicable and appropriate, the Commission will make reasonable efforts to contact applicants, permittees, or property owners before conducting a site evaluation to verify information presented to it, including access to any lands and structures subject to the Commission's statutes and rules.
-

D. SIGNATURES

In accordance with 10 M.R.S., Chapter 1053, the Commission will accept, may require, and may utilize digital signatures regarding digital submissions and other official matters. However, the Commission may, at the Commission's discretion, require that a digital signature be supplemented shortly thereafter by a manual signature.

4.03 MEETINGS

[Revision Note: This would be a new section intended to provide clarity, predictability, and consistency, yet retain appropriate flexibility.]

A. PRE-APPLICATION AND PRE-SUBMISSION MEETINGS WITH COMMISSION STAFF

1. Purpose.

- a. Pre-application meetings. Pre-application meetings between the prospective applicant and Commission staff are an early opportunity to discuss a proposed project or activity. The purpose of these meetings is to identify the applicable statutory and regulatory requirements, expected processing times, applicable fees, potential concerns, and the types of information and documentation necessary for the Commission to properly assess the project. Commission staff will determine what information the applicant must provide before or during a pre-application meeting.
- b. Pre-submission meetings. A pre-submission meeting between the prospective applicant and Commission staff occurs after the prospective applicant has finished preparing an application for submission yet before formally filing the application. The meeting is an opportunity to review at a high level the assembled application to ensure that key information has been included prior to filing the application with the Commission.

Pre-application meetings and pre-submission meetings are held for the benefit of the prospective applicant and do not bind staff or the Commission to matters discussed therein, nor limit the ability of staff or the Commission to raise further issues during the application review process.

2. Meetings Required.

- a. A pre-application meeting with Commission staff is required before filing with the Commission an application to create or modify the following:
 - (1) Grid-scale Wind and Solar Energy Development;
 - (2) Planned Development (D-PD) or Planned Recreation Facility (D-PR) Subdistricts, and their related development plans. See Chapter 10 for additional provisions;
 - (3) Resource Plan Protection (P-RP) Subdistricts and their related resource plan or concept plan; and
 - (4) As may otherwise be required by any Commission rule adopted after January 1, 2021.
- b. A pre-submission meeting with Commission staff is required before filing with the Commission an application for a zone change proposing to create or modify a Planned Development (D-PD),

Planned Recreation Facility (D-PR), or Resource Plan Protection (P-RP) Subdistrict, and their related development or concept plan.

3. Scheduling and Attendance.

- a. Notwithstanding the provisions of Section 4.03(A)(2) and (3), a pre-application meeting or a pre-submission meeting may be requested by a prospective applicant or by Commission staff. In either case, Commission staff will make a date available for the meeting in a timely manner.
- b. Pre-application and pre-submission meetings must be attended by the prospective applicant or an authorized agent. The prospective applicant may choose to have any consultants or contractors also attend.

4. Waiver.

Commission staff may waive the requirement for a pre-application or pre-submission meeting if Commission staff are satisfied that such a meeting would be of limited value in achieving the purposes noted in Section 4.03(A)(1).

B. PRE-APPLICATION MEETINGS WITH THE COMMISSION

[Revision Note: The following is based on current practice, which originally responded to unallocated language of [PL 2011 CH, 682, Section 35](#), which required the Commission to establish a process by which an applicant can request a public pre-application meeting with the commissioners to discuss a proposed project.]

1. Pre-application meetings with the Commission offer a prospective applicant an opportunity to describe the intended project, and for the Commission to ask questions and identify potential concerns that the prospective applicant may choose to address in an application. Pre-application meetings are open to the public; however, they are non-binding in that the Commission makes no formal findings-of-fact or conclusions and no vote or action is taken.
2. Any prospective applicant may request a pre-application meeting with the Commission by filing a request with Commission staff. The Director and the Commission Chair may, at their discretion, schedule a mutually convenient date and time for such a meeting.
3. Pre-application meetings with the Commission are held for the benefit of the prospective applicant and do not bind the Commission to matters discussed therein, nor limit the ability of staff or the Commission to raise further issues during the application review process.

C. SITE VISIT WITH THE COMMISSION

1. The Commission may conduct site visits for informational purposes, or as part of, or in preparation for, its review of a proposal.
 2. A site visit in which a quorum of Commissioners is present is a public proceeding, for which public notice is required, and is accessible to the public to greatest extent practicable considering public safety and the remoteness of the Commission's service area.
-

D. COMMISSION MEETINGS

[Revision Note: This would be a new section intended to identify applicable provisions without reiterating them for reader convenience.]

1. Notice and conduct of Commission meetings must be in accordance with 1 M.R.S. subchapter 13, 12 M.R.S. § 684, and any other applicable provision of the Constitution of Maine or statute.
2. The Commission, at its discretion, may provide an opportunity for comments or questions from members of the public.

4.04 NOTICES

[Revision Note: This section is proposed to consolidate all notice requirements within one section. Where possible and appropriate, notice requirements have been made consistent or are otherwise addressed separately.]

Revision and reorganization of the following notice provisions intend to comply with statutory requirements, and to the extent possible and appropriate, layout and administer a system that i) is fair and timely to both an applicant and other parties/interests; ii) is commensurate with or otherwise responds to a broad spectrum of projects, interests, and geographic considerations (e.g., neighbors, neighborhoods, communities, regions, statewide); and iii) shortens and simplifies the rule.]

A. GENERAL PROVISIONS

1. Consolidation of Notices.

Notice provided pursuant to Section 4.05 of this chapter may be included in a written statement providing notice of more than one such application, provided all applicable notice requirements are met.

2. Demonstration of Notice.

The Commission may require an applicant, as part of an application, to provide information regarding the specific notice provided, a list of recipients, and documentation of when and how the notice was provided.

3. Additional Notice.

- a. After an application has been filed, if the Commission determines that the applicant submits significant new or additional information or substantially modifies its application at any time after the application has been deemed as complete for processing, the Commission may require the applicant to provide subsequent notice to abutters and interested persons, consistent with Section 4.04(B)(3) or (4) as applicable. The Commission may also require additional public notice at its discretion if a substantial period of time has elapsed since the original public notice.
- b. Unless otherwise specified by statute or other applicable rules, the Commission or Commission staff may provide, or require an applicant to provide, additional notice related to an application in any manner the Commission or Commission staff deems appropriate. The Commission may require additional notice without limitation, to adjacent or potentially affected municipalities, counties, or service providers. Additional notice may be provided or required, without limitation, for the extension or reopening of a hearing record or comment period.

B. NOTICE REQUIREMENTS

[Revision Note: The following section is proposed to be revised to: consolidate notice requirements among various application categories in order to reduce complexity; assign notice requirements to application categories commensurate with the likelihood that review criteria for the holding of a hearing will be met; and, consolidate notice requirements in one location for ease of reference and to avoid duplication.]

1. Applications Received.

The Commission will generate a list of all applications received on a periodic basis indicating the name of the applicant and the location and nature of the proposed activity. This list will be made available to the public on the agency's website or upon request.

2. Notice of Variance Requests.

For all requests for variances from the Commission's standards pursuant to 12 M.R.S. § 685-A(10), the applicant must provide notice of the pending application by regular mail to all persons owning or leasing land within 1,000 feet of the proposed project as shown in records of Maine Revenue Services or the applicable plantation or municipality.

[Revision Note: The following section refers to "major amendment" – a term and definition of which are included in the currently pending [2021 Multi-Chapter Rulemaking Part I \(Chapters 2, 10, and 16\)](#). Otherwise, The following section is proposed to be revised to account for:

- Notice to those granted intervenor status in a prior hearing is revised to account for the fact that a prior hearing may have occurred long ago, the intervenor may have since moved or changed names, or that there is no reason for the Maine Revenue Service, town, or plantation to have contact information; and
- applications which would be required to complete this notice are of scale that persons owning or leasing property within 1,000 feet of the project should receive notice directly via mail and should not be expected to monitor legal notices.]

3. Notice of Filing.

a. Applications for permit and applications for zone change:

- (1) Applicability. Notice described by Sections 4.04(B)(3)(a)(2) and (3) is required in the following cases:
 - (a) development permit applications and major amendments;
 - (b) subdivision permit applications and major amendments;
 - (c) applications and major amendments to all other nonresidential permit types not otherwise listed in Section 4.04(B)(3)(a)(1)(a) and (b);
 - (d) applications to amend any permit which was previously appealed to the Commission;
 - (e) applications proposing amendment of a permit which permit was the subject of a hearing; and

- (f) applications for zone changes, except those proposing to change a development subdistrict designation to a management or protection subdistrict designation, and applications addressing clerical corrections.
- (2) Recipients. Within seven days prior to filing an application, the applicant must provide notice to:
 - (a) all persons owning or leasing land within 1,000 feet of the land which is the subject of the proposed change or activity;
 - (b) In any proceeding involving a proposed amendment of the most recent permit that was the subject of an earlier hearing, all persons granted intervenor status in the hearing for the most recent permit;
 - (c) If a permittee seeks to amend a term or condition of a most recent permit that was the subject of an appeal to the Commission, notice of the application for permit must be provided to the prior appellant(s);
 - (d) Persons who have made timely requests to be notified of a specific application or project; and
 - (e) The municipality or plantation where the project is proposed, or the county if the proposed project site is in an unorganized township.
 - (3) Method. Notice must be provided by regular postal mail, according to the names and addresses as shown on the records of Maine Revenue Services or plantation or town tax assessors, or by electronic mail with the agreement of the person receiving notice. The address for persons granted intervenor status in an earlier hearing may be according to the applicable means of contact established during the prior proceeding, or according to the best information currently available.
- b. All requests for certification.
 - (1) Within 30 days prior to filing a request for certification either directly with the Commission or with the Department of Environmental Protection (the MDEP) for the MDEP to provide to the Commission, a person requesting certification must give public notice of the intent to file such a request. If the request for certification is included as part of the MDEP permit application or filed with the Commission simultaneously with the filing of the MDEP permit application, the person requesting certification may give public notice as part of the notice required by the MDEP in accordance with the MDEP's rules, provided the notice includes the information required in Section 4.04(C) of these rules.
 - (2) If a person requesting certification elects not to give the notice required by this section as part of a MDEP required notice, or if the person files a request for certification prior to filing a companion permit application with the MDEP, the person requesting certification must give notice in accordance with Section 4.04(B)(3)(a).

[Revision Note: The following requirements would be revised to require certified mail with return receipt requested and otherwise revised to match statutory requirements.]

4. Projects of Substantial Public Interest.

- a. The Director may deem certain applications or requests for certification to be of substantial public interest due to their nature, location, or size.
- b. For applications designated as projects of substantial public interest, applicants must provide notice by certified mail with return receipt to the recipients listed in Section 4.04(B)(3)(a) and to legislators whose districts encompass the project.
- c. Notice of projects deemed to be of substantial public interest must also be published twice in the legal notices section of a newspaper of general circulation in the area affected by the permit application as determined by the Commission. The date of the initial publication must be at least 25 days before the date of the filing of an application. The date of the second publication must be at least 7 days before the date of the filing of an application.

5. Hearings.

Notice of all hearings in regard to applications and appeals thereof must be given as follows:

- a. By regular postal mail, or electronic mail with the agreement of the person receiving notice, at least 30 days prior to the initial scheduled hearing, to:
 - (1) The applicant;
 - (2) All persons owning or leasing land within 1,000 feet of the proposed project according to the records of the Maine Revenue Services or the applicable plantation or municipality;
 - (3) The municipality or plantation where the project is proposed, or the county, if the proposed project site is in an unorganized township;
 - (4) The legislators whose districts encompass the project;
 - (5) Intervenors;
 - (6) Persons who have made a timely request to be notified of a specific hearing or project;
 - (7) Persons who have filed a written request to be notified of hearings;
 - (8) Appropriate State and federal agencies, as determined by the Commission; and
 - (9) In any proceeding involving a proposed amendment of a Commission decision which was the subject of an earlier hearing, all persons granted intervenor status at the earlier hearing in the most recent proceeding relevant to the decision.
- b. By publication in the legal notices section of a newspaper of general circulation in the area affected by the application as determined by the Commission.
 - (1) Notice of hearing on permit applications and requests for certification must be published in the newspaper twice. The date of the initial publication must be at least 30 days before the hearing. The date of the second publication must be at least 7 days and no more than 13 days before the date of the hearing.

6. Rulemaking.

Notice of rulemaking, with or without a hearing, must be provided in accordance with 5 M.R.S. §§ 8053(1), (2), (3-A), and (5), as may be modified or supplemented by 12 M.R.S. § 685-A(7-A)(B). Notwithstanding the prior statement, pursuant to 12 M.R.S. § 685-A(7-A)(B), notice requirements for applications for zone change are addressed in Sections 4.04(B)(3) through (5), and (7).

C. NOTICE CONTENTS

1. Pursuant to 5 M.R.S. § 9052(4) and 12 M.R.S. § 685-A(7-A)(B), notice required under Section 4.04, except rulemaking notices, must include the following information:

- a. The name and address of the applicant;
- b. The legal authority and jurisdiction pursuant to which the proceeding is being conducted;
- c. A reference to the major substantive statutory and rule provisions involved;
- d. In a short and plain statement, the nature and purpose of the proceeding;
- e. The location and nature of the proposed development;
- f. The location where further information, including a copy of the application, may be inspected;
- g. The manner and time period within which evidence and argument may be submitted to the Commission for consideration;
- h. The time and place of the hearing, or the manner in which a hearing concerning the application may be requested;
- i. When a hearing has been scheduled, the manner and time within which petitions for intervention pursuant to Commission rule Chapter 5 may be filed.
- j. Such other information as the Commission deems appropriate.

2. Rulemaking.

- a. Applications for zone change are a form of rulemaking; however, pursuant to 12 M.R.S. § 685-A(7-A)(B), notice contents requirements for applications for zone change are addressed in Section 4.04(C)(1).
- b. Notice of rulemaking must include all information required by 5 M.R.S. § 8053(3) and 12 M.R.S. § 685-A(7-A)(B).

4.05 APPLICATIONS, REQUESTS, AND RULEMAKING

A. GENERAL PROVISIONS

1. Applications for Permit and Zoning Change, and Requests for Advisory Ruling and Certification.

Applications must be submitted using the Commission's forms, which may be changed from time to time by the Commission. The Commission's application forms will require information deemed necessary or desirable by the Commission to evaluate the application. The Commission may coordinate with the Maine DEP to incorporate any Commission certification forms into the Maine DEP's permit application materials.

A person requesting Commission approval must use the appropriate form, but need not complete any portions of a form determined by the Commission to be unnecessary for a specific application.

2. Signatory Requirement.

In addition to the provisions of Section 4.02(D), signatures must comply with the following:

- a. Each application or rulemaking petition submitted to the Commission must include the signature of the applicant or the person petitioning for rulemaking, or the duly authorized officer or agent.
- b. If a form is signed by an agent, it must include evidence of the agency signed by the applicant or person requesting certification.

3. Title, Right or Interest.

Unless otherwise provided by law, the Commission will not accept an application as complete for processing unless and until the applicant demonstrates, to the Commission's satisfaction, legally enforceable title, right or interest in all the property proposed for development or use sufficient to evaluate the proposed development and use of the property, including closure and post closure care, where required. Unless submitted to the Commission before filing a Maine Department of Environmental Protection permit application, determinations of title, right or interest for certification requests made pursuant to 12 M.R.S. §§ 685-B(1-A)(B-1) and 685-B(1-A)(B-2) are made by the Maine Department of Environmental Protection and are not subject to Section 4.05(A)(3). Methods of demonstrating title, right or interest include, but are not limited to, supplying the following:

- a. when the applicant owns the property, a copy of the recorded deed(s) to the property. However, in the instance of large ownerships where, at the discretion of the Commission, providing deeds would be impractical or cumbersome, other methods, such as certificates of ownership, may be acceptable;

A. General Provisions

- b. when the applicant has a lease or easement on the property, a copy of the lease or easement. The lease or easement must be of sufficient duration and terms, as determined by the Commission, to permit the proposed zone change, development, and use of the property;
- c. when the applicant has an option to buy, lease, or obtain an easement on the property, a copy of the option agreement and a copy of the property owner's recorded deed. The option agreement must be sufficient, as determined by the Commission, to give rights to title, or a leasehold or easement of sufficient duration and terms to permit the proposed development and use of the property;
- d. when the applicant asserts eminent domain power over the property, evidence describing the ability and intent to use the eminent domain power to acquire sufficient title, right or interest as determined by the Commission;
- e. when the applicant has either a valid preliminary permit or a notification of acceptance for filing of an application for a license from the Federal Energy Regulatory Commission for the site which is proposed for development or use, a copy of that permit or notification;
- f. when a project involving the State's submerged lands requires a submerged lands conveyance from the Bureau of Parks and Lands (the BPL), title, right or interest in the property will be presumed for purposes of the Commission's processing and acting upon the application or notification, subject to the following requirements:
 - (1) When an application is submitted to the Commission involving a use of the State's submerged lands, the Commission will forward a copy to the BPL. The Commission will not act upon an application until it has received written notice from the BPL that a submerged lands lease or easement is not required, or that BPL has initiated formal review of the project. If the Commission receives written notice from the BPL that a grant of a submerged lands lease or easement is legally required but has been or is likely to be withheld, the Commission will cease processing the application. As a condition of the Commission's licensing of any project involving the State's submerged lands which requires a submerged lands lease or easement from the BPL, construction may not commence unless the BPL has granted the required interest in the State's submerged lands and provided a copy of the submerged lands conveyance to the Commission.
 - (2) For projects involving the salvage of sunken logs from the State's submerged lands and which require a sunken log salvage authorization from the BPL, the Commission will not begin processing the application until the BPL has issued an authorization allowing the salvage in the location proposed, unless the BPL provides written notification that it has initiated review of the proposed salvage operation and approval in the proposed location is likely. The Commission may not issue a permit for sunken log salvage before the BPL issues a sunken log authorization for the project. A permit issued by the Commission must be effective for a period not to exceed the term of the authorization as granted or reissued by the BPL.
 - (3) When the Department of Inland Fisheries and Wildlife or the BPL files a notification to establish a public boat launch, title, right or interest to submerged lands will be presumed for purposes of accepting the notification if the applicant demonstrates it has filed an application for a submerged lands conveyance with the BPL. Work on the project may not begin until a lease or easement is obtained or the BPL has provided notification that one is not necessary.

- g. if the property is subject to a conservation easement or other restrictions of record, a copy of the conservation easement or other restrictions.

The Commission, in its discretion, may require additional information from the applicant to determine whether the applicant has sufficient title, right, or interest.

The Commission may return an application after it has already been accepted for processing if the Commission determines that the applicant did not have, or no longer has, sufficient title, right, or interest.

4. Fee.

The application must be accompanied by the proper fee as set in Chapter 1 of the Commission's rules or by the Director pursuant to 12 M.R.S. § 685-F.

5. Acceptance of Applications.

- a. **Application Accepted as Complete for Processing.** Upon receipt of an application, the Commission must determine whether to accept the application, as complete for processing based upon whether it:
 - (1) is properly signed;
 - (2) is accompanied by the proper fee;
 - (3) contains sufficient documentation of title, right, or interest (TRI);
 - (4) contains documentation that notice of the filing, when required, has been provided. Documentation of notice must include a list of the recipients and applicable addresses or email addresses, the means and date of notice, and a copy of the notice provided; and
 - (5) answers all applicable questions in the application and contains all applicable exhibits.
- b. Notwithstanding the provisions of Section 4.05(A)(5)(a), requests for an advisory ruling must be accompanied by the proper fee and contain sufficient information for the Commission to begin its review.
- c. The Commission will notify the applicant of any deficiency in the application within a reasonable time after it becomes aware of the deficiency.
- d. **Additional Information May Be Required.** In addition to the threshold information required by section 4.05(A)(5)(a), the Commission may request additional information the Commission deems necessary to evaluate applicable review criteria. Even if an application is accepted as complete for processing, the Commission may deny the application if the applicant fails to provide additional information the Commission deems necessary for it to make findings required by applicable review criteria including, but not limited to, criteria set forth in 12 M.R.S. § 685-A(8-A) and § 685-B(4), Criteria for Approval, and any other applicable review criteria.

A. General Provisions

- e. **Modification of Application.** If the Commission determines in its sole discretion that an applicant (i) materially modifies its application such that the modified application requires new or supplemental review by the Commission, or (ii) submits additional information necessary to enable the Commission to make findings under applicable review criteria, and the additional information requires new or supplemental review by the Commission, the Commission may:
- (1) If there is insufficient time to make the findings and conclusions required by law within the deadlines set forth in 12 M.R.S. § 685-A(7-A) and §§ 685-B(2-B) and (3-A), deny the application; or

[Revision Note: Reference to fees is being deleted as fees are addressed by the Commission's Chapter 1, Fee Schedule.]

- (2) With the agreement of the applicant, accept the additional information as a modified application, in which case the processing times set forth in 12 M.R.S. § 685-A(7-A) and §§ 685-B(2-B) and (3-A) restart on the date that the Commission determines there is sufficient new information for the Commission to begin its review of the modified application.

6. Burden of Proof.

Unless otherwise provided herein or by other applicable provisions of law, the burden of proof is as follows:

- a. The burden of proof is upon the applicant. An applicant must demonstrate by substantial evidence that the criteria of all applicable statutes and regulations have been met.

7. Comment Periods Without a Hearing.

[Revision Note: The following combines provisions that are the same, retains the longer comment period for certifications, and adds zoning petitions to the exceptions.]

[Requirement: [Title 5 Section 9051-A](#) requires, "Notice of opportunity for hearing; license applications with substantial public interest. When the applicable law or the Constitution of Maine requires that an opportunity for a hearing be provided or an agency deems in any proceeding that a substantial public interest is involved, notice shall be given as follows.

A. Notice of the pending license application shall be provided 30 days next prior to the date of the expected date of an agency decision. Notice shall be provided..."

- a. The Commission must allow a period of not less than five days after providing notice of receipt of a permit application, during which time any interested persons may submit written comments to the Commission.
- b. **Certifications.** The Commission must allow a period of not less than 20 days after accepting a request for certification as complete for processing, during which time any interested persons may submit written comments to the Commission. This 20-day period does not apply to the Commission's determination of whether to certify that the proposed development is an allowed use within the subdistrict or subdistricts for which it is proposed.

A. General Provisions

- c. Exceptions. Exceptions to the time periods stated in Section 4.05(A)(7)(a) and (b) may be made in cases involving emergencies, as determined by the Commission, and requests for certifications determined by the Commission to be routine in nature.

[Revision Note: As a matter of due process and investment of public resources, the following revision sets a limit to the period during which an applicant may withdraw an application, which is current agency practice.]

8. Withdrawal of Applications.

Unless otherwise provided herein or by other applicable provisions of law, applications may be withdrawn by the applicant at any time prior to:

- a. a staff issued decision; or
- b. the commencement of Commission deliberation on the application at a Commission meeting.

9. Procedures and Time Limits for Issuing a Decision on Applications.

- a. Except where otherwise directed by the Commission or determined by the Director, the staff will prepare a recommendation for each application brought to the Commission for a decision.
- b. Commission staff will send notice of the decision on an application to the applicant, intervenors, and to any other person having requested such information.
- c. Notice of a decision of the staff will indicate that any person aggrieved by the staff decision has the right to a review of the staff decision by the Commission. The request for such review must be made in writing within 30 days of the date of the staff decision.
- d. In the event the Commission approves an application for a subdivision, a copy of an approved plat or plan and a copy of the conditions required by the Commission to be included in any deed or other document conveying an interest in the subdivision must be filed by the applicant, or the Commission at the applicant's expense, with the appropriate registry of deeds for each county in which the real estate lies.

B. ADVISORY RULINGS

1. General Provisions.

Commission staff may, at its discretion, issue an advisory ruling with respect to the applicability to any person, property, or actual state of facts of any statute, standard, or rule administered by the Commission.

- a. The request for an advisory ruling must be consistent with Section 4.05(A)(1). The advisory ruling must be made in writing upon review and approval of the Director or their designee, and must state that it is limited in application to the facts stated in the request.

2. Rulings Not Binding.

In accordance with 5 M.R.S. § 9001(3), advisory rulings are not binding on the Commission.

[Revision Note: Subsection C is currently part of Chapter 10 as Section 10.16, but is more appropriate here in Chapter 4. A concurrent yet separate rulemaking proposes to delete the provision from Chapter 10. However, the added statement serves to clearly allow for project specific notification provisions (e.g., within concept plans, resource plans, and D-PD development plans).]

C. USE NOTIFICATIONS

Where a written notification to the Commission is required by Chapter 10 of the Commission's rules or by other Commission approved plans, such notification must be submitted in advance of the date on which the activity, which is the subject of the notification, is commenced. Except as provided in Chapter 10, Section 10.27(L), or by other Commission approved plans, such notification must state the:

1. location of the proposed project by use of an official Commission Land Use Guidance Map of the area;
2. nature of the proposed project; and
3. time period of the proposed project.

Such notification must also state that the activity or project will be accomplished in conformance with the applicable minimum standards of Chapter 10, Sub-Chapter III and must be signed by a duly authorized person who will be responsible for the execution of the activity.

D. PERMIT APPLICATIONS

1. **Applicability.** This section governs the procedures by which the Commission may consider permit applications submitted under 12 M.R.S. § 685-B and Chapter 10 of the Commission's rules.
2. **Who May Apply.** An applicant may designate an agent for the purposes of completing an application and representing the applicant's interests before the Commission.
3. **Who May Apply for a Subdivision Application in which Interests Have Been Sold without a Subdivision Permit.**

The following provisions apply to a permit application for a subdivision or similar development in which interests have been sold without a subdivision permit as required by 12 M.R.S. § 685-B:

- a. If the person who subdivided the land is still holding an interest in some or all of the land that was subdivided, that person must be the applicant or co-applicant .
- b. If the Commission determines that the person who subdivided the land is unavailable or no longer holds an interest in the subdivision, all persons having an interest in any lot in the subdivision may apply for a subdivision permit provided that:
 - (1) All such persons coapply or are otherwise represented, or

- (2) The Commission determines that those lot owners not represented are not necessary to the proceeding. In determining the necessity of such representation, the Commission will consider:
 - (a) The extent to which a decision reached in the person's absence might be prejudicial to that person's interests in the subdivision or to the interests of the other parties to the proceeding;
 - (b) The extent to which such prejudice can be lessened or avoided by provisions in the decision; and
 - (c) Whether the other parties will have an adequate remedy if no decision is made by the Commission.
- c. An applicant must provide the following to the Commission:
 - (1) A complete list of those persons having an interest in any lot in the subdivision; and
 - (2) A written statement certifying that the applicant has provided all persons having an interest in any lot in the subdivision with notice of the pending application. The notice must state the nature of the application, the criteria pursuant to which the application will be reviewed, the procedure for review of the application, the possible effects of the application on persons having interests in lots in the subdivision, the opportunity for any such persons to participate in the proceedings before the Commission and any other information which the Director deems appropriate.

4. Who May Apply for Amendments to Existing Subdivision Permits.

The following provisions apply to an application to amend a subdivision permit issued by the Commission pursuant to 12 M.R.S. § 685-B:

- a. The person who subdivided the land must file the application. If the Commission determines that this person is unavailable or no longer holds an interest in the subdivision, the lot owners' association or, if no lot owners' association has been formed, any individual lot owner must be considered a proper applicant before the Commission.
- b. The applicant must provide to the Commission all information required by Section 4.05(C)(3)(c). In addition, if there is a lot owners' association, the applicant must document how that the amendment is in compliance with all applicable bylaws.

5. Procedures and Time Limits for Issuing a Permit Decision.

- a. Application with a hearing. Within 60 days after closure of a hearing concerning a permit, the Commission must make written findings of fact and issue a decision either granting approval, subject to reasonable terms and conditions that the Commission determines appropriate to fulfill the requirements and intent of the Commission's statute, the Comprehensive Land Use Plan, and the Commission's rules, or denying approval of the application as proposed.

- b. Application without a hearing. If the Commission determines to act upon a permit application without a hearing, the Commission, within 90 days after accepting the application as complete for processing, must make written findings of fact and issue a decision either granting approval, subject to reasonable terms and conditions that the Commission determines appropriate to fulfill the requirements and intent of the Commission's statute, the Comprehensive Land Use Plan, and the Commission's rules, or denying approval of the application as proposed.
- c. Subdivision. The Commission must render its determination on an application for subdivision approval within 60 days after the Commission accepts the application as complete for processing and determines that the proposal is a permitted use within the affected district or subdistrict.
- d. Expedited permitting area for wind energy development. The Commission must render its determination on a permit application for a wind energy development in an expedited permitting area within 185 days after the Commission accepts the application as complete for processing, except that the Commission must render such a decision within 270 days if it holds a hearing on the application. At the request of an applicant, the Commission may stop the processing time for a period of time agreeable to the Commission and the applicant. The expedited review period specified in this paragraph does not apply to the associated facilities, as defined in 35-A M.R.S. § 3451(1), of the wind energy development if the Commission determines that an expedited review time is unreasonable due to the size, location, potential impacts, multiple agency jurisdiction or complexity of that portion of the development.

E. APPLICATIONS FOR ZONE CHANGE

1. **Applicability.** This subsection governs the procedures by which the Commission may consider petitions to change the boundaries of existing subdistricts or establish new subdistricts (applications for "zone change"). If approved, the Commission will amend its land use maps to reflect the zone change.

[Revision Note: This item proposes to require a lessee to provide written permission from the landowner as part of an application for zone change, rather than just being required to notify the landowner.]

2. **Who May Apply.** The Commission or its staff may initiate, and any state or federal agency, any county or municipal governing body, or the property owner or lessee may apply for a zone change. A lessee must provide, as part of the application for zone change, written permission from the property owner.
3. **Application Content.**
 - a. The district boundary that the applicant requests the Commission adopt or amend;
 - b. The existing and proposed district designations;
 - c. The basis for the change requested;

[Revision Note: The following proposed revision responds to the limited legal meaning for “substantial,” whereas the Commission continues to interpret the measure to require meaningful or otherwise compelling evidence.]

- d. Compelling evidence that the requested change is in conformity with the applicable criteria for zone changes set forth in 12 M.R.S. § 685-A(8-A); and
- e. Evidence that the notice provisions of Section 4.04(B) have been completed.

4. Procedures and Time Limits for Issuing a Decision on an Application for a Zone Change.

- a. Within 45 days after deeming an application for zone change complete for processing, the Commission must decide whether to hold a hearing, and either schedule a hearing or, if no hearing is held, set a final date by which comments on the petition may be submitted to the Commission.
- b. The Commission must act on an application for zone change within 90 days after the final closure of the hearing, or, when the Commission does not hold a hearing, within 90 days of the close of the public comment period.
- c. At any time before acting on an application for zone change, the Commission may elect to reopen the record and extend the time period for public comment to such date as it may designate.
- d. District boundaries adopted by the Commission must be effective not less than 15 days after adoption, provided all applicable requirements for their adoption have been met and the Commission staff have filed the boundaries and maps with the appropriate registry of deeds for each county involved;
- e. A notice of adoption of land use district boundaries must be filed by the Commission staff with the Secretary of State. This filing must state that current copies of maps showing district boundaries are on file in the Commission’s office and must state the method by which copies of the adopted map may be obtained;
- f. Commission staff must ensure public notice of adoption is provided by publication one time in a newspaper or newspapers of general circulation in the area affected.

F. REQUESTS FOR CERTIFICATION

1. Certification of Development.

Pursuant to 12 M.R.S. § 685-B(1-A)(B-1) and 38 M.R.S. § 489-A-1, for development in the unorganized and deorganized areas reviewed by the MDEP and requiring a permit, the Department may not issue a permit until the Commission certifies to the Department that the proposed development is an allowed use within the subdistrict or subdistricts for which it is proposed and the proposed development meets any land use standard established by the Commission that is not

considered in the MDEP's review. Commission certification determinations will conform with the following:

- a. The Commission will consider receipt, by the Commission, of a notice of intent to develop and map indicating the location of the proposed development, required by 12 M.R.S. § 685-B(1-A)(B-1), as a request for certification. The person proposing development may provide the notice and map directly to the Commission or to the MDEP for the MDEP to provide to the Commission.
- b. The Commission's decision on a request for certification will be issued:
 - (1) Solely to the MDEP for inclusion in the MDEP's permitting decision if the Commission approves a request for certification.
 - (2) Solely to the MDEP for inclusion in the MDEP's permitting decision if the Commission denies a request for certification and the request is associated with a development proposal being reviewed by the MDEP as part of a pending permit application.
 - (3) Both to the MDEP and to the person proposing development if the Commission denies a request for certification and the request is not associated with a development proposal being reviewed by the MDEP as part of a pending permit application.
- c. A Commission decision to approve a request for certification may include reasonable terms and conditions that the Commission determines appropriate to fulfill the requirements and intent of the Commission's statute, rules, and plans. The Commission retains, pursuant to 12 M.R.S. § 685-B(1-A)(B-1), the authority to enforce the land use standards certified to the MDEP, including through the enforcement of terms and conditions that are a part of a certification determination.
- d. The Commission may conduct its certification review and issue its decision as a single certification determination or in two parts. If provided in two parts, the first part will address whether the proposed development is an allowed use within the subdistrict or subdistricts for which it is proposed and the second part will address whether the proposed development meets the land use standards established by the Commission that are not considered in the Department's review.
- e. The Commission will evaluate the applicant's title, right or interest as follows:
 - (1) If a person requesting certification simultaneously applies to the MDEP for a permit for the same proposed development, the Commission will not evaluate whether the person has title, right or interest in the property proposed for development. In such instances, the Commission will rely on the MDEP's title, right or interest determination. If at any point the MDEP determines the applicant does not possess sufficient title, right or interest, the Commission may stop reviewing the companion request for certification. Any time period contained in this Chapter for completing review of a request for certification will be tolled if the Commission stops its review pursuant to this paragraph.
 - (2) If a person requesting certification seeks certification before filing a permit application with the MDEP, the Commission will proceed in accordance with one of the two options contained in this paragraph. The Commission may require the applicant to demonstrate, to the Commission's satisfaction, legally enforceable title, right or interest in the property proposed for development or use sufficient to approve the request for certification. Any title, right, or interest determination by the Commission will be made in consultation with

the MDEP. If the Commission determines that a person requesting certification lacks title, right or interest, the Commission will return the request to the person who made the request for certification. Alternatively, the Commission may elect to not independently evaluate title, right or interest and condition any certification determination on the MDEP finding in a future companion permit decision that the person possesses title, right or interest in the property proposed for development or use.

- f. A Commission determination to approve or deny a request for certification is not final agency action when the request is associated with a development proposal being reviewed by the MDEP as part of a pending permit application and will be incorporated into the MDEP permitting decision. Pursuant to 5 M.R.S. §§ 11001 *et seq.*, a person aggrieved by a MDEP permit decision containing a certification determination may appeal the Department's final agency action to state court in accordance with applicable state laws and court rules. As part of such an appeal, a person aggrieved may seek judicial review of any of the components of the MDEP's final agency action, including the Commission's certification determination that is incorporated into the MDEP's permitting decision.
- g. A Commission determination to approve or deny a request for certification is a final agency action subject to judicial review, when the request is not associated with a development proposal being reviewed by the MDEP as part of a pending permit application.

2. Procedures and Time Limits for Issuing a Certification.

- a. Within 60 days after closure of a hearing concerning a request for certification, the Commission must issue a written certification determination.
- b. If the Commission acts upon a request for certification without a hearing, the Commission, within 90 days after accepting the request as complete for processing, must issue a written certification determination. Notwithstanding the provisions of Sections 4.05(F)(2)(a) and (b), the Commission must issue its determination on a request for certification for a subdivision within 60 days after the Commission accepts the request for certification as complete for processing.
- d. Except where otherwise directed by the Commission or determined by the Director, the staff will prepare a recommendation for each request for certification brought to the Commission for a determination.
- e. Notice of a certification determination of the staff must indicate that any person aggrieved by the staff determination has the right to a review of the staff determination by the Commission. The request for such review must be made in writing within 30 days of the date of the staff determination.

G. RULEMAKING

[**Revision Note:** Public Law 2011 Chapter 682, Section 21 revised [Title 12 § 685-C\(1\)](#) by establishing a different process for the adoption or amendment of the Comprehensive Land Use Plan.]

1. Applicability.

This section governs the adoption or amendment of the Commission's rules, other than zone changes, which are governed by Section 4.05(E).

2. Who May Petition.

- a. The Commission may initiate the adoption or amendment of any rule.
- b. Any person may petition the Commission in writing to request the adoption of a rule or amendment of any rule administered by the Commission. Such petition must specify the change requested. Within 60 days after receipt of a complete petition, the Commission must either:
 - (1) Deny the proposed adoption or amendment, indicating in writing the reasons for denial; or
 - (2) Initiate rulemaking proceedings on the proposed adoption or amendment.
- c. Whenever a petition to adopt or amend a rule is submitted by 150 or more registered voters of the State, the Commission must initiate rulemaking within 60 days after receipt of the petition. The petition must conform to the applicable provisions of 5 M.R.S., Chapter 375, the Maine Administrative Procedure Act, including with respect to the certification of names on the petition. Pursuant to 5 M.R.S. § 8055, and Section 4.09(C)(1), rulemaking is considered to be initiated when the Commission directs staff to post the rulemaking to a comment process or a hearing, comment, and rebuttal process.

3. Petition Content.

Petitions must be in writing and must state the change requested and the basis for the change requested.

4. Time Limits for Rule Adoption.

- a. Land Use District Standards:
 - (1) The Commission must act to adopt proposed land use district standards within 90 days after the final closure of the hearing, or where the Commission determines to proceed without a hearing, within 90 days of the final date by which data, views or arguments may be submitted to the Commission for consideration in adopting the standards.

- (2) At any time prior to adoption of proposed land use standards, the Commission may elect to reopen the hearing record and extend the time period for public comment to such date as it may designate.

b. All Other Rules:

- (1) Except as provided in Section 4.05(E)(4)(a) and (b), the Commission must act to adopt proposed rules within 120 days of the final date by which data, views or arguments may be submitted to the Commission for consideration in adopting the rule.
- (2) The final date for comments may be extended if notice of doing so is published within 14 days after the most recently published comment deadline, in the Secretary of State's consolidated notice publication.

[Revision Note: The following revision addresses a common source of confusion by referring to the two sets of statutory requirements. This is a clarification and current practices would not change.]

5. Adoption Requirements.

With respect to all rules adopted or amended by the Commission, the Commission must follow the adoption procedures in 5 M.R.S. Chapter 375; and as applicable, 12 M.R.S. § 685-A(7-A).

6. Coordination with the Legislature.

The Commission must:

- a. At the time of giving notice of rulemaking or within 10 days following the adoption of an emergency rule, provide to the Legislature a rulemaking fact sheet providing information described in 5 M.R.S. § 8053-A(1), and where applicable, 5 M.R.S. § 8053-A(2);
- b. If the Commission determines that a rule which it intends to adopt will be substantially different from the proposed rule, provide the Legislature, in accordance with Section 4.05(G)(6)(a), with a revised fact sheet as it relates to the substantially different rule pursuant to 5 M.R.S. § 8053-A(1)(A);
- c. Provide copies of its regulatory agenda to the Legislature at the time the agenda is issued pursuant to 5 M.R.S. § 8060.
- d. If the Commission proposes a rule not in its current regulatory agenda, file an amendment with the Legislature and Secretary of State at the time of rule proposal, pursuant to 5 M.R.S. § 8064;
- e. When the Commission provides materials to the Legislature, follow the requirements of 5 M.R.S. § 8053-A(3);

7. Emergency Rulemaking.

If the Commission finds that immediate adoption of a rule is necessary to avoid an immediate threat to the public health, safety or general welfare, it may modify these procedures, to the extent required, to enable adoption of a rule to mitigate or alleviate the threat found. Emergency rulemaking is subject to the requirements of 5 M.R.S. § 8054.

8. Effective Date of Adopted Rules.

- a. Rules adopted or amended by the Commission become effective in accordance with 5 M.R.S. § 8052(6) for routine technical rulemaking; § 8054 for emergency rulemaking; and § 8072(8) for major substantive rulemaking.
- b. Land use district standards are effective not less than 5 days after filing with the Secretary of State, but must be submitted to the next regular or special session of the Legislature for approval or modification. If the Legislature fails to act, those standards continue in full force and effect. [12 M.R.S. § 685-A(7-A)(B)(6)]

4.06 HEARINGS

[Revision Note: This section proposes to consolidate all provisions regarding when to hold a hearing.]

A. WHEN TO HOLD A HEARING

1. A person may prepare and submit evidence and argument to the Commission in support of a request to hold a hearing on any matter.
2. The Commission will consider all written requests for a hearing submitted in a timely manner.
 - a. Within 45 days after receipt of such request for a hearing, the Commission must either:
 - (1) Deny the request for a hearing and notify in writing the person requesting the hearing of the Commission's decision; or
 - (2) Grant the request for a hearing and initiate a hearing process in accordance with Commission rules, Chapter 4 and Chapter 5. The Commission must notify the persons requesting a hearing of the Commission's decision.
3. **Hearing is Required.**

The Commission must conduct a hearing:

 - a. When required by the Constitution of Maine or statute;
 - b. If five or more interested persons request in writing that the Commission hold a hearing regarding a rulemaking, including without limitation, an application for zone change;
 - c. If a rulemaking proposal includes a rule or provision that is a major substantive rule as defined by 5 M.R.S. § 8071(2)(B); or
 - e. If otherwise required pursuant to the Commission's rules.
4. The Commission must not amend or modify any permit unless it has afforded the permittee an opportunity for hearing, nor may it refuse to renew any permit unless it has afforded the permittee an opportunity for a hearing.
5. **Hearing is Optional.**

Unless otherwise required by the Constitution of Maine, statute, or the Commission's rules, hearings are at the discretion of the Commission in the following cases:

 - a. Hearings on a permit application or a request for certification; and

- b. Applications for zone change in the case of changes proposed on motion of the staff which involve only clerical corrections.

In determining whether a hearing is advisable, the Commission considers i) the degree of public interest, ii) the likelihood of credible conflicting technical information regarding applicable regulatory criteria; iii) whether certain information material to the Commission's review cannot be effectively presented as written comments on the pending application; or iv) any other considerations the Commission deems appropriate or compelling.

B. CANCELLATION OR CHANGE OF HEARING

1. All Commission Hearings.

If a scheduled hearing is canceled or postponed to a later date, the Commission must provide timely notice to the persons described in Section 4.04(B). When hearings are continued, the Commission must provide such additional notice as it deems appropriate to inform the parties and interested persons, but the Commission may be entitled to continue a hearing to a later date and place as is announced at the hearing.

4.07 FINAL ACTION

[Revision Note: This section is proposed to consolidate existing and new provisions, and clarify current policies. Section 4.07(A) is proposed to be reserved for the possibility in the future for rule language suitable to 'general provisions' for final actions.]

A. (RESERVED)

B. STAFF DECISIONS

1. Unless otherwise indicated as a condition of the permit or certification, a final action issued by the staff is effective on the date the decision document is signed by the staff.
2. Any person aggrieved by a decision of the staff (e.g., regarding a permit, certificate of compliance, notice of violation) has the right to a review of that decision by the Commission. A request for such a review must be made in writing within 30 days of the date of the staff decision.

C. COMMISSION DECISIONS

1. To the extent practicable, copies of staff recommendations for Commission decisions will be made available at least 7 days prior to the date of expected decision, to the applicant, intervenors, and any other person requesting to be so notified.
2. A decision of the Commission is considered final on the date rendered by the Commission, unless the Commission receives a request for a public hearing pursuant to Section 4.06(A) or 4.07(K). Where such a request is made, the decision of the Commission is considered final on the date the Commission denies the request for public hearing or on the date of the Commission's decision after public hearing.

D. CORRECTIONS

[Revision Note: This next provision is proposed to be moved from Chapter 5, Section 5.20. A concurrent yet separate rulemaking proposes to delete the provision from Chapter 5.]

1. Within 30 days following the effective date of a permit, petition, or certification, any person aggrieved by the decision or order of the Commission may petition to seek the correction of any misstatement of fact or clerical error contained in the final decision or to challenge any material fact of which the Commission took official notice pursuant to 5 M.R.S. § 9058. The Commission will determine whether to dismiss the petition as without merit, to correct the error, to reopen the hearing pursuant to Chapter 5, Section 5.10(D) of the Commission's rules, or to take such other steps as it deems appropriate. Failure to invoke the provisions of this section will have no effect upon an aggrieved party's right of appeal to a court of law.
2. The Commission or Commission staff, as applicable, will consider requests for correction within 30 days of receipt of such request.
3. At any time, the Commission may issue a corrected permit, certification, or petition in accordance with Section 4.07(D).
4. The filing of a request for, or the issuance of, a correction under Section 4.07(D) does not serve to stay the deadlines for any appeal of a Commission decision, and the effective date of any corrected decision must be the same as the original decision.

E. AMENDMENTS

An application for amendment or request for minor change must be submitted to the Commission before undertaking any modification not exempted from permitting requirements by statute or rule to a project, development, or activity that is the subject of Commission authorization. Written approval for the modification must be received before the modification is undertaken.

F. EXPIRATION

[Revision Note: This section proposes to relocate all provisions from Chapter 10, Section 10.17(A) to Chapter 4 to consolidate existing provisions regarding procedure. A concurrent yet separate rulemaking proposes to delete the provisions from Chapter 10.]

Except as provided in Sections 4.07(F)(1) through (4) below or as otherwise authorized by the Commission in the permit conditions of approval, development or uses authorized by a permit must be substantially started within two years of the effective date of the permit and substantially completed within five years of the effective date of the permit:

1. Permits Issued Prior to July 1, 2003.

For permits issued prior to July 1, 2003 with no specified expiration dates, the expiration date is October 1, 2004.

2. Special Flood Hazard Areas.

In special flood hazard areas, development or uses authorized by a permit must be substantially started within 180 days of the effective date of the permit and substantially completed within five years of the effective date of the permit.

3. Subdivisions.

Development authorized by a Commission approved subdivision permit must be substantially started within four years of the effective date of the permit and substantially completed within seven years of the effective date of the permit.

Upon the Commission's determination that a subdivision permit has expired under this paragraph, notice of such expiration must be recorded, by the permittee or by the Commission at the permittee's expense, in the appropriate Registry of Deeds.

4. Multi-phased Projects.

For multi-phased projects or project expansions that are permitted separately, final Commission approval of each phase or expansion will be treated as a separate permit for the purposes of determining "substantial start" and "substantial completion" for each phase or expansion.

G. RENEWALS

[Revision Note: This section proposes to relocate all provisions from Chapter 10, Section 10.17(D) to Chapter 4 to consolidate existing provisions regarding procedure. A concurrent yet separate rulemaking proposes to delete the provisions from Chapter 10.]

An application to renew a permit must be submitted prior to the expiration of the permit.

1. If an application to renew a permit is not timely submitted prior to expiration of the permit, or is timely submitted but not accepted as complete for processing in accordance with Chapter 4, Section 4.05(A)(5)(a), the permit lapses.
2. If the renewal application is timely submitted prior to the expiration of the permit and accepted as complete for processing, the terms and conditions of the existing permit remain in effect until the final Commission decision on the renewal application.
3. The Commission may renew a permit and extend by up to two years, either or both of the deadline for a substantial start or for substantial completion.
4. Renewal applications to extend the expiration date for projects that have not been substantially started are subject to the procedural and substantive requirements in effect at the time of acceptance of the renewal application.

H. RE-APPLICATION

1. After receipt of a final decision as described in Sections 4.07(B) and (C) above, no person may reapply to the Commission for a permit for the same proposed use for the property in question, unless they can demonstrate that there is a significant change in circumstances or substantial new information to be presented to the Commission.

I. TRANSFER

1. Transfer of Commission permits is required for all subdivisions, nonresidential development, or certifications, where there is at the time of change in ownership:
 - a. development or activities that have been authorized or required but are not yet completed, except accessory structures;
 - b. other on-going compliance obligations including outstanding conditions and long-term operational or maintenance requirements;
 - c. condominium type residential development involving more than four dwellings; or

- d. nonresidential development cumulatively involving more than 3 acres of total impervious area.

Except as may be required by the Constitution of Maine or statute, all other permits carryforward with the land and therefore any change in ownership thereof.

2. No later than two weeks after the transfer of ownership of property subject to certain Commission permits or certifications that meet one or more of the provisions of Section 4.07(I)(1), the new owner must submit a transfer application for all relevant permits or certifications that have not expired.
3. Pending determination on the application for a transfer, the transferee must abide by all of the conditions of such permit, and is jointly or severally liable with the original permittee for any violation of the terms and conditions thereof. The transferee must demonstrate to the Commission's satisfaction sufficient technical ability and financial capacity, and the intent and ability to: (a) comply with all terms and conditions of the applicable permits, and (b) satisfy all applicable statutory and regulatory criteria.

J. REVOCATION, SUSPENSION, AND SURRENDER

1. The Commission may revoke or suspend, or seek revocation or suspension of, permits or certifications granted by it in accordance with applicable provisions of the Maine Administrative Procedure Act and 12 M.R.S. § 685-C(8).

[Revision Note: This would be a new section – based on DEP's Chapter 2 and recent LUPC matters where an applicant temporarily surrendered/suspended authorized activities.]

2. Suspension.

Any permittee may propose to suspend activities for a period specified as part of a permit transfer, permit application, or other appropriate situations. The proposal must be made in writing and contain sufficient detail for the Commission to understand the purpose and effect of the suspension. If a proposed suspension is approved,

- a. the Commission must confirm such suspension, and any subsequent release from suspension, in writing; and
- b. the suspension does not pause, extend, or otherwise affect requirements regarding substantial start or substantial completion.

3. Surrender.

Any permittee may request to surrender its permit, certification, or zone change if the permittee demonstrates to the Commission's satisfaction that it has never used the permit, certification, or zone change for its intended purpose nor begun any of the activities approved under the permit and

does not intend to do so in the future. The request must also provide that the permittee waives notice and opportunity for hearing.

The Commission may require written and photographic documentation, certified statements, and sampling analyses, in addition to any other relevant information, as demonstration that the activities described in the permit have not been undertaken. For any approved permit recorded in a registry of deeds which is later surrendered, the Commission will require that evidence of the surrender be filed by the permittee, or the Commission at the permittee's expense, with the same registry of deeds.

When the Commission approves the surrender, the permit, certification, or zone change is deemed null and void as of the date the surrender is approved.

K. APPEALS

[Revision Note: The following proposes to group all provisions regarding appeals into one section.]

1. General Provisions.

- a. **Person Aggrieved.** It is the Commission's intent to interpret and apply the term "person aggrieved," whenever it appears in statute or rule, consistent with Maine state court decisions that address judicial standing requirements for appeals of final agency action.
- b. A person aggrieved by a staff decision may appeal the decision to the Commission. Requests for Commission review of staff decisions must be made within 30 days of the date of the decision. If the staff decision regarded a certification determination made in two parts as provided for in Section 4.05(F)(1)(d), the appeal must be made within 30 days of the part of the determination of for which review is sought.
- c. In the event a person aggrieved appeals a Maine DEP permit decision that includes a certification determination to state court, the Commission certification determination record must be considered part of the Maine DEP permit record for the purpose of the appeal.
- d. Appeals of Commission decisions that are final agency action must be taken to Superior Court, or in the case of applications for expedited wind energy development, to the Supreme Judicial Court, in accordance with applicable state laws and court rules. However, any person aggrieved by a decision of the Commission in which no hearing was held, may petition the Commission for a hearing.

2. Contents.

An appeal to the Commission of a Commission staff determination, permit, or certification must set forth in detail:

- a. The written appeal must include evidence demonstrating the appellant's standing as an aggrieved person; the findings, conclusions or conditions objected to or believed to be in error; the basis of the objections or challenge; and the remedy sought.

- b. Exhibits attached to an appeal must be clearly labeled indicating date and source, and indicating whether the exhibit is in the existing record or is proposed supplemental evidence. Unlabeled exhibits may be rejected by the Chair. Electronic links to documents will not be accepted. In the case of lengthy documents, the appellant must specify the relevant portions.
- c. If the appellant requests that supplemental evidence be included in the record and considered by the Commission, such a request, with the proposed supplemental evidence, must be submitted with the appeal. A request to supplement the record must address the criteria for inclusion of supplemental evidence set forth in Section 4.07(K)(4).
- d. If a hearing is requested, the appellant must provide an offer of proof regarding the testimony and other evidence that would be presented at the hearing. The offer of proof must consist of a statement of the substance of the evidence, its relevance to the issues on appeal, and whether any expert or technical witnesses would testify.
- e. Appeals must be copied to the permittee. The Commission staff will provide notice of the appeal to persons on the Commission's interested persons list for the application at issue.

[Revision Note: The following is based on the Maine DEP's Chapter 2.]

3. Response to Appeal.

A written response to the merits of an appeal may be filed by a permittee (if the permittee is not the appellant) and any person who submitted written comment on the application (hereafter collectively referred to as the respondents). All proposed supplemental evidence is subject to the labeling and form requirements of Section 4.07(K)(2)(b) and the criteria for inclusion of supplemental evidence set forth in Section 4.07(K)(4).

- a. If no supplemental evidence is offered by any party, a respondent's complete response to the merits of the appeal must be filed within 30 days of the date of the staff's written acknowledgement of receipt of the appeal with a copy to the appellant.
- b. If supplemental evidence is offered by any party, the opposing party may submit written comment on the admissibility of the proposed supplemental evidence and may offer proposed supplemental evidence in response. The written comment is due within 15 days of the date of the Chair's written determination as to which of the submissions constitute proposed supplemental evidence unless the Commission establishes an alternative schedule.
- c. The Chair shall rule on the admissibility of all proposed supplemental evidence in accordance with Section 4.07(K)(6) within 10 days of receipt of all comments regarding admissibility of all of the proposed supplemental evidence.
- d. Within 20 days after the decision on the admissibility of all of the proposed supplemental evidence, the respondent's complete response to the merits of the appeal must be filed.
- e. Further evidence may not be provided directly to Commission members or distributed at Commission meetings or hearings without specific permission of the Chair.

4. Record on Appeal, Supplemental Evidence.

The record for appeals decided by the Commission is the administrative record prepared by Commission staff in its review of the application, unless the Commission admits supplemental evidence or decides to hold a hearing on the appeal.

- a. If an appellant or respondent seeks to supplement the record, that person shall provide copies of all proposed supplemental evidence with the written appeal or in response to the appeal as provided in Sections 4.07(K)(4)(b) and (5).
- b. The Commission may allow the record to be supplemented on appeal when it finds that the evidence offered is relevant and material and that:
 - (1) the person seeking to supplement the record has shown due diligence in bringing the evidence to the attention of the Commission at the earliest possible time; or
 - (2) the evidence is newly discovered and could not, by the exercise of reasonable diligence, have been discovered in time to be presented earlier in the regulatory process.
- c. The Chair may accept into the record additional evidence and analysis submitted by Commission staff in response to issues raised on appeal or supplemental evidence offered by the appellant or respondent.

5. Procedure.

The procedure for hearings on appeals is governed by Chapter 5 of the Commission's rules. Appeals decided without a hearing will be considered based on the administrative record on appeal and oral argument at a regular meeting of the Commission as follows, at the Chair's discretion:

- a. the Commission staff briefly introduces the appeal, indicating the subject matter, the appellant's basis for appeal, and the relevant statutes and rules, and indicating the staffs' recommended disposition of the appeal;
- b. the appellant makes a presentation discussing objections or challenges to the staff's decision on the application;
- c. when the appellant is a person other than the permittee, the permittee is then provided an opportunity to address the issues raised by the appellant;
- d. other persons may comment on the appeal;
- e. the appellant and permittee may be provided with a final opportunity for rebuttal.

The Commission, its staff and the Commission's legal representative may at any time address questions to any person participating in the appeal.

6. Decision on Appeal.

- a. The Commission will, as expeditiously as possible, affirm all or part, affirm with conditions, order a hearing to be held as expeditiously as possible, reverse all or part of the decision of the staff, or remand the matter to the staff for further proceedings.
- b. The Commission's decision is based on the administrative record on appeal, including any supplemental evidence admitted into the record and any evidence admitted during the course of a hearing on the appeal. The Commission is not bound by the staff findings of fact or conclusions of law.

4.08 DELEGATION OF AUTHORITY TO STAFF

[Revision Note: This would be a new section to Chapter 4 by incorporating the provisions of Chapter 3, Delegation of Authority to Staff, into this rule. Concurrent with the addition here, the Commission consequently is proposing to REPEAL Chapter 3.]

A. PURPOSE AND SCOPE

Pursuant to 12 M.R.S. §§ 685-B(1-B) and (8), the Commission finds that:

1. Many of the applications submitted to the Commission are similar and are therefore of a routine nature;
2. The handling of that type of application by the staff will eliminate a waiting period between completion of the staff work and the next Commission meeting; and
3. The nature of the applications is such that the decision may be made by the staff on the strict basis of the statutory criteria for approval contained in 12 M.R.S. § 685-B(4) and the policies, standards, and rules duly adopted by the Commission.

B. DELEGATION OF AUTHORITY

1. The Commission delegates to its staff, under the responsibility of the Director, the authority to
 - a. Approve, approve with conditions, disapprove, issue, or otherwise act on the following, provided they are routine in nature and do not raise significant policy issues:
 - (1) all applications, including those for special exceptions, submitted to the Commission.

These include situations where applicable Commission rules contain qualifying phrases, including but not limited to: the Commission may reduce, may consider, may allow for development by waiving, may waive, and must consider.
 - b. Extend the time limits herein imposed for review of staff decisions and for Commission review and decision, upon written request by the applicant or with the written consent of the applicant, where circumstances necessitate a longer time or for other good cause.

Notwithstanding the provisions of Sections 4.08(B)(1)(a) and (b), at the discretion of the Commission or the Director, any application, request, or matter may be forwarded to the Commission for discussion, decision, guidance to staff, or directive to staff.

[Revision Note: The following provisions are new and intend to add clarity and predictability.]

C. EXCEPTIONS

1. Notwithstanding any other provision, the Commission does not delegate to its staff authority to:
 - a. Approve or disapprove applications for zone changes, including adoption or amendment of any related development, concept, or resource plans;
 - b. Hear or decide on appeals of staff actions;
 - c. Approve or disapprove requests for a variance;
 - d. Initiate, approve, disapprove, or terminate rulemaking;
 - e. Decide or decide on requests for a hearing;
 - f. Revoke any Commission or staff approval or certification; and
 - g. Approve or disapprove requests to, or actions that would, affect land use regulatory authority, such as those provided in 12 M.R.S. § 685-A(4-A).

Department of Agriculture, Conservation and Forestry
MAINE LAND USE PLANNING COMMISSION
22 State House Station, Augusta, Maine 04330. Tel. (207) 287-2631

Rules for the Conduct of Public Hearings

Chapter 5 of the Commission's Rules

[Chapter 5 is proposed to be repealed and replaced with the following.]

May 12, 2021 Draft

*Of the substantive revisions, many are self-explanatory. Where necessary, further explanations of some changes have been included in **[brackets]**. These explanatory notes will not be included in the final rule. A generalized summary of the revisions is provided on the next page.*

The following is a generalized summary of proposed revisions by topic:

Relocate to Chapter 4:

- Petition for correction of a permit or zone change; and
- Relocate provisions regarding hearing records from Chapter 5 to Chapter 4.

Clarifications:

- Confirm the number of Commissioners required to attend each type of hearing;
- Confirm that the presiding officer is presumed to be the chair, unless otherwise determined (Section 5.02(C));
- The number and form of filings (section 5.04(B));
- Provisions for oral testimony (section 5.09(C)); and

Clerical Edits:

- Minor reorganization of provisions to improve the order of content;
- Revise visual characteristics to contribute to improved function of the rule – *such as formatting, spacing, and an alternating alpha numeric outline structure (e.g., 5.04(B)(1)(a))*;
- Correct citations and references – *such as proper citation to Maine statutes (M.R.S.)*;
- Revise the usage of “shall” to more appropriate terminology or phrases;
- Revise gender specific phrasing; and
- Apply new phrasing when referring to “petition for changes to land use district boundaries” to “application for zone change”

**CHAPTER 5
RULES FOR THE CONDUCT OF PUBLIC HEARINGS**

TABLE OF CONTENTS

5.01	Scope of Rules.....	52
5.02	General Provisions.....	52
	A. Consolidation of Proceedings.....	52
	B. Notice	52
	C. Location and Attendance.....	52
	D. Presiding Officer	52
	E. Ex parte Communications	53
5.03	Parties and Governmental Agencies	55
	A. Intervention	55
	B. Participation by Interested Persons	56
	C. Governmental Agencies	56
5.04	Service and Filing of Documents	57
	A. Service.....	57
	B. Filing	57
	C. Forms.....	57
	D. Representatives.....	57
5.05	Conferences	58
	A. Prehearing Conferences without Intervenors	58
	B. Prehearing Conferences with Intervenors or Petitions for Intervention.....	58
	C. Recording of Conferences	58
5.06	Subpoenas	59
	A. Who May Request Subpoenas.....	59
	B. Content	59
	C. Service.....	59
	D. Proof of Service.....	59
	E. Quashing.....	59
	F. Confidentiality.....	59
	G. Court Orders	59
	H. Costs	60

5.07	Evidence	61
	A. Admissible Evidence.....	61
	B. Official Notice.....	61
	C. Documentary and Real Evidence	61
	D. Objections.....	62
	E. Offer of Proof	62
5.08	Testimony and Questions	63
	A. Hearings on applications	63
	B. All Other Hearings	64
	C. Oral Argument.....	64
5.09	Conduct of the Hearing	65
	A. Opening Statement	65
	B. Recording of Testimony; Report to Commission.....	65
	C. Oral Testimony.....	65
	D. Written Testimony.....	65
	E. Continuance; Multiple Hearings on Matter	66
	F. Regulation of Certain Devices and Signage.....	66
5.10	Closure of the Hearing.....	67
	A. Closure of the Hearing Record.....	67
	B. Time Periods for Written Comments After the Conclusion of a Hearing	67
	C. Reopening a Hearing Prior to a Decision	67
	D. Reopening the Hearing after Decision on Applications for Permit or Zone Change	67
	E. Final Closure	67
5.11	Hearing Record	68

5.01 SCOPE OF RULES

These rules govern all public hearings conducted by the Land Use Planning Commission (“Commission” or “the LUPC”).

[**Revision Note:** Rules should not include policy statements. Otherwise, Chapter 4 Section 4.06 sufficiently addresses opportunities to request a hearing.]

5.02 GENERAL PROVISIONS

A. Consolidation of Proceedings.

On motion and for good cause shown, or on its own initiative, the Commission may consolidate two or more proceedings if it finds that such action will be conducive to just and proper dispatch of its business and that opportunities for public participation will not be compromised.

B. Notice.

Notice of all public hearings before the Commission must be in accordance with Chapter 4 of the Commission’s rules.

C. Location and Attendance.

1. Hearing Locations: All hearings of the Commission must be held in a location or through certain means, and at a time determined by the Commission to be appropriate when considering the needs, costs, safety, and convenience of the interested parties together with those of the Commission. To the extent practicable, hearings must be held at a location in close proximity to, or significantly affected by, the project or projects under review or which are concerned about the issue.

2. Attendance at Hearings: Attendance at a hearing must be in accordance with 12 M.R.S. § 684.

D. Presiding Officer.

1. Designation of Presiding Officer: The Presiding Officer at any hearing must be either:

- a. The Chair, if present and willing to preside;
- b. A Commissioner selected by those members present at the hearing; or

- c. A qualified employee or representative of the Land Use Planning Commission, as designated by the Chair.

Unless otherwise determined by the Commission on a case by case basis, the Presiding Officer is presumed to be the Chair.

2. **Authority of Presiding Officer:** The Presiding Officer maintains the authority to:
 - a. Require and administer oaths or affirmations;
 - b. Rule upon issues of procedure and admissibility of evidence;
 - c. Regulate the course of the hearing, set the time and place of continued hearings, and fix the time for filing of evidence, briefs and other written submissions;
 - d. Certify questions to the Commission for its determination;
 - e. Take other actions, on behalf of the Commission consistent with these regulations and applicable statutes, as may be ordered by the Commission or that are necessary for the efficient and orderly conduct of the hearing.
 - f. To the extent permitted by law, where good cause appears, the Presiding Officer may permit deviation from the procedural rules of the Commission insofar as compliance therewith is found to be impractical or unnecessary and the change does not prejudice any of the parties.
 - g. Issue conclusions and fact to be considered by the full Commission.

E. Ex parte Communications.

1. **Limitations of this section:** This Section 5.02(D) applies to those public hearings concerned with applications for zone changes pursuant to 12 M.R.S. § 685-A(7-A); permit applications pursuant to 12 M.R.S. § 685-B; applications for a variance or issuance of special exception permit pursuant to 12 M.R.S. § 685-A(10); and any public hearing in which the legal rights, duties, or privileges of specific persons are to be adjudicated.
2. **Prohibitions on ex parte communications:** After a decision by the Commission to conduct a public hearing, Commission members, and any Presiding Officer designated by the Commission, must not engage in any ex parte communication in connection with any issue of fact, law or procedure which is the subject of the hearing.
3. **Allowable communications:** However, Section 5.02(D) does not prohibit any Commission member or Presiding Officer from:
 - a. Communicating in any respect with other members of the Commission or other Presiding Officers;
 - b. Having the aid and advice of members of the staff, counsel or consultants retained by the Commission; provided that, in adjudicatory proceedings subject to 5 M.R.S. Sections 9051 *et seq.*, this exception extends only to consultation with members of the staff, counsel or consultants who have not participated and will not participate in the proceeding in an advocate capacity.

- 4. Actions considered as ex parte communication:** For purposes of Section 5.02(D), "ex parte communication" includes, but is not limited to, oral communication (other than public communication occurring upon notice to all parties and during a properly scheduled public hearing or meeting of the Commission) or any written communication (other than motions, prefiled testimony or other writings, copies of which are furnished or available, as required herein, to all other parties to the proceeding).
- 5. Disclosure of ex parte communication:** In the case of an ex parte communication prohibited by this Section 5.02(D), the Commission member or Presiding Officer involved therein must disclose the nature and substance of the communication to the Commission members and parties to the proceeding, but will not be disqualified from voting in connection with the proceeding. The Commission may provide an opportunity to the other parties to the proceeding to respond to the matter communicated.

Such disclosure will be made part of the public record, but the substance of the ex parte communication will not form a basis for the decision of the Commission or Presiding Officer unless other parties to the proceeding have been given an opportunity to respond.

5.03 PARTIES AND GOVERNMENTAL AGENCIES

A. Intervention.

- 1. Petition for Intervention:** Prior to the commencement of any public hearing of the type described in Section 5.08(A) of these regulations, the Commission or Presiding Officer may require or allow any person who desires to participate as a party, offer testimony and evidence, and participate in oral cross-examination, to file a petition under oath or affirmation for leave to intervene. Notice of the requirement of filing a petition for intervention will be given in a manner consistent with Section 4.04 of the Commission's rules or in such other manner as the Presiding Officer deems appropriate. A petition to intervene must be granted if it demonstrates that the petitioner is or may be substantially and directly affected by the proceeding.

The Commission or Presiding Officer may further allow any other interested person to intervene as a party or to participate in more limited manner as the Commission or its Presiding Officer may designate.

A petition for leave to intervene must be filed by the date specified by the Commission or the Presiding Officer or, if an earlier date is not specified, before the public hearing. A petition to intervene which is not timely filed will be denied unless the petitioner shows good cause for failure to timely file. A person permitted to intervene will become a party to the proceeding and will be permitted to participate in all phases of the hearing, subject, however, to such limitations as the Commission or Presiding Officer may direct. Petitioners for intervention may be required to consolidate or join their appearances in part or in whole if their interests or contentions are found to be substantially similar and such consolidation would expedite or simplify the hearing without prejudice to the rights of any party or petitioner. A consolidation under this section may be for all purposes of the proceeding, all of the issues of the proceeding or with respect to any one or more issues or purposes thereof.

- 2. Duration of Intervenor Status:** Unless otherwise specified by the Commission or Presiding Officer, intervenor status will be deemed to have been granted for the duration of the proceeding. Any applicant whose proposal is approved will be required to provide notice to any intervenors of the filing of any documents presented to the Commission indicating actions taken to comply with the conditions attached to the approval or of proposals to vary or amend approved activities, provided, however, that the applicant's responsibility under this subsection will be deemed fulfilled when such notice has been mailed to the person designated to represent an intervenor in the petition for intervention.
- 3. Denial of Intervenor Status:** When a petition to intervene is denied, the Commission must include in the record of the hearing an entry to that effect and the reasons therefore.
- 4. Legal Counsel:** Nothing in this regulation will be construed to require or prevent representation by legal counsel in order for a person to be granted intervenor status or otherwise participate before the Commission.
- 5. Copies:** The applicant must provide each person granted intervenor status pursuant to this section with a copy of the application or petition and any amendments thereto.

B. Participation by Interested Persons.

Any person may, in the discretion of the Commission or Presiding Officer, be permitted to make oral or written statements on the issues, introduce documentary, photographic and real evidence, attend and participate in conferences and submit written or oral questions of other participants, within such limits and on such terms and conditions as may be fixed by the Commission or the Presiding Officer.

C. Governmental Agencies.

Governmental agencies may notify the Commission of their anticipated participation in any hearing in the form and manner required by Section 5.03(A)(1). Such governmental agencies must, upon having filed such notice, be entitled to all rights of an intervenor in such proceedings. Representatives of governmental agencies may participate in their official capacity only if representing the views of the agency on whose behalf they appear, and not personal views and opinions. Government agencies may provide testimony at the hearing without filing a notice under this section.

5.04 SERVICE AND FILING OF DOCUMENTS

A. Service.

Unless the Presiding Officer otherwise provides, any person submitting any notices, motions, petitions, briefs, written testimony or testimony pursuant to Section 5.10, permitted or required to be filed with the Commission pursuant to these regulations (except briefs or proposed findings prepared by the staff, its consultants or counsel), must serve such documents upon all applicants and intervenors in the proceeding or their representatives.

B. Filing.

Unless the Presiding Officer otherwise provides, all motions, petitions, briefs and prefiled testimony shall be filed in digital form. The Commission or Presiding Officer, , may require one or more paper copies be filed.

C. Forms.

All motions, proposed findings, petitions, briefs, and, to the extent practicable, written testimony filed within the Commission (except for documents not susceptible of reproduction in the manner herein provided or for other good cause shown) shall be typewritten or printed on white opaque paper 8 1/2 x 11 inches in size. Typed materials must be double spaced. The first page of each such document must be headed by the title:

STATE OF MAINE
LAND USE PLANNING COMMISSION

and must have a caption with:

1. The title of the matter, giving the name of the applicant, the action in issue and the location;
2. The Commission's application number; and
3. The title of the document (*e.g.*, Petition to Intervene).

The final page must be dated and signed.

D. Representatives.

The first document filed by any person in a proceeding must designate the name and address of a person on whom service should be made and to whom all correspondence from the Commission and staff will be sent.

5.05 CONFERENCES

A. Prehearing Conferences without Intervenors.

At the request of an applicant, the staff may confer with the applicant concerning the nature and types of information and testimony which the applicant will be expected to present at the hearing. Any conference is held for the benefit of the applicant and does not bind the Commission or Presiding Officer to matters discussed therein, nor limit the ability of the Commission or Presiding Officer to raise further issues at the hearing.

B. Prehearing Conferences with Intervenors or Petitions for Intervention.

The Presiding Officer or the staff may, upon notice to the applicant, to any parties intervening pursuant to Section 5.03(A) of these regulations and to any other persons the Commission or the Presiding Officer deems appropriate, hold conferences and issue procedural orders for the purpose of formulating or simplifying the issues, obtaining admissions of fact, arranging for the submission of proposed exhibits or written testimony, limiting the numbers of witnesses, consolidating the examination of witnesses, consolidating parties or specifying procedures in connection with the hearing, and such other matters which may expedite the orderly conduct and disposition of the proceedings.

C. Recording of Conferences.

The actions taken at or following any such conference and any agreements or orders arising there from must be stated on the record by the Presiding Officer, or detailed in a procedural order, and any person may ask questions about or raise objections to such actions at the time they are stated.

5.06 SUBPOENAS

A. Who May Request Subpoenas.

At the request of any party, or at the request of the Commission, or any member thereof, or on the Presiding Officer's own motion, the Presiding Officer may issue subpoenas for the attendance of witnesses or for the production of documents.

B. Content.

Every subpoena so issued must bear the name of the Commission, bear the name of the issuing officer, and must command the person to whom it is directed to attend and give testimony or produce specified documents or things at a designated time and place. The subpoena requires the approval of the Attorney General or their designee. The subpoena must also advise of the quashing procedure provided by Section 5.06(E).

C. Service.

Unless receipt of the subpoena is acknowledged by the witness, it must be served by a person who is not a party to the proceeding and is not less than 18 years of age. Service must be made by delivering a copy of the subpoena to the person named in it and tendering to them the fees and mileage paid to witnesses in the Superior Courts of this State.

D. Proof of Service.

The person serving the subpoena must make proof of service, by filing the subpoena and affidavit or acknowledgment of service with the Presiding Officer. Failure to make such proof of service will not affect the validity of such subpoena and service.

E. Quashing.

On motion made promptly, and before the time specified in the subpoena, and on notice to the party at whose instance the subpoena was issued, the Presiding Officer may:

1. Quash or modify the subpoena if the Presiding Officer finds that it is unreasonable or requires evidence not relevant to any matter in issue; or
2. Deny the motion to quash.

F. Confidentiality.

If any person served with such subpoena claims, at or before the hearing, that the production of books, records or other data under such person's control may disclose secret processes, formulae or methods used by or under the direction of such person, which are entitled to protection as trade secrets or as to which the confidentiality is otherwise entitled to protection by law, and the Presiding Officer determines that such claim is valid after consultation with a representative of the Attorney General, such information from such books, records, or other data must be disclosed at a nonpublic portion of the hearing and the record thereof must be confidential.

G. Court Orders.

Failure to comply with a subpoena lawfully issued under Section 5.06 will be punishable as for contempt of court. (5 M.R.S. § 9060(1)(D))

H. Costs.

Any costs incident to complying with a subpoena must be borne by the party requesting the subpoena.

5.07 EVIDENCE

A. Admissible Evidence.

Evidence will be admissible if it is relevant and material to the subject matter of the hearing and is of a type customarily relied upon by reasonable persons in the conduct of serious affairs.

Evidence which is irrelevant, immaterial, or unduly repetitious may be excluded. Notwithstanding Section 5.07(B), the experience, technical competence and specialized knowledge of the Commission or Presiding Officer may be utilized in the evaluation of all evidence submitted..

B. Official Notice.

The Commission or Presiding Officer may, at its discretion and at any time, take official notice of any facts of which judicial notice could be taken, including relevant statutes, regulations, transcripts of other hearings, non-confidential agency records, generally recognized facts of common knowledge to the general public, and physical, technical or scientific facts.

In a hearing of the type described in Section 5.08(A) of these regulations, the Commission must include in its final decision those facts of which it took official notice, unless those facts are included in the recording of the proceedings.

C. Documentary and Real Evidence.

1. All documents, materials and objects offered in evidence as exhibits must, if accepted, be numbered or otherwise identified.
2. Documentary evidence may be received in the form of copies or excerpts if the original is not readily available.
3. The Presiding Officer may require that any person offering documentary or photographic evidence must provide the Commission with a specified number of copies or provide the materials in digital form.
4. Any documentary or real evidence must:
 - a. be produced, compiled and submitted by the person offering the same, who must not request the Commission or its staff to produce or compile the same on his behalf; and
 - b. be clearly labeled indicating date and source, and indicating whether the evidence is in the existing record or is proposed supplemental evidence. Unlabeled exhibits may be rejected by the Presiding Officer, and electronic links to documents will not be accepted.
6. In a hearing of the type described in Section 5.08(A) of these regulations, the applicant, intervening parties, and state, federal or municipal agencies must provide each other with copies of any exhibit offered in evidence unless otherwise ordered by the Presiding Officer.
7. All documents, materials and objects admitted into evidence must be made available during the course of the hearing for public examination. All such evidence will also be available for public examination at the Commission's primary office during normal business hours.

D. Objections.

All objections to rulings of the Presiding Officer and the grounds therefore must be timely stated. If, during the course of or after the close of the hearing and during its deliberations, the Commission determines that the ruling of the Presiding Officer was in error, the Commission may reopen the hearing or take such other action as it deems appropriate to correct such error.

E. Offer of Proof.

An offer of proof may be made in connection with an objection to a ruling of the Presiding Officer excluding or rejecting any testimony, evidence, or questions on cross-examination. Such offer of proof must consist of a statement of the substance of the proffered evidence which is expected to be shown.

5.08 TESTIMONY AND QUESTIONS

A. Hearings on applications.

In those hearings concerned with a permit application pursuant to 12 M.R.S. § 685-B(4) or with an application for variance or special exception pursuant to 12 M.R.S. § 685-A(10) or with an application for zone change pursuant to 12 M.R.S. § 685-A(7-A), testimony must be offered as follows:

1. Direct Testimony:

Direct Testimony will be offered in the following order:

- a. The applicant and such representatives and witnesses as the applicant selects;
- b. Governmental agencies and representatives thereof;
- c. Intervenors; and
- d. Other interested persons.

The staff of the Commission and its representatives and consultants may offer testimony at any time, at the discretion of the Presiding Officer.

2. Cross-Examination and Questions:

At the conclusion of the testimony of each witness, the Commissioners, staff and consultants, Federal and State and other governmental representatives, the applicant, and intervenors must have the right of oral cross-examination. Cross-examination will be conducted in the following order:

- a. Commissioners, counsel, staff members and consultants may be permitted, by the Presiding Officer, to ask questions at any time;
- b. The applicant or petitioner;
- c. Intervenors; and
- d. Federal, State, and other governmental representatives.

3. Redirect and Rebuttal Evidence:

- a. A person who has concluded their presentation cannot thereafter introduce further evidence except in rebuttal, unless by leave of the Presiding Officer. Rebuttal evidence must be directed only to contradict or respond to evidence presented by another party, except by leave of the Presiding Officer.
- b. All parties must have the right to redirect and re-cross-examination of any witness, unless otherwise directed by the Presiding Officer. Such re-examination must be limited to evidence or issues presented by another party, except by leave of the Presiding Officer.

4. Varying Order of Appearance:

When circumstances warrant, the Presiding Officer may vary the order in which witnesses appear and the order or manner in which testimony is given or witnesses cross-examined.

B. All Other Hearings.

In all other hearings, testimony may be offered first by the staff and then by any interested persons in such order and on such conditions as the Presiding Officer may designate.

C. Oral Argument.

For hearings conducted under Section 5.08(A), oral argument may be permitted before the Commission at the conclusion of the evidence or at a time and place fixed by the Presiding Officer, at their discretion.

5.09 CONDUCT OF THE HEARING

A. Opening Statement.

The Presiding Officer, or their designee, must open the hearing by describing in general terms the purpose of the hearing and the general procedure governing its conduct.

B. Recording of Testimony; Report to Commission.

All testimony at hearings before the Commission must be recorded and may, as necessary, be transcribed.

If the hearing is conducted by a single commissioner or qualified employee or representative, the commissioner, employee, or representative must report the findings of fact and conclusions to the Commission together with a transcript of the hearing and all exhibits. The findings of fact and conclusions become part of the record. The Commission is not bound by the findings or conclusions when acting upon the record, but will take action, issue orders, and make decisions as if it had held and conducted the hearing itself.

C. Oral Testimony.**1. Hearings on Applications**

Witnesses must be sworn. Witnesses may be compelled to attend, testify and produce records if subpoenaed by the Commission. Witnesses will state for the record their name, place of residence, business or professional affiliation, if any, and whether or not they represent another individual, firm, association, organization, partnership, trust company, corporation, state agency, or other legal entity for the purpose of the hearing.

2. All Other Hearings

Persons testifying are not required to be sworn, but must state for the record their name and place of residence. If the person testifying represents another individual, firm, association, organization, partnership, trust company, corporation, state agency or other legal entity for the purpose of the hearing, the person testifying must identify the business or professional affiliation.

D. Written Testimony.

At any time prior to or during the course of the hearing, the Presiding Officer may require that all or part of the testimony to be offered at such a hearing be submitted in written form. Any written testimony must be submitted and be in such form and at such time as the Presiding Officer may specify. All persons offering testimony in written form must be available for cross-examination as provided in Section 5.11(A) of these rules. Testimony offered in written form must be available for public inspection. The person submitting the written testimony may be required within a specified time to serve a copy thereof on the applicant or petitioner, on all intervenors and on any other person whom the Presiding Officer deems appropriate.

This rule must not be construed to prevent oral testimony at a scheduled hearing by a member of the public who is not affiliated with a party required to file testimony in writing and who requests and is granted time to testify at a hearing.

E. Continuance; Multiple Hearings on Matter.

All hearings conducted pursuant to these rules may be continued and reconvened from time to time and from place to place by the Presiding Officer as circumstances require. Any hearing may also be convened in multiple hearing sessions, on multiple dates and in multiple locations, in the interest of providing the public with an opportunity to be heard across the Commission's jurisdiction. When the Commission elects to hold multiple public hearings on any matter, either by continuance of a hearing or by holding multiple scheduled hearing sessions, all hearings within a 45-day period are considered one hearing for administrative purposes. All orders for continuance must specify the time and place at which such hearing will be reconvened, or must set forth the manner in which such information may be later publicized by the Commission and obtained by interested persons. The Presiding Officer, or the staff under the direction of the Presiding Officer, must give notice to interested persons and the public in such a manner as is appropriate to ensure that reasonable notice will be given of the time and place of such reconvened hearing.

F. Regulation of Certain Devices and Signage.

The placement and use of signage or devices for recording of audio or video at Commission hearings may be regulated by the Presiding Officer in a manner consistent with the provisions of 1 M.R.S. §§ 401 *et seq.*

5.10 CLOSURE OF THE HEARING

A. Closure of the Hearing Record.

Except as provided in Sections 5.07(B) and 5.10(D), of these rules, after final closure of the public hearing, including any period when the record remains open as provided in this section or as directed by the Presiding Officer, no further evidence will be allowed into the record.

B. Time Periods for Written Comments After the Conclusion of a Hearing.

After the conclusion of a hearing the record will remain open for:

1. A period of 10 days for the purpose of allowing interested persons to file written statements with the Commission; and
2. A period of seven additional days for the purpose of allowing interested persons to file statements in rebuttal of those filed pursuant to Section 5.10(B)(1) above.

C. Reopening a Hearing Prior to a Decision.

Prior to issuance of a final order or decision, the Commission or Presiding Officer may elect to reopen a hearing and extend the time period for public comment in compliance with Chapter 4 of the Commission's rules.

D. Reopening the Hearing after Decision on Applications for Permit or Zone Change.

Within 30 days after the Commission has rendered a decision on an application following a hearing, any person aggrieved by such decision or order may petition the Commission to reopen the hearing for the purpose of introducing new evidence with regard to any provision of such order or decision. The petitioner must deliver or mail a copy of any such petition simultaneously to any other party to the proceeding. Upon receipt of such petition, the Commission will consider the offer of evidence contained therein and determine whether to dismiss the petition as offering no material evidence not already before the Commission or to reopen the hearing. Upon reopening the hearing, the Commission will amend its original order only if new evidence is presented to support such amendment. Failure to invoke the provisions of this section shall have no effect upon an aggrieved party's right of appeal to a court of law.

Within seven days of the filing of a petition to reopen hereunder, any other interested person may file an answer in opposition to the petition.

E. Final Closure.

The date of final closure of the hearing record, including any extension of the open record or reopening of the hearing or record, constitutes final closure of the public hearing and the final date by which data, views or arguments may be submitted to the Commission for consideration in acting upon an application or in adopting the rule.

5.11 HEARING RECORD

- A.** The record of the hearing must consist of all applications, petitions, motions, preliminary and introductory rulings and orders, the recording of the hearing or the transcript, all exhibits or written testimony submitted at the hearing or pursuant to Section 5.12 of these regulations, any other evidence received or considered, all briefs and proposed findings and comments thereon, the findings of fact and conclusions of the Presiding Officer, any facts officially noticed, any offers of proof, objections and rulings thereon, and all staff memoranda to the Commission together with the decision or order of the Commission.
- B.** Copies of the record must be available in accordance with Chapter 4 of the Commission's rules. Where available, a transcript of the testimony of any hearing and copies of evidentiary materials may be purchased directly from the independent official Commission reporter or from the person having submitted such materials, if any, or if necessary, through the Commission, provided that no undue burden is placed upon the Commission in responding to such request, and further provided that such materials are in a form or size possible to reproduce by photocopying or similar means.

Effective Date: May 16, 1975,

Amended Effective: July 1, 2011

MAINE DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY

MAINE LAND USE PLANNING COMMISSION

**Draft 2021 Multi-Chapter Rulemaking –
PART II: Chapters 3, 4, and 5**

May 12, 2021 Draft

[NOTE: This rulemaking proposes to repeal or repeal and replace each applicable rule. The following pages represent the unofficial redlined versions which are included for background purposes only.]

Proposed changes are shown in strikeout and underline format with additions in underlined text, deletions as ~~strikethroughs~~, and relocations within the same chapter as double underline and double ~~strikethroughs~~.

Where necessary, further explanations of some changes have been included in [brackets]. These explanatory notes will not be included in the final rule. Otherwise, a generalized summary of the revisions is provided on the next page.

Department of Agriculture, Conservation and Forestry
MAINE LAND USE PLANNING COMMISSION
22 State House Station, Augusta, Maine 04330. Tel. (207) 287-2631

Delegation of Authority to Staff

Chapter 3 of the Commission's Rules

**[As Chapter 3 is proposed to be repealed and the provisions
relocated into the replacement Chapter 4, see pages 120 through
122.]**

Effective Date: August 7, 1975

Amended Effective: October 17, 2000

Department of Agriculture, Conservation and Forestry

MAINE LAND USE PLANNING COMMISSION

22 State House Station, Augusta, Maine 04333 Tel. (207) 287-2631

RULES OF PRACTICE

Chapter 4 of the Commission's Rules

Effective Date: May 16, 1975

Amended Effective: [Not yet applicable / available]

Generalized Summary of Proposed Revisions by Topic

Reorganization: The whole chapter is proposed to be reorganized. Specifically, the proposal organizes provisions by activity (*e.g.*, notice, hearings, final action) rather than by process (*e.g.*, applications, petitions, rulemaking), which improves the opportunity for consistency, brevity, and clarity.

Relocation: Proposed repeal of the provisions of Chapter 3 Delegation of Authority to Staff, and relocate each to Chapter 4 as both chapters are instructive and relevant to the other.

Simplification:

- This rule proposes to refer to ‘applicant’ and ‘application’ more generally. Particularly, unless indicated otherwise, reference to an “application” includes: application for permit, petition for amendment of district boundaries, request for a variance, request for an advisory ruling, and request for certification. Similarly, unless indicated otherwise, reference to an “applicant” includes: a person submitting an application for permit, petition for amendment of district boundaries, request for a variance, request for an advisory ruling, and request for certification.
- Revisions propose to consolidate and simplify notice provisions to clarify the rule.

Additions: Revise this rule by adding a number of provisions:

- Right of entry and inspection – clarifying current authority, policy, and expectations;
- Clarify opportunities for pre-application meetings with the Commission (per Public Law 2011 Chapter 682, Section 35);
- Require additional notice in limited situations (*e.g.*, upon significant modification of an application);
- Clarifying existing policy – such as regarding permit amendments, transfers, corrections; and
- Opportunities for voluntary permit surrender and suspension.

Clerical Edits:

- Revise visual characteristics to contribute to improved function of the rule – *such as formatting, spacing, and an alternating alpha numeric outline structure (e.g., 4.02,A,1,a,(1),(a),(i));*
- Correct citations and references – *such as proper citation to Maine statutes (M.R.S.), to reflect changes within this and other concurrent rulemaking proposals. etc.*

Table of Contents

4.01	SCOPE OF RULES	75
4.02	ADMINISTRATIVE PROVISIONS.....	76
	A. Computation of Time	76
	B. Public Access to Information	77
	C. Right to Inspection and Entry	78
	D. Signatures.....	78
4.03	MEETINGS.....	79
	A. Pre-Application and Pre-Submission Meetings with Commission Staff	79
	B. Pre-Application Meetings with the Commission	80
	C. Site Visit with the Commission	80
	D. Commission Meetings.....	81
4.04	NOTICES.....	82
	A. General Provisions	82
	B. Notice Requirements.....	84
	C. Notice Contents.....	88
4.05	APPLICATIONS, REQUESTS, AND RULEMAKING	89
	A. General Provisions	89
	B. Advisory Rulings	96
	C. Use Notifications.....	97
	D. Permit Applications.....	97
	E. Applications for Zone Change	100
	F. Requests for Certification	102
	G. Rulemaking	105
4.06	HEARINGS	108
	A. When to Hold a Hearing	108
	B. Cancellation or Change of Hearing.....	109
4.07	FINAL ACTION	110
	A. (RESERVED)	110
	B. Staff Decisions	110
	C. Commission Decisions.....	110
	D. Corrections.....	111

E.	Amendments	111
F.	Expiration.....	112
G.	Renewals	113
H.	Re-application.....	113
I.	Transfer	113
J.	Revocation, Suspension, and Surrender.....	114
K.	Appeals	115
4.08	DELEGATION OF AUTHORITY TO STAFF	120
A.	Purpose and Scope	120
B.	Delegation of Authority	120
C.	Exceptions.....	121

4.01 SCOPE OF RULES

Except as otherwise provided herein or by other applicable provisions of law, these rules ~~shall~~ are ~~be~~ applicable to procedures before the Commission including:

- A. ~~the adoption and amendment of rules, land use standards and district boundaries;~~
- B. ~~the processing of all applications made to the Land Use Planning Commission, including~~ applications for permits, including special exception permits, required pursuant to 12 M.R.S.A. § 685-B ~~and as provided by 12 M.R.S. § 685-A(10);~~
- C. ~~the processing of requests for variances or special exceptions pursuant as provided by~~ to 12 M.R.S.A. § 685-A(10);
- D. ~~the processing of~~ petitions for changes in land use standards pursuant to 12 M.R.S. § 685-A(7-A), or petitions for any rulemaking pursuant to 5 M.R.S. § 8055;
- E. ~~the processing of petitions for adoption or amendment of and~~ district boundaries pursuant to 12 M.R.S.A. § 685-A(7-A) (hereinafter referred to as applications for zone change); and ~~and~~
- F. ~~the processing of requests for certifications~~ pursuant to 12 M.R.S.A. §§ 685-B(1-A)(B-1) and (B-2);
- G. ~~the delegation of certain authority to the Commission's staff; and~~
- H. ~~other procedural requirements. As used throughout this Chapter, unless clearly stated otherwise or clearly evident from the context, the term Commission includes Commission staff where, consistent with Chapter 3 of its rules, the Commission has delegated authority to its staff to act on behalf of the Commission.~~

Unless indicated otherwise, reference to an "application" includes: an application for a permit, an application for zone change, a request for a variance, a request for an advisory ruling, or a request for certification. For the purposes of this chapter, unless indicated otherwise, reference to an "applicant" includes: a person submitting an application for a permit or zone change, or submitting a request for a variance, an advisory ruling, or certification. As to a request for certification, the "applicant" may include the person proposing development, not the Maine DEP.

4.02 GENERAL-ADMINISTRATIVE PROVISIONS

A. COMPUTATION OF TIME

1. Days Included.

In computing any period of time prescribed by statute or regulations of the Commission, the day of the act or event, after which the designated period of time begins to run, is not to be included. The last day of the period so computed is to be included unless it is a Saturday, Sunday, or legal holiday in which event the period ~~shall~~must run until the end of the next day which is not a Saturday, Sunday or legal holiday. A holiday is any day designated as such by the President or Congress of the United States, or the ~~Governor or~~ Legislature of the State of Maine.

2. Receipt of Materials.

In regard to any time period or deadline for the filing of any submission or for service of any paper, that filing or service is complete:

- a. Upon the Commission, when the Commission receives the submission or paper by mail, in-hand delivery, email, or any other means specified by the Commission; or
- b. Upon a party, when the submission or paper is ~~mailed-sent~~ to the party or the party's attorney, by mail, in-hand delivery, by email, or by delivery to the recipient's office.

3. Acceptance of Materials After Expiration of the Time Period.

The Commission, for good cause shown, may at any time in its discretion:

- a. With or without motion or notice, order the period ~~enlarged-extended~~ if request thereof is made before the expiration of the period originally prescribed or as extended by a previous order; or
- b. Upon request made after the expiration of the prescribed period, ~~allow~~permit the act to be done where the failure to act was the result of excusable neglect.

B. PUBLIC ACCESS TO INFORMATION

1. Availability of Documents.

In accordance with 1 M.R.S. § 408-A, tThe Commission ~~shall~~must make available to any person for inspection by appointment during normal business hours, at no charge, and for copying at a reasonable fee, the following information in paper or digital form, public records, including the following:

- ~~a. All applications and other forms submitted in support of any proposal;~~
- ~~b. All correspondence to or from the Commission, including any attachments thereto concerning any application, petition, or request for certification;~~
- ~~c. All written comments received from governmental agencies or any other person regarding an application, petition, or request for certification;~~
- ~~d. The approved minutes of Commission meetings;~~
- ~~e. Transcripts of all public hearings, where available; and recordings of all public hearings where recordings have not been transcribed;~~
- ~~f. Staff recommendations on permit applications, petitions, or requests for certification; and~~
- ~~g. All permits, certifications, advisory opinions, and other orders issued by the Commission.~~
- ~~g. The Commission will maintain at its principal office a written record, available for inspection by the public, of the vote of each Commission member on the petition.~~
- ~~h. A copy of each application, marked approved or disapproved, shall be retained in the commission files and shall be available to the public during normal business hours.~~
- ~~A copy of each request for certification determination, marked approved or disapproved, shall be retained in the Commission files and shall be available to the public during normal business hours.~~
- ~~The Commission will maintain at its principal office a written record, available for inspection by the public, of the vote of each Commission member on a request for certification it has considered.~~

- a. All agency plans, rules, policies, and guidance documents;
- b. All current land use guidance maps;
- c. All applications, including all related or resulting:
 - (1) forms and information submitted in support of any proposal;
 - (2) correspondence to or from the Commission, including any attachments thereto concerning any application or request;
 - (3) written comments received from governmental agencies or any other person;
 - (4) staff recommendations on applications; and
 - (5) all permits, certifications, advisory rulings, and other orders issued by the Commission;

- d. The approved minutes of Commission meetings, including the vote of each Commission member on each motion or vote;
- e. Transcripts of all hearings, where available; and recordings of all hearings where transcripts have not been produced;
- f. All other documents and information required to be available by the Constitution of Maine or statute.

2. Confidentiality.

The Commission ~~shall~~will keep confidential any record, plan, report or other information only in consultation with the Attorney General's Office ~~in connection with~~regarding an enforcement proceeding or other litigation, or other matters where such confidentiality may be provided by law.

C. RIGHT TO INSPECTION AND ENTRY

- 1. The right to inspection and entry of lands and structures is provided in 12 M.R.S. § 685-C(8).
- 2. As applicable and appropriate, the Commission will make reasonable efforts to contact applicants, permittees, or property owners before conducting a site evaluation to verify information presented to it, including access to any lands and structures subject to the Commission's statutes and rules.

D. SIGNATURES

In accordance with 10 M.R.S., Chapter 1053, the Commission will accept, may require, and may utilize digital signatures regarding digital submissions and other official matters. However, the Commission may, at the Commission's discretion, require that a digital signature be supplemented shortly thereafter by a manual signature.

4.03 MEETINGS

[Revision Note: This would be a new section intended to provide clarity, predictability, and consistency, yet retain appropriate flexibility.]

A. PRE-APPLICATION AND PRE-SUBMISSION MEETINGS WITH COMMISSION STAFF

1. Purpose.

- a. Pre-application meetings. Pre-application meetings between the prospective applicant and the Commission staff are an early opportunity to discuss a proposed project or activity. The purpose of these meetings is to identify the applicable statutory and regulatory requirements, expected processing times, applicable fees, potential concerns, and the types of information and documentation necessary for the Commission to properly assess the project. Commission staff will determine what information the applicant must provide before or during a pre-application meeting.
- b. Pre-submission meetings. A pre-submission meeting between the prospective applicant and the Commission staff occurs after the prospective applicant has finished preparing an application for submission yet before formally filing the application. The meeting is an opportunity to review at a high level the assembled application to ensure that key information has been included prior to filing the application with the Commission.

Pre-application meetings and pre-submission meetings are held for the benefit of the prospective applicant and do not bind staff or the Commission to matters discussed therein, nor limit the ability of staff or the Commission to raise further issues during the application review process.

2. Meetings Required.

- a. A pre-application meeting with Commission staff is required before filing with the Commission an application to create or modify the following:
 - (1) Preapplication Meeting for Grid-scale Wind and Solar Energy Development: The Commission may require that, prior to the filing of any development permit application or request for certification for wind energy development, a preapplication meeting be held with the Commission and representatives from other relevant agencies;
 - (2) Planned Development (D-PD) or Planned Recreation Facility (D-PR) Subdistricts, and their related development plans. See Chapter 10 for additional provisions;
 - (3) Resource Plan Protection (P-RP) Subdistricts and their related resource plan or concept plan; and
 - (4) As may otherwise be required by any Commission rule adopted after January 1, 2021.

- b. A pre-submission meeting with Commission staff is required before filing with the Commission an application for a zone change proposing to create or modify a Planned Development (D-PD), Planned Recreation Facility (D-PR), or Resource Plan Protection (P-RP) Subdistrict, and their related development or concept plan.

3. Scheduling and Attendance.

- a. Notwithstanding the provisions of Section 4.03(A)(2) and (3), a pre-application meeting or a pre-submission meeting may be requested by a prospective applicant or by Commission staff. In either case, Commission staff will make a date available for the meeting in a timely manner.
- b. Pre-application and pre-submission meetings must be attended by the prospective applicant or an authorized agent. The prospective applicant may choose to have any consultants or contractors also attend.

4. Waiver.

Commission staff may waive the requirement for a pre-application or pre-submission meeting if Commission staff are satisfied that such a meeting would be of limited value in achieving the purposes noted in Section 4.03(A)(1).

B. PRE-APPLICATION MEETINGS WITH THE COMMISSION

[Revision Note: The following is based on current practice, which originally responded to unallocated language of [PL 2011 CH, 682, Section 35](#), which required the Commission to establish a process by which an applicant can request a public pre-application meeting with the commissioners to discuss a proposed project.]

1. Pre-application meetings with the Commission offer a prospective applicant an opportunity to describe the intended project, and for the Commission to ask questions and identify potential concerns that the prospective applicant may choose to address in an application. Pre-application meetings are open to the public; however, they are non-binding in that the Commission makes no formal findings-of-fact or conclusions and no vote or action is taken.
2. Any prospective applicant may request a pre-application meeting with the Commission by filing a request with Commission staff. The Director and the Commission Chair may, at their discretion, schedule a mutually convenient date and time for such a meeting.
3. Pre-application meetings with the Commission are held for the benefit of the prospective applicant and do not bind the Commission to matters discussed therein, nor limit the ability of staff or the Commission to raise further issues during the application review process.

C. SITE VISIT WITH THE COMMISSION

1. The Commission may conduct site visits for informational purposes, or as part of, or in preparation for, its review of a proposal.

2. A site visit in which a quorum of Commissioners is present is a public proceeding, for which public notice is required, and is accessible to the public to greatest extent practicable considering public safety and the remoteness of the Commission's service area.

C.D. COMMISSION MEETINGS

[Revision Note: This would be a new section intended to identify applicable provisions without reiterating them for reader convenience.]

1. Notice and conduct of Commission meetings must be in accordance with 1 M.R.S. subchapter 13, 12 M.R.S. § 684, and any other applicable provision of the Constitution of Maine or statute.
2. The Commission, at its discretion, may provide an opportunity for comments or questions from members of the public.

4.034.04 NOTICES

[Revision Note: This section is proposed to consolidate all notice requirements within one section. Where possible and appropriate, notice requirements have been made consistent or are otherwise addressed separately.]

Revision and reorganization of the following notice provisions intend to comply with statutory requirements, and to the extent possible and appropriate, layout and administer a system that i) is fair and timely to both an applicant and other parties/interests; ii) is commensurate with or otherwise responds to a broad spectrum of projects, interests, and geographic considerations (e.g., neighbors, neighborhoods, communities, regions, statewide); and iii) shortens and simplifies the rule.]

A. GENERAL PROVISIONS

1. Consolidation of Notices.

Notice provided pursuant to Sections ~~4.04, 4.05, 4.06, 4.07 and 4.11~~ 4.05 of this chapter may be included in a written statement providing notice of more than one such application, ~~petition, or certification~~ provided all applicable notice requirements are met.

2. Demonstration of Notice.

The Commission may require an applicant, as part of an application, to provide information regarding the specific notice provided, a list of recipients, and documentation of when and how the notice was provided.

3. Additional Notice.

- a. After an application has been filed, if the Commission determines that the applicant submits significant new or additional information or substantially modifies its application at any time after the application has been deemed as complete for processing, the Commission may require the applicant to provide subsequent notice to abutters and interested persons, consistent with Section 4.04(B)(3) or (4) as applicable. The Commission may also require additional public notice at its discretion if a substantial period of time has elapsed since the original public notice.
- b. Unless otherwise specified by statute or other applicable rules, the Commission or Commission staff may provide, or require an applicant to provide, additional notice related to an application in any manner the Commission or Commission staff deems appropriate. The Commission may require additional notice without limitation, to adjacent or potentially affected municipalities, counties, or service providers. Additional notice may be provided or required, without limitation, for the extension or reopening of a hearing record or comment period.

Additional notice.

The Commission may provide additional notice in any other manner it deems appropriate.

B. NOTICE REQUIREMENTS

[Revision Note: The following section is proposed to be revised to: consolidate notice requirements among various application categories in order to reduce complexity; assign notice requirements to application categories commensurate with the likelihood that review criteria for the holding of a hearing will be met; and, consolidate notice requirements in one location for ease of reference and to avoid duplication.]

1. Applications Received.

The Commission ~~must~~will generate a list of all applications received on a periodic basis indicating the name of the applicant and the location and nature of the proposed activity. This list ~~must~~will be made available to the public on the agency's website or upon request.

2. Notice of Variance Requests ~~for variances~~.

For all requests for variances ~~to from~~ the Commission's standards pursuant to 12 M.R.S.A. § 685-A(10), the ~~Commission shall~~applicant must provide notice of the pending application by regular mail to all persons owning or leasing land within 1,000 feet of the proposed project as shown in records of Maine Revenue Services or the applicable plantation or municipality ~~but it shall be the responsibility of the applicant to provide accurate names and addresses of such persons~~.

[Revision Note: The following section refers to "major amendment" – a term and definition of which are included in the currently pending [2021 Multi-Chapter Rulemaking Part I \(Chapters 2, 10, and 16\)](#). Otherwise, The following section is proposed to be revised to account for:

- Notice to those granted intervenor status in a prior hearing is revised to account for the fact that a prior hearing may have occurred long ago, the intervenor may have since moved or changed names, or that there is no reason for the Maine Revenue Service, town, or plantation to have contact information; and
- applications which would be required to complete this notice are of scale that persons owning or leasing property within 1,000 feet of the project should receive notice directly via mail and should not be expected to monitor legal notices.]

3. b. Notice of Filing.

a. Applications for permit and applications for zone change:

(1) Applicability. Notice described by Sections 4.04(B)(3)(a)(2) and (3) is required in the following cases:

(a) development permit applications and major amendments;

(b) subdivision permit applications and major amendments;

(c) applications and major amendments to all other nonresidential permit types not otherwise listed in Section 4.04(B)(3)(a)(1)(a) and (b);

(d) applications to amend any permit which was previously appealed to the Commission;

- (e) applications proposing amendment of a permit which permit was the subject of a hearing; and
 - (f) applications for zone changes, except those proposing to change a development subdistrict designation to a management or protection subdistrict designation, and applications addressing clerical corrections.
- (2) Recipients. Within seven days prior to filing an application, the applicant must provide notice by certified mail to:
- (a) all persons owning or leasing land within 1,000 feet of the land which is the subject of the proposed change or activity;
 - (b) In any proceeding involving a proposed amendment of the most recent permit that was the subject of an earlier hearing, all persons granted intervenor status in the hearing for the most recent permit;
 - (c) If a permittee seeks to amend a term or condition of a most recent permit that was the subject of an appeal to the Commission, notice of the application for permit must be provided to the prior appellant(s);
 - (d) Persons who have made timely requests to be notified of a specific application or project; and
 - (e) The municipality or plantation where the project is proposed, or the county if the proposed project site is in an unorganized township.
- (3) Method. Notice must be provided by regular postal mail, according to their names and addresses as shown on the records of Maine Revenue Services or plantation or town tax assessors, or by electronic mail with the agreement of the person receiving notice. The address for persons granted intervenor status in an earlier hearing may be according to the applicable means of contact established during the prior proceeding, or according to the best information currently available. If the number of persons owning or leasing land within 1,000 feet of the affected land is more than 50, notice may instead be by publication in a newspaper of general circulation in the area affected by the permit application as determined by the Commission. Notice must be published in the legal notices section of the newspaper. The date of the publication must be 17-24 days before the hearing.

b. All requests for certification.

- (1) Within 30 days prior to filing a request for certification either directly with the Commission or with the Department of Environmental Protection (the MDEP) for the Department MDEP to provide to the Commission, a person requesting certification ~~shall~~must give public notice of the intent to file such a request. If the request for certification is included as part of the MDEP Department Site Location of Development permit application or filed with the Commission simultaneously with the filing of the MDEP Department permit application, the person requesting certification may give public notice as part of the notice required by the MDEP Department in accordance with the MDEP's Department's rules, provided the notice includes the information required in Section ~~4.054.04~~4.04(C) of these rules.
- (2) If a person requesting certification elects not to give the notice required by this section as part of a MDEP Department required notice, or if the person files a request for certification prior to filing a companion Site Location of Development permit application with the MDEP Department, the person requesting certification must give notice in accordance with Section ~~4.05(B)(2)(b)~~4.04(B)(3)(a).

- ~~(3) Separate from the notice provided by the person requesting certification under either of the alternatives above, the Commission may, at its expense, provide additional notice in any other manner it deems appropriate.~~

[Revision Note: The following requirements are sufficiently addressed by existing requirements, or are otherwise not warranted.]

~~d. The Director shall provide notice of requests for public hearing made following a Commission certification determination to any person having requested in writing to be notified of such requests and to any other person the Director deems appropriate. The notice shall include a copy of the petition for public hearing and any other information the Director deems appropriate.~~

[Revision Note: The following requirements would be revised to require certified mail with return receipt requested and otherwise revised to match statutory requirements.]

4. Projects of Substantial Public Interest.

- a. The Director may deem certain applications, ~~or~~ requests for certification, ~~or petitions~~ to be of ~~general~~ substantial public interest due to their nature, location, or size.
- b. For applications designated as projects of substantial public interest, applicants must ~~complete the notice requirements of provide notice by certified mail with return receipt to the recipients listed in~~ Section ~~4.05(B)(1)4.04(B)(3)(a)~~ and ~~add the following recipients:~~
to legislators whose districts encompass the project.
- c. Notice of projects deemed to be of substantial public interest must also be published twice in the legal notices section of a newspaper of general circulation in the area affected by the permit application as determined by the Commission. The date of the initial publication must be at least 25 days before the date of the filing of an application. The date of the second publication must be at least 7 days before the date of the filing of an application.

3.5. Hearings.

Notice of all ~~public~~ hearings in regard to ~~permit~~ applications and appeals thereof must be given ~~by the Commission~~ as follows:

- a. By regular postal mail, or electronic mail with the agreement of the person receiving notice, at least 30 days prior to the initial scheduled hearing, to:
- (1) The applicant;
 - (2) All persons owning or leasing land within 1,000 feet of the proposed project according to the records of the Maine Revenue Services or the applicable plantation or municipality;
 - ~~(3) The municipality or plantation where the project is proposed, or the county, if the proposed project site is in an unorganized township;~~
 - ~~(4)(3) The county, if the proposed project site is in an unorganized township;~~
 - ~~(5)(4) The legislators whose districts encompass the project;~~
 - ~~(6)(5) Intervenors;~~

~~(7)(6)~~ Persons who have made a timely request to be notified of a specific hearing or project;

~~(8)(7)~~ Persons who have filed a written request, ~~within the calendar year~~, to be notified of hearings;

~~(9)(8)~~ Appropriate State and federal agencies, as determined by the Commission; and

~~(10)(9)~~ In any proceeding involving a proposed ~~modification or~~ amendment of a ~~permit~~ Commission decision which was the subject of an earlier hearing, all persons ~~admitted to formal party~~ granted intervenor status at the earlier hearing in the most recent proceeding relevant to the decision.

- b. By publication ~~twice~~ in the legal notices section of a newspaper of general circulation in the area affected by the ~~permit~~ application as determined by the Commission.

~~(1) — Notice must be published in the legal notices section of the newspaper.~~

(1) Notice of hearing on permit applications and requests for certification must be published in the newspaper twice. The date of the initial publication must be at least 30 days before the hearing. The date of the second publication ~~shall~~ must be at least 7 days and no more than 13 days before the date of the hearing.

~~e. — In any other manner the Commission deems appropriate.~~

4.6. Rulemaking.

Notice of rulemaking, with or without a hearing, must be provided ~~as required by~~ in accordance with 5 M.R.S. ~~A~~ §§ 8053(1), (2), (3-A), and (5), as may be modified or supplemented by 12 M.R.S. § 685-A(7-A)(B). Notwithstanding the prior statement, pursuant to 12 M.R.S. § 685-A(7-A)(B), notice requirements for applications for zone change are addressed in Sections 4.04(B)(3) through (5), and (7).

~~5.1. Additional notice.~~

~~The Commission may provide additional notice in any other manner it deems appropriate.~~

C. NOTICE CONTENTS

1. ~~Notice Pursuant to 5 M.R.S. § 9052(4) and 12 M.R.S. § 685-A(7-A)(B), notice~~ required under Section 4.04, except rulemaking notices, this section must indicate include the following information:

~~The Commission may maintain appropriate notice forms, but all notices must include the information listed below.~~

- a. The name and address of the applicant;
- b. The legal authority and jurisdiction ~~under~~ pursuant to which the proceeding is being conducted;
- c. A reference to the major substantive statutory and rule provisions involved;
- d. In a short and plain statement, the nature and purpose of the proceeding;
- e. The location and nature of the proposed development;
- f. The location where further information, including a copy of the application, may be inspected;
- g. The manner and time period within which evidence and argument may be submitted to the Commission for consideration;
- h. The time and place of the ~~public~~ hearing, or the manner in which a ~~public~~ hearing concerning the application ~~or petition~~ may be requested;
- i. When a hearing has been ~~set~~ scheduled, the manner and time within which petitions for intervention ~~under~~ pursuant to Commission rule Chapter 5 may be filed.
- j. Such other information as the Commission deems appropriate.

~~The Commission may maintain appropriate notice forms, but all notices must include the information listed below~~ above

2. **Rulemaking.**

- a. Applications for zone change are a form of rulemaking; however, pursuant to 12 M.R.S. § 685-A(7-A)(B), notice contents requirements for applications for zone change are addressed in Section 4.04(C)(1).
- b. Notice of rulemaking must include all provisions in information required by 5 M.R.S. § 8053 (3) and 12 M.R.S. § 685-A(7-A)(B).

4.044.05 APPLICATIONS, REQUESTS, CERTIFICATIONS, AND RULEMAKING

A. GENERAL PROVISIONS

1. Applications for Permit and Zoning Change, and Requests for Advisory Ruling, and Certification Forms.

Applications ~~forms for permits or zone changes shall~~ must be submitted using the Commission's forms established and, which may be changed from time to time by the Commission. The Commission's application forms and shall require will require such information as deemed necessary or desirable by the Commission to evaluate the application. ~~obtain information relevant to the permit, petition or other request.~~ The Commission may ~~develop request for certification forms and may coordinate with the Maine DEP Department of Environmental Protection to incorporate any Commission certification forms into the Maine DEP's Department's Site Location of Development permit application materials.~~

A person requesting ~~certification Commission approval shall~~ must use the appropriate forms, ~~as coordinated with the Department of Environmental Protection,~~ but need not complete any portions of a form determined by the Commission to be unnecessary for a specific application request for certification.

2. Signatures Signatory Requirement.

In addition to the provisions of Section 4.02(D), signatures must comply with the following:

- a. Each aApplication or rulemaking petition submitted to the Commission must include the signature of the applicant or the person petitioning for rulemaking, or the duly authorized officer or agent.
- b. If a form is signed by an agent, it must include evidence of the agency signed by the applicant or person requesting certification.
~~for permits or zone changes shall be signed and submitted in writing to the Commission offices. An application submitted by a corporation or other legal entity shall be signed by a properly authorized official. If the applicant is acting as agent for the landholder, the applicant shall indicate the agency relationship and so sign the application. If the applicant desires that orders and notices of the decision be served on any other person, the applicant shall designate such person on the application form. A request for certification provided to the Commission pursuant to 12 M.R.S.A. § 685 B(1-A)(B-1) shall be subject to the same signature requirements set forth in this paragraph as an application for a permit, except that where such a request is included in a Site Location of Development permit application submitted to the Department of Environmental Protection the person providing the notice of intent need only satisfy the Department's signature standards, as determined by the Department.~~

3. Title, Right or Interest.

Unless otherwise provided by law, ~~prior to the Commission will not~~ acceptance of an application ~~for a permit as complete~~ for processing ~~unless and until, an the~~ applicant ~~shall~~ demonstrates, to the Commission's satisfaction, legally enforceable title, right or interest in all the property proposed for development or use sufficient to ~~permit evaluate~~ the proposed development and use of the property, including closure and post closure care, where required. ~~Requests for certification Unless submitted to the Commission before filing a Maine Department of Environmental Protection permit application, determinations of title, right or interest for certification requests made pursuant to 12 M.R.S.A. §§ 685-B(1-A)(B-1) and 685-B(1-A)(B-2) are made by the Maine Department of Environmental Protection and are shall not be subject to this subsection 4.03(3)Section 4.05(A)(3).~~ Methods of ~~proving demonstrating~~ title, right or interest include, but are not limited to, supplying the following:

- a. ~~When when~~ the applicant owns the property, a copy of the recorded deed(s) to the property ~~must be supplied~~. However, in the instance of large ownerships where, at the discretion of the Commission, providing deeds would be impractical or cumbersome, other methods, such as certificates of ownership, may be acceptable;
- b. ~~When when~~ the applicant has a lease or easement on the property, a copy of the lease or easement ~~must be supplied~~. The lease or easement must be of sufficient duration and terms, as determined by the Commission, to permit the proposed zone change, development, and use of the property;
- c. ~~When when~~ the applicant has an option to buy, lease, or obtain an easement on the property, a copy of the option agreement ~~must be supplied and a copy of the property owner's recorded deed~~. The option agreement must be sufficient, as determined by the Commission, to give rights to title, or a leasehold or easement of sufficient duration and terms to permit the proposed development and use of the property;
- d. ~~When when~~ the applicant asserts eminent domain power over the property, evidence ~~must be supplied~~ describing the ability and intent to use the eminent domain power to acquire sufficient title, right or interest as determined by the Commission;
- e. ~~When when~~ the applicant has either a valid preliminary permit or a notification of acceptance for filing of an application for a license from the Federal Energy Regulatory Commission for the site which is proposed for development or use, a copy of that permit or notification ~~notification must be supplied~~;
- f. ~~When when~~ a project involving the State's submerged lands requires a grant of a submerged lands ~~conveyance lease or easement~~ from the Bureau of Parks and Lands (the BPL), title, right or interest in the property will be presumed for purposes of the Commission's processing and acting upon the application or notification, subject to the following requirements:
 - (1) When an application is submitted to the Commission involving a use of the State's submerged lands, the Commission will forward a copy to the BPL. The Commission will not act upon an application until it has received written notice from the BPL that a submerged lands lease or easement is not required, or that BPL has initiated formal review of the project. If the Commission receives written notice from the BPL that a grant of a submerged lands lease or easement is legally required but has been or is likely to be withheld, the Commission will cease processing the application. As a condition of the Commission's licensing of any project involving the State's submerged lands which

requiring a submerged lands lease or easement from the BPL, construction may not commence unless the BPL has granted the required interest ~~has been granted by the BPL in the State's submerged lands and provided a copy of the submerged lands conveyance to the Commission.~~

- (2) For projects involving the salvage of sunken logs from the ~~state's~~ State's submerged lands and which require a sunken log salvage authorization from the BPL, the Commission ~~shall~~ will not begin processing the application until the BPL has issued an authorization allowing the salvage in the location proposed, unless the BPL provides written notification that it has initiated review of the proposed salvage operation and approval in the proposed location is likely. ~~In no instance shall~~ The Commission may not issue a permit for sunken log salvage ~~prior to before~~ the BPL's ~~issuance of~~ a sunken log authorization for the project. A permit issued by the Commission ~~shall~~ must be effective for a period not to exceed the term of the authorization as granted or reissued by the BPL.
- (3) When the Department of Inland Fisheries and Wildlife or the ~~Bureau of Parks and Lands~~ BPL files a notification to establish a public boat launch, title, right or interest to submerged lands ~~shall~~ will be presumed for purposes of accept~~ing~~ ance of the notification if the applicant demonstrates ~~ed~~ it has filed an application for a submerged lands ~~lease conveyance~~ with the BPL. Work on the project may not begin until a lease or easement is obtained or the ~~Bureau of Parks and Lands~~ BPL has provided notification that one is not necessary.

g. if the property is subject to a conservation easement or other restrictions of record, a copy of the conservation easement or other restrictions.

The Commission, in its discretion, may require additional information from the applicant to determine whether the applicant has sufficient title, right, or interest.

The Commission may return an application after it has already been accepted for processing if the Commission determines that the applicant did not have, or no longer has, sufficient title, right, or interest.

4. Fee.

The application ~~or request for certification shall~~ must be accompanied by the proper fee as set in Chapter 1 of the Commission's rules or by the ~~director~~ Director pursuant to 12 M.R.S.A. § 685-F. ~~Any required fee shall be provided to the Commission.~~

5. Acceptance of Applications.

a. Application Accepted as Complete for Processing. Upon receipt of ~~an~~ permit application, ~~including an application for wind energy development in an expedited permitting area, or a petition for adoption or amendment of land use district boundaries,~~ the Commission ~~shall~~ must determine whether to accept the application, ~~or petition~~ as complete for processing based upon whether it:

- (1) is properly signed;
- (2) is accompanied by the proper fee;
- ~~(3) contains sufficient information for the Commission to begin its review; and~~

- ~~(4)(3)~~ contains sufficient documentation of ~~Title, Right or Interest~~ title, right, or interest (TRI) pursuant to 12 M.R.S.A. § 685-B(2)(D), the Commission’s Chapter 10 rules, and Section 4.03(3) above;
- (4) contains documentation that notice of the filing, when required, has been provided. Documentation of notice must include a list of the recipients and applicable addresses or email addresses, the means and date of notice, and a copy of the notice provided; and
- (5) answers all applicable questions in the application and contains all applicable exhibits.
- b. Notwithstanding the provisions of Section 4.05(A)(5)(a), requests for an advisory ruling must be accompanied by the proper fee and contain sufficient information for the Commission to begin its review. The Commission shall make such determination prior to providing notice to the public of receipt of the application or petition and initiating substantive review.
- c. The Commission ~~shall~~ will notify the applicant of any deficiency in the application ~~or petition~~ within a reasonable time after it becomes aware of the deficiency.
- bd. Additional Information May Be Required. ~~A determination that an application, or petition is accepted as complete for processing is based upon satisfying the factors in Section 4.03(8)(a)(i-iv) above, but does not preclude~~ In addition to the threshold information required by section 4.05(A)(5)(a), the Commission may from requesting additional information the Commission deems necessary to evaluate applicable review criteria during its review. Even if an application ~~or petition~~ is accepted as complete for processing, the Commission may deny the application ~~or petition if the applicant fails~~ sure to provide additional information the Commission deems necessary for it to enable the Commission to make necessary findings under required by applicable review criteria including, but not limited to, criteria set forth in 12 M.R.S.A. § 685-A(8-A) and § 685-B(4), Criteria for Approval, and any other applicable review criteria in the Commission’s Land Use Districts and Standards (Chapter 10).
- e. ~~When available, applications must include the “E 911” address of the project and Global Positioning System (“GPS”) reference data.~~
- ee. Modification of Application. If the Commission determines in its sole discretion that an ~~If the applicant or petitioner~~ (i) materially ~~revises the~~ modifies its application ~~such that and the revised-modified~~ application requires new or supplemental review by the Commission, or (ii) submits additional information necessary to enable the Commission to make ~~necessary~~ findings under applicable review criteria ~~including, but not limited to, criteria set forth in 12 M.R.S.A. § 685-A(8-A) and § 685-B(4), Criteria for Approval, and in the Commission’s Land Use Districts and Standards (Chapter 10), and the additional information requires new or supplemental review by the Commission, then~~ the Commission may:
- (1) If there is insufficient time to make the findings and conclusions required by law within the deadlines set forth in 12 M.R.S.A. § 685-A(7-A) and §§ 685-B(2-B) and (3-A), deny the application; or
- [Revision Note: Reference to fees is being deleted as fees are addressed by the Commission’s Chapter 1, Fee Schedule.]**
- (2) With the agreement of the applicant, accept the additional information ~~or the revised-as a modified~~ application ~~as an amended application~~, in which case, ~~the date the application processing times set forth in 12 M.R.S. § 685-A(7-A) and §§ 685-B(2-B) and (3-A)~~

~~restart on the date that is accepted as complete for processing is the date of determination by the Commission determines that there is sufficient new information to allow for the Commission to begin its review of the amended-modified application. No additional application fee will be required.~~

~~**d.—Application for Wind Energy Development in an Expedited Permitting Area:**~~

~~Section 4.03(8)(c) above does not apply to a permit application for wind energy development in an expedited permitting area.~~

~~**e.—**When available, applications must include the “E-911” address of the project and Global Positioning System (“GPS”) reference data.~~

~~**f.—**The acceptance of a request for certification and determination of whether such a request is complete for processing is governed by Section 4.11(2) below.~~

6. Burden of Proof.

Unless otherwise provided herein or by other applicable provisions of law, the burden of proof ~~should be~~ is as follows:

- a. The burden of proof ~~and burden of going forward shall be~~ is upon the ~~permit applicant, petitioner, or person requesting certification. An~~ permit applicant; petitioner pursuant to 12 M.R.S.A. § 685-B, § 685-A(10), or § 685-A(8A); or ~~or person requesting certification pursuant to 12 M.R.S.A. § 685-B(1-A)(B-1)~~ or person requesting certification pursuant to 12 M.R.S.A. § 685-B(1-A)(B-1) must demonstrate by substantial evidence that the criteria of all applicable statutes and regulations have been met. ~~In the case of any property owner or lessee who requests that the Commission place his/her certain land in a particular land use district, the burden of proof shall be defined as the burden of presenting sufficient evidence for the Commission to make affirmative findings as required by law or regulation.~~

7. Comment Periods Without a Hearing.

[Revision Note: The following combines provisions that are the same, retains the longer comment period for certifications, and adds zoning petitions to the exceptions.]

[Requirement: [Title 5 Section 9051-A](#) requires, “Notice of opportunity for hearing; license applications with substantial public interest. When the applicable law or the Constitution of Maine requires that an opportunity for a hearing be provided or an agency deems in any proceeding that a substantial public interest is involved, notice shall be given as follows.

A. Notice of the pending license application shall be provided 30 days next prior to the date of the expected date of an agency decision. Notice shall be provided...”]

- a. The Commission ~~shall~~ must allow a period of not less than ~~7-five~~ five days after providing notice of receipt of a permit application, during which time any interested persons may submit written comments to the Commission’s ~~office~~. ~~Exceptions to this time period may be made in cases involving emergencies, as determined by the Commission, and permit applications determined by the Commission to be routine in nature, including building permits and building permit amendments.~~

- b. Certifications. The Commission ~~shall~~must allow a period of not less than 20 days after accepting a request for certification as complete for processing, during which time any interested persons may submit written comments to the Commission's ~~office~~. This 20-day period ~~shall~~does not apply to the Commission's determination of whether to certify that the proposed development is an allowed use within the subdistrict or subdistricts for which it is proposed. ~~Additionally, exceptions to this time period may be made in cases involving emergencies, as determined by the Commission, and requests for certifications determined by the Commission to be routine in nature.~~
- c. Exceptions. ~~Additionally, e~~Exceptions to this~~the time periods stated in Section 4.05(A)(7)(a) and (b) may be made in cases involving emergencies, as determined by the Commission, and requests for certifications determined by the Commission to be routine in nature.~~

[Revision Note: As a matter of due process and investment of public resources, the following revision sets a limit to the period during which an applicant may withdraw an application, which is current agency practice.]

8. Withdrawal of Applications.

Unless otherwise provided herein or by other applicable provisions of law, applications may be withdrawn by the applicant at any time prior to:

- a. a staff issued decision; or
- b. the commencement of Commission deliberation on the application at a Commission meeting.

9. Procedures and Time Limits for Issuing a Decision on Applications.

- a. Except where otherwise directed by the Commission or determined by the Director, the staff shall will prepare a recommendation for each permit application brought to the Commission for a decision. Copies of the staff recommendation for a Commission decision must be made available to the applicant, intervenors and all other persons requesting to be so notified at least 7 days prior to the date of expected decision.
- ~~fb.~~ Commission staff will send notice of the decision on an application shall be sent to the applicant, intervenors, and to any other person having requested such information.
- ~~gc.~~ Notice of a decision of the staff must will indicate that any person aggrieved by the staff decision has the right to a review of the staff decision by the Commission. The request for such review must be made in writing within 30 days of the date of the staff decision.
- ~~h.~~ A copy of each application, marked approved or disapproved, shall be retained in the commission files and shall be available to the public during normal business hours.
- ~~ide.~~ In the event the Commission approves an application for a subdivision, a copy of an approved plat or plan and a copy of the conditions required by the ~~commission~~ Commission to be included in any deed or other document conveying an interest in the subdivision shall must be

A. General Provisions

filed by the applicant, or the Commission at the applicant's expense, with the appropriate registry of deeds for each county in which the real estate lies.

B. ADVISORY RULINGS

1. General Provisions.

~~The Commission~~ staff ~~of the Land Use Planning Commission~~ may, at its discretion, issue an advisory ruling with respect to the applicability to any person, property, or actual state of facts of any statute, standard, or rule administered by the Commission.

~~Any such ruling shall be issued as follows:~~

- a. ~~The request for an advisory ruling shall be made in writing and set forth all facts relevant to the determination of the applicability of the rules, standards or statutes of the Commission; and~~
The request for an advisory ruling must be consistent with Section 4.05(A)(1).
- b. ~~The advisory ruling shall~~ must be made in writing upon review and approval of the Director ~~or their designee~~, and ~~shall~~ must state that it is limited in application to the facts stated in the request.

2. Contents.

~~The request for an advisory ruling shall~~ must be made in writing and set forth all facts relevant to the determination of the applicability of the rules, standards or statutes of the Commission; and

3. Rulings Not Binding.

~~The a~~In accordance with 5 M.R.S. § 9001(3), advisory rulings ~~shall~~ are not be-binding on the Commission ~~but shall be subject to the provisions of 5 M.R.S.A. § 9001(3).~~

[**Revision Note:** Subsection C is currently part of Chapter 10 as Section 10.16, but is more appropriate here in Chapter 4. A concurrent yet separate rulemaking proposes to delete the provision from Chapter 10. However, the added statement serves to clearly allow for project specific notification provisions (e.g., within concept plans, resource plans, and D-PD development plans).]

C. USE NOTIFICATIONS FORMAT

Where a written notification to the Commission is required by ~~this chapter~~ Chapter 10 of the Commission's rules or by other Commission approved plans, such notification must be submitted in advance of the date on which the activity, which is the subject of the notification, is commenced. Except as provided in Chapter 10, Section 10.27;(L), or by other Commission approved plans, such notification must state the:

1. location of the proposed project by use of an official Commission Land Use Guidance Map of the area;
2. nature of the proposed project; and
3. time period of the proposed project.

Such notification must also state that the activity or project will be accomplished in conformance with the applicable minimum standards of Chapter 10, Sub-Chapter III and must be signed by a duly authorized person who ~~shall~~ will be responsible for the execution of the activity.

D. PERMIT APPLICATIONS

1. **Applicability.** This section governs the procedures by which the Commission may consider permit applications submitted under 12 M.R.S.~~A~~-§ 685-B and Chapter 10 of the Commission's rules.
2. **Who May Apply.** An applicant may designate an agent for the purposes of completing an application and representing the applicant's interests before the Commission.
3. **~~Representation~~ Who May Apply for a Subdivision Application in which Interests Have Been Sold without a Subdivision Permit.**

The following provisions apply ~~in the case of~~ to a permit application for a subdivision or similar development in which interests have been sold without a subdivision permit as required by 12 M.R.S.~~A~~ § 685-B:

- a. ~~The~~ If the person who subdivided the land is still holding an interest in some or all of the land that was subdivided, that person must be the applicant or co-applicant shall be considered the proper applicant before the Commission, provided the person still holds an interest in some or all of the land that was subdivided.

- b. If ~~the Commission determines that~~ the person who subdivided the land is unavailable or no longer holds an interest in the subdivision, all persons having an ~~an~~ current interest in any lot in the subdivision may apply for a subdivision permit provided that:

(1) All such persons coapply ~~or are otherwise represented~~, or

~~(1)(2)~~ (2) The Commission determines that those lot owners not represented are not necessary to the proceeding. In determining the necessity of such representation, the Commission ~~shall~~ will consider:

- (a) The extent to which a decision reached in the person's absence might be prejudicial to ~~his/her~~ that person's interests in the subdivision or to the interests of the other parties to the proceeding;
- (b) The extent to which such prejudice can be lessened or avoided by provisions in the decision; and
- (c) ~~Whether the decision reached in the person's absence will be adequate~~ not be prejudicial; and
- ~~(d)~~ Whether the other parties will have an adequate remedy if no decision is made by the Commission.

- c. An applicant must provide the following to the Commission:

- (1) A complete list of those persons having an ~~an~~ current interest in any lot in the subdivision; and
- (2) ~~Documentary evidence indicating~~ A written statement certifying that ~~he/she~~ the applicant has provided all persons having an ~~an~~ current interest in any lot in the subdivision with notice of the pending application. The notice ~~shall indicate~~ must state the nature of the application, the criteria ~~against~~ pursuant to which the application ~~shall~~ will be ~~measured~~ reviewed, the procedure for review of the application, the possible effects of the application on persons having interests in lots in the subdivision, the opportunity for any such persons to participate in the proceedings before the Commission and any other information which the Director deems appropriate.

4. ~~Representation~~ Who May Apply for Amendments to Existing Subdivision Permits.

The following provisions apply ~~in the case of~~ to an application to amend a subdivision permit issued by the Commission ~~under the provisions of~~ pursuant to 12 M.R.S.A. § 685-B:

- a. The person who subdivided the land ~~shall be considered the proper applicant before the Commission~~ must file the application. If ~~the Commission determines that~~ this person is unavailable or no longer holds an interest in the subdivision, the lot owners' association or, if no lot owners' association has been formed, any individual lot owner ~~shall~~ must be considered a proper applicant before the Commission.
- b. The applicant must provide to the Commission all information required ~~under~~ by Section ~~4.03(4)(e)~~ 4.05(C)(3)(c). In addition, if there is a lot owners' association, the applicant ~~shall~~

~~provide must document how that the amendment is in compliance with all applicable bylaws the Commission with documentary evidence that all procedures related to the amendment of the subdivision permit, if any, which may be set forth in the bylaws of the association have been complied with.~~

5. ~~**Application Content.** An applicant shall use the appropriate application forms but need not complete any portions of an application determined by the Commission to be unnecessary for a specific application.~~

6. Procedures and Time Limits for Issuing a Permit Decision.

- a. Application with a hearing. Within 60 days after closure of a ~~public~~ hearing concerning a permit, the Commission ~~shall~~must make written findings of fact and issue ~~an order~~a decision either granting approval, subject to reasonable terms and conditions that the Commission determines appropriate ~~in order~~ to fulfill the requirements and intent of the Commission's statute, the Comprehensive Land Use Plan, and the Commission's rules, or denying approval of the application as proposed.
- b. Application without a hearing. If the Commission determines to act upon a permit application without a hearing, the Commission, within 90 days after accepting the application as complete for processing, ~~shall~~must make written findings of fact and issue ~~an order~~a decision either granting approval, subject to reasonable terms and conditions that the Commission determines appropriate ~~in order~~ to fulfill the requirements and intent of the Commission's statute, the Comprehensive Land Use Plan, and the Commission's rules, or denying approval of the application as proposed.
- c. Subdivision. The Commission ~~shall~~must render its determination on an application for subdivision approval within 60 days after the Commission accepts the application as complete for processing and determines that the proposal is a permitted use within the affected district or subdistrict.
- d. Expedited permitting area for wind energy development. The Commission ~~shall~~must render its determination on a permit application for a wind energy development in an expedited permitting area within 185 days after the Commission accepts the application as complete for processing, except that the Commission ~~shall~~must render such a decision within 270 days if it holds a hearing on the application. At the request of an applicant, the Commission may stop the processing time for a period of time agreeable to the Commission and the applicant. The expedited review period specified in this paragraph does not apply to the associated facilities, as defined in ~~Title 35-A, section 3451, subsection 135-A M.R.S. § 3451(1)~~, of the wind energy development if the Commission determines that an expedited review time is unreasonable due to the size, location, potential impacts, multiple agency jurisdiction or complexity of that portion of the development.

[Revision Note: The following provisions are moved to Section 4.05(A) General Provisions.]

- e. ~~Except where otherwise directed by the Commission or determined by the Director, the staff shall prepare a recommendation for each permit application brought to the Commission for a decision. Copies of the staff recommendation for a Commission decision must be made available to the applicant, intervenors and all other persons requesting to be so notified at least 7 days prior to the date of expected decision.~~

- ~~f. Notice of the decision on an application shall be sent to the applicant and to any other person having requested such information.~~
- ~~g. Notice of a decision of the staff must indicate that any person aggrieved by the staff decision has the right to a review of the staff decision by the Commission. The request for such review must be made in writing within 30 days of the staff decision.~~
- ~~h. A copy of each application, marked approved or disapproved, shall be retained in the commission files and shall be available to the public during normal business hours.~~
- ~~i. In the event the Commission approves an application for a subdivision, a copy of an approved plat or plan and a copy of the conditions required by the commission to be included in any deed or other document conveying an interest in the subdivision shall be filed with the appropriate registry of deeds for each county in which the real estate lies.~~

E. PETITION FOR ADOPTION OR AMENDMENT OF LAND USE DISTRICT BOUNDARY APPLICATIONS FOR ZONE CHANGE

1. **Applicability.** This subsection governs the procedures by which the Commission may consider petitions to change the boundaries of existing subdistricts or establish new subdistricts (applications for “zone change”). ~~Zoning changes requested by these petitions, if approved, the Commission will amend its will be reflected on the Commission’s~~ land use maps to reflect the zone change.

[Revision Note: This item proposes to require a lessee to provide written permission from the landowner as part of an application for zone change, rather than just being required to notify the landowner.]

2. **Who May Petition Apply.** The Commission or its staff may initiate, and any state or federal agency, any county or municipal governing body, or the property owner or lessee may apply for a zone change. ~~petition for the adoption or amendment of land use district boundaries~~ A lessee must provide, as part of the application for zone change, written permission from the property owner. ~~notice to the landowner of the intent to file a petition for adoption or amendment of land use district boundaries.~~
3. **Petition Application Content.**
- The district boundary that the petitioner applicant requests the Commission ~~to~~ adopt or amend;
 - The existing and proposed district designations ~~nature of the change requested;~~
 - The basis for the change requested;

[Revision Note: The following proposed revision responds to the limited legal meaning for “substantial,” whereas the Commission continues to interpret the measure to require meaningful or otherwise compelling evidence.]

- d. ~~Substantial-Compelling~~ evidence that the requested change is in conformity with the applicable criteria for zone changes ~~in district boundaries~~ set forth in 12 M.R.S.A. § 685-A(8-A); and
- e. Evidence that the notice provisions of Section 4.04(B) have been completed.

4. Procedures and Time Limits for Issuing a Decision on a ~~Petition to Adopt or Change a District Boundary~~an Application for a Zone Change.

- a. Within 45 days after ~~receipt of a petition for a change in a district boundary~~deeming an application for zone change complete for processing, the Commission ~~shall~~must decide whether to hold a hearing, and either schedule a ~~public~~ hearing or, if no hearing is held, set a final date by which comments on the petition may be submitted to the Commission.
- b. The Commission must act ~~upon a petition for proposed changes to district boundaries~~an application for zone change within 90 days after the final closure of the ~~public~~ hearing, or, ~~where when~~ the Commission ~~determines to proceed without~~does not hold a hearing ~~pursuant to this chapter~~, within 90 days of the ~~final date by which data, views or arguments may be submitted to the Commission for consideration in amending the district boundaries~~close of the public comment period.
- c. At any time ~~before acting on an application for zone change~~prior to adoption of proposed land use boundaries, the Commission may elect to reopen the ~~public hearing~~ record and extend the time period for public comment to such date as it may designate.
- d. District boundaries adopted by the Commission ~~shall~~must be effective not less than 15 days after adoption, provided all applicable requirements for their adoption have been met and the ~~same have been filed~~Commission staff have filed the boundaries and maps with the appropriate registry of deeds for each county involved;
- e. A notice of adoption of land use district boundaries must be filed by the Commission staff with the Secretary of State. This filing must ~~include a statement~~ indicating that current copies of maps showing district boundaries are on file in the Commission’s office and must state the method by which copies of the adopted map may be obtained;
- f. Commission staff must ensure ~~P~~ublic notice of adoption ~~must be~~is provided by publication one time in a newspaper or newspapers of general circulation in the area affected.;

F. REQUESTS FOR CERTIFICATION.

1. Certification of Development.

Pursuant to 12 M.R.S.A. § 685-B(1-A)(B-1) and 38 M.R.S.A. § 489-A-1, for development in the unorganized and deorganized areas reviewed by the MDEP and requiring a Site Location of Development permit, the Department may not issue a Site Location of Development permit until it receives certification from the Commission certifies to the Department that the proposed development is an allowed use within the subdistrict or subdistricts for which it is proposed and the proposed development meets any land use standard established by the Commission that is not considered in the Department's MDEP's review. All Commission certification determinations will conform with the following:

- a. The Commission will consider receipt, by the Commission, of a notice of intent to develop and map indicating the location of the proposed development, required by 12 M.R.S.A. § 685-B(1-A)(B-1), as a request for certification. The person proposing development may provide the notice and map may be provided by the person proposing development directly to the Commission or to the Department MDEP for the Department MDEP to provide to the Commission.
- b. A The Commission's certification determination decision on a request for certification will be issued:
 - (1) Solely to the Department MDEP for inclusion in the MDEP Department's Site Location of Development permitting decision if the determination Commission approves a request for certification.
 - (2) Solely to the MDEP Department for inclusion in the MDEP Department's Site Location of Development permitting decision if the determination Commission denies a request for certification and the request is associated with a development proposal being reviewed by the MDEP Department as part of a pending Site Location of Development permit application that is pending at the time of the determination.
 - (3) Both to the MDEP Department and to the person proposing development if the determination Commission denies a request for certification and the request is not associated with a development proposal being reviewed by the MDEP Department as part of a pending Site Location of Development permit application that is pending at the time of the determination.
- c. A Commission determination decision to approve a request for certification may include reasonable terms and conditions that the Commission determines appropriate in order to fulfill the requirements and intent of the Commission's statute, rules, and plans. After the inclusion of the certification determination in the Department's Site Location of Development permitting decision, the Commission retains, pursuant to 12 M.R.S.A. § 685-B(1-A)(B-1), the authority to enforce the land use standards certified to the MDEP Department, including through the enforcement of terms and conditions that are a part of a certification determination.

- d. The Commission may conduct its certification review and issue its ~~determination decision~~ as a single certification determination or in two parts. If provided in two parts, the first part will ~~include a determination of address~~ whether ~~to certify that~~ the proposed development is an allowed use within the subdistrict or subdistricts for which it is proposed ~~and the~~. The second part will ~~include a determination of address~~ whether ~~to certify that~~ the proposed development meets the land use standards established by the Commission that are not considered in the Department's review.
- e. The Commission will evaluate the applicant's title, right or interest ~~of a person requesting certification in the property proposed for development or use~~ as follows:
- (1) If a person requesting certification ~~elects to simultaneously~~ apply/applies to the MDEP Department for a Site Location of Development permit for the same proposed development, the Commission will not evaluate whether the person has title, right or interest in the property proposed for development. In such instances, the Commission will rely on the MDEP Department's title, right or interest ~~review/determination~~. If at any point the MDEP Department determines the person applicant does not possess sufficient title, right or interest, the Commission may stop ~~its reviewing of~~ the companion request for certification. Any time period contained in this Chapter for completing review of a request for certification will be tolled if the Commission ~~elects to stop~~ its review pursuant to this paragraph.
 - (2) If a person requesting certification ~~elects to seek~~ certification ~~prior to before~~ filing a Site Location of Development permit application with the MDEP Department, the Commission will proceed in accordance with one of the two options contained in this paragraph. The Commission may ~~elect to require the person applicant~~ to demonstrate, to the Commission's satisfaction, legally enforceable title, right or interest in the property proposed for development or use sufficient to approve the request for certification ~~for the proposed development of the property~~. Any title, right, or interest determination by the Commission ~~must will~~ be made in consultation with the MDEP Department. If the Commission determines that a person requesting certification lacks title, right or interest, the Commission will return the request to the person who made the request for certification. Alternatively, the Commission may elect to not independently evaluate title, right or interest and condition any certification determination on the MDEP Department finding in a future companion Site Location of Development permit decision that the person possesses title, right or interest in the property proposed for development or use.
- f. A Commission determination to approve or deny a request for certification ~~is not final agency action, or to deny a request for certification~~ when the request is associated with a development proposal being reviewed by the MDEP Department as part of a pending Site Location of Development permit application ~~and will be incorporated into the MDEP permitting decision that is pending at the time of the determination, is not final agency action~~. Pursuant to 5 M.R.S.A. §§ 11001 *et seq.*, a person aggrieved by a MDEP Department Site Location of Development permit decision containing a certification determination may appeal the Department's final agency action to state court in accordance with applicable state laws and court rules. As part of such an appeal, a person aggrieved may seek judicial review of any of the components of the MDEP Department's final agency action, including the Commission's certification determination that is incorporated into the MDEP Department's permitting decision.
- g. A Commission determination to approve or deny a request for certification ~~is a final agency action subject to judicial review~~, when the request is not associated with a development

proposal being reviewed by the ~~MDEP Department~~ as part of a ~~pending Site Location of Development~~ permit application ~~that is pending at the time of the determination, is a final agency action subject to judicial review in state court by a person aggrieved in accordance with governing laws and court rules.~~

2. Procedures and Time Limits for Issuing a Certification.

- a. Within 60 days after closure of a ~~public~~ hearing concerning a request for certification, the Commission ~~shall~~must issue a written certification determination.
- b. If the Commission acts upon a request for certification without a hearing, the Commission, within 90 days after accepting the request as complete for processing, ~~shall~~must issue a written certification determination.
- e.—Notwithstanding the provisions of Sections 4.05(F)(2)(a) and (b), tThe Commission ~~shall~~must issue its determination on a request for certification for a subdivision within 60 days after the Commission accepts the request for certification as complete for processing.
- d. Except where otherwise directed by the Commission or determined by the Director, the staff ~~shall~~will prepare a recommendation for each request for certification brought to the Commission for a determination. ~~Copies of the staff recommendation must be made available to the person requesting certification, intervenors and all other persons requesting to be so notified at least 7 days prior to the date of the expected determination.~~
- e.—~~Notice of the certification determination shall be sent to the person requesting certification and to any other person having requested such information.~~
- e.f. Notice of a certification determination of the staff must indicate that any person aggrieved by the staff determination has the right to a review of the staff determination by the Commission. The request for such review must be made in writing within 30 days of the date of the staff determination.

G. RULEMAKING PROCEDURES

[Revision Note: Public Law 2011 Chapter 682, Section 21 revised [Title 12 § 685-C\(1\)](#) by establishing a different process for the adoption or amendment of the Comprehensive Land Use Plan.]

1. Applicability.

This section governs the adoption or amendment of ~~the Commission's rules, other than -and the Commission's Comprehensive Land Use Plan. This section does not pertain to the adoption or amendment of land use district boundaries; those procedures zone changes, which~~ are governed by Section 4.05(E).

2. Who May Petition.

- a. The Commission ~~or its staff~~ may initiate the adoption or amendment of ~~land use district standards any rule.~~
- b. Any person may petition the Commission in writing to request the adoption ~~of a rule~~ or ~~modification amendment~~ of any rule ~~administered by the Commission~~. Such petition must specify the change requested. Within 60 days after receipt of ~~such a complete~~ petition, the Commission ~~shall~~ must either:
 - (1) Deny the proposed ~~adoption or~~ amendment, indicating in writing the reasons for denial; or
 - (2) Initiate rulemaking proceedings on the proposed ~~adoption or~~ amendment.
- c. Whenever a petition to adopt or ~~modify amend~~ a rule is submitted by 150 or more registered voters of the State, the Commission ~~shall~~ must initiate rulemaking within 60 days after receipt of the petition. The petition must conform to the applicable provisions of 5 M.R.S., Chapter 375, the Maine Administrative Procedures Act, including with respect to the certification of names on the petition. Pursuant to 5 M.R.S. § 8055, and Section 4.09(C)(1), rulemaking is considered to be initiated when the Commission directs staff to post the rulemaking to a comment process or a hearing, comment, and rebuttal process.

3. Petition Content.

Petitions must be in ~~writing, and writing and~~ must state the change requested and the basis for the change requested.

4. Time Limits for Rule Adoption.

- a. Land Use District Standards:
 - (1) The Commission must act to adopt proposed land use district standards within 90 days after the final closure of the ~~public~~ hearing, or where the Commission determines to proceed without a hearing, within 90 days of the final date by which data, views or

arguments may be submitted to the Commission for consideration in adopting the standards.

(2) At any time prior to adoption of proposed land use standards, the Commission may elect to reopen the ~~public~~-hearing record and extend the time period for public comment to such date as it may designate.

b. All Other Rules:

(1) Except as provided in ~~paragraph (a)~~ Section 4.05(E)(4)(a) and (b), the Commission must act to adopt proposed rules within 120 days of the final date by which data, views or arguments may be submitted to the Commission for consideration in adopting the rule.

(2) The final date for comments may be extended if notice of doing so is published within 14 days after the most recently published comment deadline, in the Secretary of State's consolidated notice publication.

[Revision Note: The following revision addresses a common source of confusion by referring to the two sets of statutory requirements. This is a clarification and current practices would not change.]

5. Adoption Requirements.

With respect to all rules adopted or amended by the Commission, the Commission ~~shall~~must follow the adoption procedures in 5 M.R.S.A. ~~§§ 8052(4), (5), (5-A), (7)(B), and (8); 8053-A(4); 8056(1), (2) and (5); 8056-A(1); 8057-A; and 8063~~ Chapter 375; and as applicable, 12 M.R.S. § 685-A(7-A).

6. Coordination with the Legislature.

The Commission ~~shall~~must:

- a. At the time of giving notice of rulemaking or within 10 days following the adoption of an emergency rule, provide to the Legislature a rulemaking fact sheet providing information described in 5 M.R.S.A. § 8053-A(1), and where applicable, 5 M.R.S.A. § 8053-A(2);
- b. If the Commission determines that a rule which it intends to adopt will be substantially different from the proposed rule, provide the Legislature, in accordance with ~~paragraph~~ Section 4.05(G)(6)(a), with a revised fact sheet as it relates to the substantially different rule pursuant to 5 M.R.S.A. § 8053-A(1)(A);
- c. Provide copies of its regulatory agenda to the Legislature at the time the agenda is issued pursuant to 5 M.R.S.A. § 8060.
- d. If the Commission proposes a rule not in its current regulatory agenda, file an amendment with the Legislature and Secretary of State at the time of rule proposal, pursuant to 5 M.R.S.A. § 8064;
- e. When the Commission provides materials to the Legislature, follow the guidelines in requirements of 5 M.R.S.A. § 8053-A(3);

7. Emergency Rulemaking.

If the Commission finds that immediate adoption of a rule is necessary to avoid an immediate threat to the public health, safety or general welfare, it may modify these procedures, to the extent required, to enable adoption of a rule to mitigate or alleviate the threat found. ~~An e~~Emergency rulemaking ~~must be adopted in accordance with~~ is subject to the requirements of 5 M.R.S. ~~A.~~ § 8054.

8. Effective Date of Adopted Rules.

- a. ~~Unless a later effective date is provided, r~~Rules adopted or amended by the Commission become effective in accordance with 5 M.R.S. § 8052(6) for routine technical rulemaking; § 8054 for emergency rulemaking; and § 8072(8) for major substantive rulemaking. 5 days after filing with the Secretary of State, except for emergency rules, which become effective immediately upon adoption by the Commission.
- b. Land use district standards are effective not less than 5 days after filing with the Secretary of State, as provided in the preceding paragraph but must be submitted to the next regular or special session of the Legislature, for approval or modification. If the Legislature fails to act, those standards continue in full force and effect. [12 M.R.S. § 685-A(7-A)(B)(6)]

4.054.06 HEARINGS

[Revision Note: This section proposes to consolidate all provisions regarding when to hold a hearing.]

A. WHEN TO HOLD A PUBLIC HEARING

1. ~~As provided by these rules, interested persons~~ A person may prepare and submit evidence and argument to the ~~agency Commission in support of a~~ request to hold a hearing on ~~an application, any matter.~~
2. The Commission ~~shall~~ will consider all written requests for a hearing submitted in a timely manner.
 - ea. Within 45 days after receipt of such ~~petition request~~ for a ~~public~~ hearing, the Commission ~~shall~~ must either:
 - (1) Deny the ~~petition request~~ for a ~~public~~ hearing and notify in writing the ~~petitioner person requesting the hearing in writing~~ of the ~~denial of the request~~ Commission's decision; or
 - (2) ~~Schedule a public hearing in accordance with the rules in this section~~ Grant the request for a hearing and initiate a hearing process in accordance with Commission rules, Chapter 4 and Chapter 5. The Commission must notify the persons requesting a hearing of the Commission's decision.
3. **Hearing is Required.**

The Commission ~~shall~~ must conduct a ~~public~~ hearing:

 - a. When required by the Constitution of Maine or statute;
 - b. If five or more interested persons request in writing that the Commission hold a hearing regarding a rulemaking, including without limitation, an application for zone change ~~petition for adoption or amendment of land use district boundaries;~~
 - ~~c. If five or more interested persons request in writing that the Commission hold a hearing on a Commission or staff initiated rulemaking petition.~~
 - c. If a rulemaking proposal includes a rule or provision that is a major substantive rule as defined by 5 M.R.S. § 8071(2)(B); or
 - e. If otherwise required pursuant to the Commission's rules.
4. The Commission ~~shall~~ must not amend or modify any permit ~~or certification~~ unless it has afforded the permit ~~tee holder~~ holder an opportunity for hearing, nor ~~shall~~ may it refuse to renew any permit unless it has afforded the permit ~~tee holder~~ holder an opportunity for a hearing.

5. Hearing is Optional.

Unless otherwise required by the Constitution of Maine, ~~or statute,~~ or the Commission's rules, hearings are at the discretion of the Commission in the following cases:

- a. ~~Hearings on an a permit~~ application or a request for certification; and
- b. Applications for zone change~~changes in land use district boundaries~~ in the case of changes proposed on motion of the staff which involve only ~~correction of~~ clerical ~~mistakes~~corrections.

In determining whether a hearing is advisable, the Commission ~~shall~~ considers i) the degree of public interest, ii) the likelihood of credible conflicting technical information regarding applicable regulatory criteria; iii) whether certain information material to the Commission's review cannot be effectively presented as written comments on the pending application~~the likelihood that information presented at the hearing will be of assistance to the Commission in reaching its decision;~~ or iv) any other considerations the Commission deems appropriate or compelling.

B. CANCELLATION OR CHANGE OF HEARING

1. ~~Permits, Petitions, Requests for Certification, and Rulemaking~~All Commission Hearings.

If a scheduled hearing is canceled or postponed to a later date, the Commission ~~shall~~must provide timely notice to the persons described in Section ~~4.04(6)(a)~~4.04(B). When hearings are continued, the Commission ~~shall~~must provide such additional notice as it deems appropriate to inform the parties and interested persons, but the Commission ~~shall~~may be entitled to continue a hearing to a later date and place as is announced at the hearing.

4.064.07 FINAL ACTION

[Revision Note: This section is proposed to consolidate existing and new provisions, and clarify current policies. Section 4.07(A) is proposed to be reserved for the possibility in the future for rule language suitable to 'general provisions' for final actions.]

A. (RESERVED)

B. STAFF DECISIONS

1. Unless otherwise indicated as a condition of the permit or certification, a final action issued by the staff is effective on the date the decision document is signed by the staff.
- ~~B.~~ 2. Any person aggrieved by a decision of the staff (e.g., regarding a permit, certificate of compliance, notice of violation) under Section 3.02 has the right to a review of that decision by the Commission. A request for such a review must be made in writing within 30 days of the date of the staff decision.

C. COMMISSION DECISIONS

1. To the extent practicable, copies of staff recommendations for Commission decisions will be made available at least 7 days prior to the date of expected decision, to the applicant, intervenors, and any other person requesting to be so notified.
2. A decision of the Commission shall be considered final on the date rendered by the Commission, unless the Commission receives a request for a public hearing pursuant to Section 4.04(11)(b)4.06(A) or 4.05(11)4.07(K). Where such a request is made, the decision of the Commission shall be considered final on the date of notice of the Commission's denial of denials the request for public hearing or on the date of the Commission's decision after public hearing.
- ~~2. A certification determination of the Commission is effective beginning on the date the determination is rendered by the Commission, unless the Commission receives a request for a~~

~~public hearing pursuant to Section 4.11(12)(c). Where such a request is made, the determination of the Commission is effective on the date of the Commission's denial of the request for public hearing or of the Commission's determination after public hearing.~~

D. CORRECTIONS

[Revision Note: This next provision is proposed to be moved from Chapter 5, Section 5.20. A concurrent yet separate rulemaking proposes to delete the provision from Chapter 5.]

1. ~~Within 30 days following the effective date of a permit, petition, or certification, after receipt of any decision concerning a permit application or rezoning petition following a hearing,~~ any person aggrieved by the decision or order of the Commission may petition to seek the correction of any misstatement of fact or clerical error contained in the final decision or to challenge any material fact of which the Commission took official notice pursuant to 5 M.R.S. § 9058. The Commission ~~shall~~ will determine whether to dismiss the petition as without merit, to correct the error, to reopen the hearing pursuant to Chapter 5, Section 5.21 herein 5.10(D) of the Commission's rules, or to take such other steps as it deems appropriate. Failure to invoke the provisions of this section ~~shall~~ will have no effect upon an aggrieved party's right of appeal to a court of law.
2. The Commission or Commission staff, as applicable, will consider requests for correction within 30 days of receipt of such request. ~~The filing of a petition under this section does not serve to stay the deadlines for any appeal of a Commissioner or Board Order, and the effective date of any corrected order shall be the same as the original order.~~
3. At any time, the Commission may issue a corrected permit, certification, or petition in accordance with Section 4.07(D).
- 1.4. The filing of a request for, or the issuance of, a correction under Section 4.07(D) does not serve to stay the deadlines for any appeal of a Commission decision, and the effective date of any corrected decision must be the same as the original decision.

E. AMENDMENTS

An application for amendment or request for minor change must be submitted to the Commission before undertaking any modification not exempted from permitting requirements by statute or rule to a project, development, or activity that is the subject of Commission authorization. Written approval for the modification must be received before the modification is undertaken.

F. EXPIRATION

[Revision Note: This section proposes to relocate all provisions from Chapter 10, Section 10.17(A) to Chapter 4 to consolidate existing provisions regarding procedure. A concurrent yet separate rulemaking proposes to delete the provisions from Chapter 10.]

Except as provided in Sections ~~10.17,A,1 through 44.07(F)(1) through (4)~~ below or as otherwise authorized by the Commission in the permit conditions of approval, development or uses authorized by a permit must be substantially started within two years of the effective date of the permit and substantially completed within five years of the effective date of the permit:

1. Permits Issued Prior to July 1, 2003.

For permits issued prior to July 1, 2003 with no specified expiration dates, the expiration date is October 1, 2004.

2. Special Flood Hazard Areas.

In special flood hazard areas, development or uses authorized by a permit must be substantially started within 180 days of the effective date of the permit and substantially completed within five years of the effective date of the permit.

3. Subdivisions.

Development authorized by a Commission approved subdivision permit must be substantially started within four years of the effective date of the permit and substantially completed within seven years of the effective date of the permit.

Upon the Commission's determination ~~determining~~ that a subdivision permit has expired under this paragraph, notice of such expiration must be recorded, by the permittee or by the Commission at the permittee's expense, in the appropriate Registry of Deeds.

4. Multi-phased Projects.

For multi-phased projects or project expansions that are permitted separately, final Commission approval of each phase or expansion ~~must~~will be treated as a separate permit for the purposes of determining "substantial start" and "substantial completion" for each phase or expansion.

G. RENEWALS

[Revision Note: This section proposes to relocate all provisions from Chapter 10, Section 10.17(D) to Chapter 4 to consolidate existing provisions regarding procedure. A concurrent yet separate rulemaking proposes to delete the provisions from Chapter 10.]

An application to renew a permit must be submitted prior to the expiration of the permit.

1. If an application to renew a permit is not timely submitted prior to expiration of the permit, or is timely submitted but not accepted as complete for processing in accordance with Chapter 4, Section ~~4.03,(8),(a)~~4.05(A)(5)(a), the permit lapses.
2. If the renewal application is timely submitted prior to the expiration of the permit and accepted as complete for processing, the terms and conditions of the existing permit remain in effect until the final Commission decision on the renewal application.
3. The Commission may renew a permit and extend by up to two years, either or both of the deadline for a substantial start or for substantial completion ~~by up to two years~~.
- 3.4. Renewal applications to extend the expiration date for projects that have not been substantially started are subject to the procedural and substantive requirements in effect at the time of acceptance of the renewal application.

H. RE-APPLICATION

1. After receipt of a final decision as described in ~~subsections Sections~~ Sections 4.07-(1) and (2)(B) and (C) above, no person may reapply to the Commission for a permit for the same proposed use for the property in question, unless they can demonstrate that there is a significant change in circumstances or substantial new information to be presented to the Commission.

I. TRANSFER

1. Transfer of Commission permits is required for all subdivisions, nonresidential development, or certifications, where there is, at the time of change in ownership:
 - a. development or activities that have been authorized or required but are not yet completed, except accessory structures;

- b. other on-going compliance obligations including outstanding conditions and long-term operational or maintenance requirements;
- c. condominium type residential development involving more than four dwellings; or
- d. largescale nonresidential development cumulatively involving more than 3 acres of total impervious area.

Except as may be required by the Constitution of Maine or statute, all other permits carryforward with the land and therefore any change in ownership thereof.

2. No later than two weeks after the transfer of ownership of property subject to certain Commission permits or certifications that meet one or more of the provisions of Section 4.07(I)(1), the new owner must submit a transfer application for all relevant permits or certifications that have not expired.
3. Pending determination on the application for a transfer, the transferee must abide by all of the conditions of such permit, and is jointly or severally liable with the original permittee for any violation of the terms and conditions thereof. The transferee must demonstrate to the Commission's satisfaction sufficient technical ability and financial capacity, and the intent and ability to: (a) comply with all terms and conditions of the applicable permits, and (b) satisfy all applicable statutory and regulatory criteria.

J. REVOCATION, SUSPENSION, AND SURRENDER

1. The Commission may revoke or suspend, or seek revocation or suspension of, ~~approvals or~~ permits or certifications granted by it in accordance with applicable provisions of the Maine Administrative Procedure Act and 12 M.R.S. § 685-C(8).

[Revision Note: This would be a new section – Based on DEP's Chapter 2 and recent LUPC matters where an applicant temporarily surrendered/suspended authorized activities.]

2. Suspension.

Any permittee may propose to suspend activities for a period specified as part of a permit transfer, permit application, or other appropriate situations. The proposal must be made in writing and contain sufficient detail for the Commission to understand the purpose and effect of the suspension. If a proposed suspension is approved,

- a. the Commission must confirm such suspension, and any subsequent release from suspension, in writing; and
- b. the suspension does not pause, extend, or otherwise affect requirements regarding substantial start or substantial completion.

3. Surrender.

Any permittee may request to surrender its permit, certification, or zone change if the permittee demonstrates to the Commission's satisfaction that it has never used the permit, certification, or zone change for its intended purpose nor begun any of the activities approved under the permit and does not intend to do so in the future. The request must also provide that the permittee waives notice and opportunity for hearing.

The Commission may require written and photographic documentation, certified statements, and sampling analyses, in addition to any other relevant information, as demonstration that the activities described in the permit have not been undertaken. For any approved permit recorded in a registry of deeds which is later surrendered, the Commission will require that evidence of the surrender be filed by the permittee, or the Commission at the permittee's expense, with the same registry of deeds.

When the Commission approves the surrender, the permit, certification, or zone change is deemed null and void as of the date the surrender is approved.

K. APPEALS

[Revision Note: The following proposes to group all provisions regarding appeals into one section.]

1. Person Aggrieved.

It is the Commission's intent to interpret and apply the term "person aggrieved," whenever it appears in statute or rule, consistent with Maine state court decisions that address judicial standing requirements for appeals of final agency action.

- a. Requests for Commission review of staff decisions must be made within 30 days of the decision.
- b. Appeals of Commission decisions that are final agency action must be taken to Superior Court, or in the case of applications for expedited wind energy development, to the Supreme Judicial Court, in accordance with applicable state laws and court rules. However, any person aggrieved by a decision of the Commission in which no hearing was held, may petition the Commission for a hearing. Such petition must be made within 30 days of the decision and must set forth in detail:
 - (1) The findings, conclusions and conditions to which the petitioner objects;
 - (2) The basis of the objection;
 - (3) A summary of the information that will be presented at the public hearing that could not be reasonably presented during the administrative review process;
 - (4) A statement describing the reasons why holding a public hearing will be of assistance to the Commission in rendering a decision;
 - (5) The nature of the harm caused the petitioner by the decision; and
 - (6) The nature of the relief requested.

- ~~e. The Director shall provide notice of requests for public hearing made following a Commission decision to any person having requested in writing to be notified of such requests and to any other person the Director deems appropriate. The notice shall include a copy of the petition for public hearing and any other information the Director deems appropriate.~~
- ~~d. Within 45 days after receipt of such petition for a public hearing, the Commission shall either:

 - ~~(1) Deny the petition for public hearing and notify the petitioner in writing of the denial of the request; or~~
 - ~~(2) Schedule a public hearing in accordance with the rules in this section and Chapter 5.~~~~

~~Appeals of Commission decisions that are final agency actions must be taken to Superior Court in accordance with applicable state laws and court rules. However, any person aggrieved by a decision of the Commission in which no hearing was held may petition the Commission for a hearing within 30 days. In this case, the petitioner and the Commission must follow the provisions of Section 4.04(11)(b).~~

~~3. Certifications:~~

- ~~a. A person aggrieved may request Commission review of a staff certification determination. Such a request must be made within 30 days of the determination. If the determination is made in two parts as provided for in Section 4.11(1)(d) above, the request for review must be made within 30 days of the part of the determination of which review is sought.~~
- ~~b. In the event a person aggrieved appeals a Department permit decision that includes a certification determination to state court, the Commission certification determination record shall be considered part of the Department permit record for the purpose of the appeal. A Commission determination to deny a request for certification, when the request is not associated with a development proposal being reviewed by the Department as part of a Site Location of Development permit application that is pending at the time of the determination, is final agency action subject to judicial review in state court by a person aggrieved in accordance with governing laws and court rules.~~
- ~~e. A person aggrieved by a Commission certification determination in which no hearing was held, may petition the Commission for a hearing. Such petition must be made within 30 days of the determination, or respective part of the determination provided for in Section 4.11(1)(d) above, and~~
- ~~d. The Director shall provide notice of requests for public hearing made following a Commission certification determination to any person having requested in writing to be notified of such requests and to any other person the Director deems appropriate. The notice shall include a copy of the petition for public hearing and any other information the Director deems appropriate.~~

1. General Provisions.

- a. Person Aggrieved. It is the Commission's intent to interpret and apply the term "person aggrieved," whenever it appears in statute or rule, consistent with Maine state court decisions that address judicial standing requirements for appeals of final agency action.

- b. A person aggrieved by a staff decision may appeal the decision to the Commission. Requests for Commission review of staff decisions must be made within 30 days of the date of the decision. If the staff decision regarded a certification determination made in two parts as provided for in Section 4.05(F)(1)(d), the appeal must be made within 30 days of the part of the determination of for which review is sought.
- c. In the event a person aggrieved appeals a Maine DEP permit decision that includes a certification determination to state court, the Commission certification determination record must be considered part of the Maine DEP permit record for the purpose of the appeal.
- d. Appeals of Commission decisions that are final agency action must be taken to Superior Court, or in the case of applications for expedited wind energy development, to the Supreme Judicial Court, in accordance with applicable state laws and court rules. However, any person aggrieved by a decision of the Commission in which no hearing was held, may petition the Commission for a hearing.

2. Contents.

An appeal to the Commission of a Commission staff determination, permit, or certification must set forth in detail:

- ~~(1) The portions of the determination to which the petitioner objects;~~
- ~~(2) The basis of the objection;

 - ~~(a) A summary of the information that will be presented at the public hearing that could not be reasonably presented during the administrative review process;~~
 - ~~(b) A statement describing the reasons why holding a public hearing will be of assistance to the Commission in reviewing the determination;~~~~
- ~~(3) The nature of the harm caused the petitioner by the determination; and~~
- ~~(4) The nature of the relief requested.~~
- a. The written appeal must include evidence demonstrating the appellant's standing as an aggrieved person; the findings, conclusions or conditions objected to or believed to be in error; the basis of the objections or challenge; and the remedy sought.
- b. Exhibits attached to an appeal must be clearly labeled indicating date and source, and indicating whether the exhibit is in the existing record or is proposed supplemental evidence. Unlabeled exhibits may be rejected by the Chair. Electronic links to documents will not be accepted. In the case of lengthy documents, the appellant must specify the relevant portions.
- c. If the appellant requests that supplemental evidence be included in the record and considered by the Commission, such a request, with the proposed supplemental evidence, must be submitted with the appeal. A request to supplement the record must address the criteria for inclusion of supplemental evidence set forth in Section 4.07(K)(4).
- d. If a hearing is requested, the appellant must provide an offer of proof regarding the testimony and other evidence that would be presented at the hearing. The offer of proof must consist of a statement of the substance of the evidence, its relevance to the issues on appeal, and whether any expert or technical witnesses would testify.

- e. Appeals must be copied to the permittee. The Commission staff will provide notice of the appeal to persons on the Commission's interested persons list for the application at issue.

[Revision Note: The following is based on the Maine DEP's Chapter 2.]

3. Response to Appeal.

A written response to the merits of an appeal may be filed by a permittee (if the permittee is not the appellant) and any person who submitted written comment on the application (hereafter collectively referred to as the respondents). All proposed supplemental evidence is subject to the labeling and form requirements of Section 4.07(K)(2)(b) and the criteria for inclusion of supplemental evidence set forth in Section 4.07(K)(4).

- a. If no supplemental evidence is offered by any party, a respondent's complete response to the merits of the appeal must be filed within 30 days of the date of the staff's written acknowledgement of receipt of the appeal with a copy to the appellant.
- b. If supplemental evidence is offered by any party, the opposing party may submit written comment on the admissibility of the proposed supplemental evidence and may offer proposed supplemental evidence in response. The written comment is due within 15 days of the date of the Chair's written determination as to which of the submissions constitute proposed supplemental evidence unless the Commission establishes an alternative schedule.
- c. The Chair shall rule on the admissibility of all proposed supplemental evidence in accordance with Section 4.07(K)(6) within 10 days of receipt of all comments regarding admissibility of all of the proposed supplemental evidence.
- d. Within 20 days after the decision on the admissibility of all of the proposed supplemental evidence, the respondent's complete response to the merits of the appeal must be filed.
- e. Further evidence may not be provided directly to Commission members or distributed at Commission meetings or hearings without specific permission of the Chair.

4. Record on Appeal, Supplemental Evidence.

The record for appeals decided by the Commission is the administrative record prepared by Commission staff in its review of the application, unless the Commission admits supplemental evidence or decides to hold a hearing on the appeal.

- a. If an appellant or respondent seeks to supplement the record, that person shall provide copies of all proposed supplemental evidence with the written appeal or in response to the appeal as provided in Sections 4.07(K)(4)(b) and (5).
- b. The Commission may allow the record to be supplemented on appeal when it finds that the evidence offered is relevant and material and that:
- (1) the person seeking to supplement the record has shown due diligence in bringing the evidence to the attention of the Commission at the earliest possible time; or
 - (2) the evidence is newly discovered and could not, by the exercise of reasonable diligence, have been discovered in time to be presented earlier in the regulatory process.

- c. The Chair may accept into the record additional evidence and analysis submitted by Commission staff in response to issues raised on appeal or supplemental evidence offered by the appellant or respondent.

5. Procedure.

The procedure for hearings on appeals is governed by Chapter 5 of the Commission's rules. Appeals decided without a hearing will be considered based on the administrative record on appeal and oral argument at a regular meeting of the Commission as follows, at the Chair's discretion:

- a. the Commission staff briefly introduces the appeal, indicating the subject matter, the appellant's basis for appeal, and the relevant statutes and rules, and indicating the staffs' recommended disposition of the appeal;
- b. the appellant makes a presentation discussing objections or challenges to the staff's decision on the application;
- c. when the appellant is a person other than the permittee, the permittee is then provided an opportunity to address the issues raised by the appellant;
- d. other persons may comment on the appeal;
- e. the appellant and permittee may be provided with a final opportunity for rebuttal.

The Commission, its staff and the Commission's legal representative may at any time address questions to any person participating in the appeal.

6. Decision on Appeal.

- a. The Commission will, as expeditiously as possible, affirm all or part, affirm with conditions, order a hearing to be held as expeditiously as possible, reverse all or part of the decision of the staff, or remand the matter to the staff for further proceedings.
- b. The Commission's decision is based on the administrative record on appeal, including any supplemental evidence admitted into the record and any evidence admitted during the course of a hearing on the appeal. The Commission is not bound by the staff findings of fact or conclusions of law.

4.074.08 DELEGATION OF AUTHORITY TO STAFF

[Revision Note: This would be a new section to Chapter 4 by incorporating the provisions of Chapter 3 into this rule. Concurrent with the addition here, the Commission consequently is proposing to REPEAL Chapter 3.]

3.01A. PURPOSE AND ~~AUTHORITY~~SCOPE

~~The purpose of this regulation is to increase the efficiency of the Commission's operations by delegating authority to the staff to handle certain applications and certificates of compliance. This rule is authorized and adopted pursuant to 12 M.R.S.A. §§ 685-B(1-B) and (8), the Commission finds that:-~~

- ~~1. Many of the applications submitted to the Commission are similar and are similarly decided and, therefore, of a routine nature;~~
- ~~2. The handling of that type of application by the staff will eliminate a waiting period between completion of the staff work and the next Commission meeting; and~~
- ~~3. The nature of the applications is such that the decision may be made by the staff on the strict basis of the statutory criteria for approval contained in 12 M.R.S.A. § 685-B(4) and the policies, standards, and rules duly adopted by the Commission.~~

3.02 — B. DELEGATION OF AUTHORITY ~~TO STAFF TO APPROVE OR DISAPPROVE APPLICATIONS~~

~~A-1.~~ The Commission delegates to its staff, under the responsibility of the Director, the authority to

- ~~a. approve, approve with conditions, or disapprove, issue, or otherwise act on the following, provided they are routine in nature and do not raise significant policy issues:~~

- ~~(1) all applications, (including those for special exceptions,) submitted to the Commission, pursuant to 12 M.R.S.A. § 685-B, provided they are routine in nature and do not raise significant policy issues.~~

~~These include situations where applicable Commission rules contain qualifying phrases, including but not limited to: the Commission may reduce, may consider, may allow for development by waiving, may waive, and must consider.~~

~~The Commission delegates authority to the staff to so approve or disapprove permit applications submitted pursuant to 12 M.R.S.A. § 685-B upon finding that:~~

- ~~1. Many of the applications are similar and are similarly decided and, therefore, of a routine nature;~~
- ~~2. The handling of that type of application by the staff will eliminate a waiting period between completion of the staff work and the next Commission meeting; and~~
- ~~3. The nature of the applications is such that the decision may be made by the staff on the strict basis of the statutory criteria for approval contained in 12 M.R.S.A. § 685-B(4) and the policies, standards and rules duly adopted by the Commission.~~

[Revision Note: The following provision is already addressed by Section 4.07(B).]

- ~~B. Any person aggrieved by a decision of the staff under Section 3.02 has the right to a review of that decision by the Commission. A request for such a review must be made in writing within 30 days of the staff decision.~~
- ~~b. The Director may e~~Extend the time limits herein imposed for review of staff decisions and for Commission review and decision, upon written request by the applicant or with the written consent of the applicant, where circumstances necessitate a longer time or for other good cause.
- ~~C. Notwithstanding the above provisions of Sections 4.08(B)(1)(a) and (b), at the Director's discretion of the Commission or the Director, any application, request, or matter may be forwarded directly to the Commission for discussion, decision, guidance to staff, or directive to staff.~~

~~3.03 — Delegation of Authority to Staff to Issue or Deny Certificates of Compliance~~

- ~~A. The Commission delegates to its staff, under the responsibility of the Director, the authority to issue or deny certificates of compliance.~~
- ~~B. Any person aggrieved by a decision of the staff under Section 3.03 shall have the right to a review of the decision by the Commission members within 30 days of the decision.~~

~~3.04 — Delegation of Authority to Extend Certain Time Limits~~

~~The Director may extend the time limits herein imposed for review of staff decisions and for Commission review and decision, upon written request by the applicant or with the written consent of the applicant, where circumstances necessitate a longer time or for other good cause.~~

[Revision Note: The following provisions are new and intend to add clarity and predictability.]

C. EXCEPTIONS

1. Notwithstanding any other provision, the Commission does not delegate to its staff authority to:

- a. Approve or disapprove applications for zone changes, including adoption or amendment of any related development, concept, or resource plans;
- b. Hear or decide on appeals of staff actions;
- c. Approve or disapprove requests for a variance;
- d. Initiate, approve, disapprove, or terminate rulemaking;
- e. Decide or decide on requests for a hearing;
- f. Revoke any Commission or staff approval or certification; and
- g. Approve or disapprove requests to, or actions that would, affect land use regulatory authority, such as those provided in 12 M.R.S. § 685-A(4-A).

Department of Agriculture, Conservation and Forestry
MAINE LAND USE PLANNING COMMISSION
22 State House Station, Augusta, Maine 04330. Tel. (207) 287-2631

Rules for the Conduct of Public Hearings

Chapter 5 of the Commission's Rules

APA Office Note dated November 6, 2013: due to a legislatively mandated reorganization, the Land Use Regulation Commission was renamed as Land Use Planning Commission, with its umbrella unit number changed from 04-061 to 01-672.)

May 12, 2021 Draft

The Commission proposes to repeal and replace Chapter 5. The following “Redline Version” illustrates proposed changes in strikeout and underline format with additions in underlined text, deletions as ~~strikethroughs~~, and relocations as double underline and double ~~strikethroughs~~.

Many of the proposed revisions can be described as clerical edits and generally include: factual corrections; improving the structure of citations; and simple clarifications that do not change the meaning of the applicable standard.

Of the substantive revisions, many are self-explanatory. Where necessary, further explanations of some changes have been included in [brackets]. These explanatory notes will not be included in the final rule. A generalized summary of the revisions is provided on the next page.

The following is a generalized summary of proposed revisions by topic:

Relocate to Chapter 4:

- Petition for correction of a permit or zone change; and
- Relocate provisions regarding hearing records from Chapter 5 to Chapter 4.

Clarifications:

- Confirm the number of Commissioners required to attend each type of hearing;
- Confirm that the presiding officer is presumed to be the chair, unless otherwise determined (Section 5.02(C));
- The number and form of filings (section 5.04(B));
- Provisions for oral testimony (section 5.09(C)); and

Clerical Edits:

- Minor reorganization of provisions to improve the order of content;
- Revise visual characteristics to contribute to improved function of the rule – *such as formatting, spacing, and an alternating alpha numeric outline structure (e.g., 5.04(B)(1)(a))*;
- Correct citations and references – *such as proper citation to Maine statutes (M.R.S.)*;
- Revise the usage of “shall” to more appropriate terminology or phrases;
- Revise gender specific phrasing; and
- Apply new phrasing when referring to “petition for changes to land use district boundaries” to “application for zone change”

CHAPTER 5
RULES FOR THE CONDUCT OF PUBLIC HEARINGS

TABLE OF CONTENTS

5.01	Scope of Rules.....	127
5.02	General Provisions.....	127
	A. Consolidation of Proceedings.....	127
	B. Notice	127
	C. Location and Attendance.....	127
	D. Presiding Officer	128
	E. Ex parte Communications	128
5.03	Parties and Governmental Agencies	130
	A. Intervention	130
	B. Participation by Interested Persons	131
	C. Governmental Agencies	131
5.04	Service and Filing of Documents	132
	A. Service.....	132
	B. Filing	132
	C. Forms.....	132
	D. Representatives.....	132
5.05	Conferences	133
	A. Prehearing Conferences without Intervenors	133
	B. Prehearing Conferences with Intervenors or Petitions for Intervention.....	133
	C. Recording of Conferences	133
5.06	Subpoenas	134
	A. Who May Request Subpoenas.....	134
	B. Content	134
	C. Service.....	134
	D. Proof of Service.....	134
	E. Quashing.....	134
	F. Confidentiality.....	134
	G. Court Orders	134
	H. Costs	135

5.07	Evidence	136
	A. Admissible Evidence.....	136
	B. Official Notice.....	136
	C. Documentary and Real Evidence	136
	D. Objections.....	137
	E. Offer of Proof	137
5.08	Testimony and Questions	138
	A. Hearings on applications	138
	B. All Other Hearings	139
	C. Oral Argument.....	139
5.09	Conduct of the Hearing	140
	A. Opening Statement	140
	B. Recording of Testimony; Report to Commission.....	140
	C. Oral Testimony.....	140
	D. Written Testimony.....	140
	E. Continuance; Multiple Hearings on Matter	141
	F. Regulation of Certain Devices and Signage.....	141
5.10	Closure of the Hearing.....	142
	A. Closure of the Hearing Record.....	142
	B. Time Periods for Written Comments After the Conclusion of a Hearing	142
	C. Reopening a Hearing Prior to a Decision	142
	D. Reopening the Hearing after Decision on Applications for Permit or Zone Change	142
	E. Final Closure	142
5.11	Hearing Record	144

CHAPTER 5: RULES FOR THE CONDUCT OF PUBLIC HEARINGS
5.015.01 SCOPE OF RULES

These rules govern all public hearings ~~before conducted by~~ the Land Use Planning Commission (~~“Commission” or “the LUPC”~~).

[Revision Note: Rules should not include policy statements. Otherwise, Chapter 4 Section 4.06 sufficiently addresses opportunities to request a hearing.]

~~5.02 REQUESTS FOR HEARINGS~~

~~It is the policy of the Land Use Planning Commission to conduct the administration of its programs in an atmosphere of public understanding and cooperation and in a manner responsive to the public interest. Accordingly, the Commission shall provide the applicant, the petitioner, or any other interested person the opportunity to request a public hearing on any application, petition, or other proposal pending before the Commission. Chapter 4 of these rules contains procedures by which hearings may be requested.~~

5.02 GENERAL PROVISIONS

A.5.03 Consolidation of Proceedings.

On motion and for good cause shown, or on its own initiative, the Commission may consolidate two or more proceedings if it finds that such action will be conducive to just and proper dispatch of its business and that opportunities for public participation will not be compromised.

B.5.04 Notice.

Notice of all public hearings before the ~~Land Use Planning Commission shall be governed by~~ must be in accordance with Chapter 4 of ~~these the Commission’s~~ rules.

C.5.05 Location and Attendance.

1. Hearing Locations: All hearings of the ~~Land Use Planning Commission shall~~ must be held in a location or through certain means, and at a time determined by the Commission to be

appropriate when considering the needs, costs, safety, and convenience of the interested parties together with those of the Commission. To the extent practicable, hearings must be held at a location in close proximity to, or significantly affected by, the project or projects under review or which are concerned about the issue.

- 2.** ~~Attendance at Hearings: A hearing on a permit application must be attended by at least one Commission member. In proceedings involving rulemaking zone changes, and amendment or adoption of district boundaries and district standards, at least 3 Commission members must be present at the hearing.~~ Attendance at a hearing must be in accordance with 12 M.R.S. § 684.

D. 5.06—Presiding Officer.

- 1. Designation of Presiding Officer:** The Presiding Officer at any hearing ~~shall~~ must be either:

- a. The Chair, if present and willing to preside;
- b. A Commissioner selected by those members present at the hearing; or
- c. ~~If no Commissioner is present or willing to preside, a~~ A qualified employee or representative of the Land Use Planning Commission, as designated by the Chair.

Unless otherwise determined by the Commission on a case by case basis, the Presiding Officer is presumed to be the Chair.

- 2. Authority of Presiding Officer:** The Presiding Officer ~~shall have~~ maintains the authority to:

- a. Require and administer oaths or affirmations;
- b. Rule upon issues of procedure and admissibility of evidence;
- c. Regulate the course of the hearing, set the time and place of continued hearings, and fix the time for filing of evidence, briefs and other written submissions;
- d. Certify questions to the Commission for its determination; ~~and~~
- e. Take other actions, on behalf of the Commission consistent with these regulations and applicable statutes, as may be ordered by the Commission or that are necessary for the efficient and orderly conduct of the hearing.
- f. To the extent permitted by law, where good cause appears, the Presiding Officer may permit deviation from the procedural rules of the Commission insofar as compliance therewith is found to be impractical or unnecessary and the change does not prejudice any of the parties.
- g. Issue conclusions and fact to be considered by the full Commission.

E. 5.25—Ex parte Communications.

- 1. Limitations of this section:** This Section 5.02(D) applies ~~section shall apply~~ to those public hearings concerned with applications for zone changes ~~the adoption of district boundaries~~ pursuant to 12 M.R.S.A. § 685-A-(7-A); ~~the amendment of district boundaries pursuant to 12 M.R.S.A. § 685-A-(8-A);~~ permit applications pursuant to 12 M.R.S.A. § 685-B; ~~petitions for~~

- ~~the granting of applications for~~ a variance or issuance of special exception permit pursuant to 12 M.R.S.A. § 685-A-(10); and any public hearing in which the legal rights, duties, or privileges of specific persons are to be adjudicated.
2. **Prohibitions on ex parte communications:** After a decision by the Commission to conduct a public hearing, ~~no~~ Commission members, and any Presiding Officer designated by the Commission, must not shall engage in any ex parte communication in connection with any issue of fact, law or procedure which is the subject of the hearing.
 3. **Allowable communications:** However, ~~this section shall~~ Section 5.02(D) does not prohibit any Commission member or Presiding Officer from:
 - a. Communicating in any respect with other members of the Commission or ~~other~~ the Presiding Officers;
 - b. Having the aid and advice of members of the staff, counsel or consultants retained by the Commission; provided that, in adjudicatory proceedings subject to 5 M.R.S.A. Sections 9051 *et seq.*, this exception ~~shall~~ extends only to consultation with members of the staff, counsel or consultants who have not participated and will not participate in the proceeding in an advocate capacity.
 4. **Actions considered as ex parte communication:** For purposes of ~~this~~ Section 5.02(D), "ex parte communication" ~~shall~~ includes, but is not ~~be~~ limited to, oral communication (other than public communication occurring upon notice to all parties and during a properly scheduled public hearing or meeting of the Commission) or any written communication (other than motions, prefiled testimony or other writings, copies of which are furnished or available, as required herein, to all other parties to the proceeding).
 5. **Disclosure of ex parte communication:** In the case of an ex parte communication prohibited by this ~~S~~ section 5.02(D), the Commission member or Presiding Officer involved therein ~~shall~~ must disclose the nature and substance of the communication to the Commission members and parties to the proceeding, but ~~he shall~~ will not be disqualified from voting in connection with the proceeding. ~~but~~ The Commission may provide an opportunity to the other parties to the proceeding to respond to the matter communicated.

Such disclosure ~~shall~~ will be made part of the public record, but the substance of the ex parte communication ~~shall~~ will not form a basis for the ~~Commission's~~ decision of the Commission or Presiding Officer unless other parties to the proceeding have been given an opportunity to respond.

5.03 PARTIES AND GOVERNMENTAL AGENCIES

A. **Intervention.**

1. **Petition for Intervention:** Prior to the commencement of any public hearing of the type described in Section ~~5.08(A)5.16(4)~~ of these regulations, the Commission or Presiding Officer may require or allow any person who desires to participate as a party, offer testimony and evidence, and participate in oral cross-examination, to file a petition under oath or affirmation for leave to intervene. Notice of the requirement of filing a petition for intervention ~~shall~~will be given in a manner consistent with Section 4.04~~(7)~~ of the Commission's rules~~these regulations~~ or in such other manner as the Presiding Officer deems appropriate. A petition to intervene ~~shall~~must be granted if it demonstrates that the petitioner is or may be substantially and directly affected by the proceeding.

The Commission or Presiding Officer may further allow any other interested person to intervene as a party or to participate in more limited manner as the Commission or its Presiding Officer may designate.

A petition for leave to intervene must be filed by the date specified by the Commission or the Presiding Officer or, if an earlier date is not specified, ~~by the date of~~before the public hearing. A petition to intervene which is not timely filed will be denied unless the petitioner shows good cause for failure to ~~file on time~~timely file. A person permitted to intervene ~~shall~~will become a party to the proceeding and ~~shall~~will be permitted to participate in all phases of the hearing, subject, however, to such limitations as the Commission or Presiding Officer may direct. Petitioners for intervention may be required to consolidate or join their appearances in part or in whole if their interests or contentions are found to be substantially similar and such consolidation would expedite or simplify the hearing without prejudice to the rights of any party or petitioner. A consolidation under this section may be for all purposes of the proceeding, all of the issues of the proceeding or with respect to any one or more issues or purposes thereof.

2. **Duration of Intervenor Status:** Unless otherwise specified by the Commission or Presiding Officer, intervenor status ~~shall~~will be deemed to have been granted for the duration of the proceeding. Any applicant ~~or petitioner~~ whose proposal is approved ~~shall~~will be required to provide notice to any intervenors of the filing of any documents presented to the Commission indicating actions taken to comply with the conditions attached to the approval or of proposals to vary or amend approved activities, provided, however, that the applicant's responsibility under this subsection ~~shall~~will be deemed fulfilled when such notice has been mailed to the person designated to represent an intervenor in the petition for intervention.
3. **Denial of Intervenor Status:** When a petition to intervene is denied, the Commission ~~shall~~must include in the record of the hearing an entry to that effect and the reasons therefore.
4. **Legal Counsel:** Nothing in this regulation ~~shall~~will be construed to require or prevent representation by legal counsel in order for a person to be granted intervenor status or otherwise participate before the Commission.

5. **Copies:** The applicant ~~or petitioner shall~~must provide each person granted intervenor status pursuant to this section with a copy of the application or petition and any amendments thereto.

5.14B. ~~_____~~ **Participation by Interested Persons.**

Any person may, in the discretion of the Commission or Presiding Officer, be permitted to make oral or written statements on the issues, introduce documentary, photographic and real evidence, attend and participate in conferences and submit written or oral questions of other participants, within such limits and on such terms and conditions as may be fixed by the Commission or the Presiding Officer.

5.15C. **Governmental Agencies.**

Governmental agencies may notify the Commission of their anticipated participation in any hearing in the form and manner required by Section ~~5.13(1)~~5.03(A)(1). Such governmental agencies ~~shall~~must, upon having filed such notice, be entitled to all rights of an intervenor in such proceedings. Representatives of governmental agencies may participate in their official capacity only if representing the views of the agency on whose behalf they appear, and not personal views and opinions. Government agencies may ~~still~~ provide testimony at the hearing without filing a notice under this section.

5.04 SERVICE AND FILING OF DOCUMENTS

A. **Service.**

Unless the Presiding Officer otherwise provides, any person submitting any notices, motions, petitions, briefs, written testimony or testimony pursuant to Section ~~5.185.10~~, permitted or required to be filed with the Commission pursuant to these regulations (except briefs or proposed findings prepared by the ~~Commission or~~ staff, its consultants or counsel), ~~shall~~ must serve such documents upon all applicants ~~or petitioners~~ and intervenors in the proceeding or their representatives.

B. **Filing.**

Unless the Presiding Officer otherwise provides, all motions, petitions, briefs and prefiled testimony shall be filed in digital form. The Commission or Presiding Officer, at its discretion, may require one or more paper copies be filed, an original and (9) nine copies of all motions, petitions, briefs and prefiled testimony shall be filed with the Commission.

C.5.23 **Forms.**

All motions, proposed findings, petitions, briefs, and, to the extent practicable, written testimony filed within the Commission (except for documents not susceptible of reproduction in the manner herein provided or for other good cause shown) shall be typewritten or printed on white opaque paper 8 1/2 x 11 inches in size. Typed ~~matter shall~~ materials must be double spaced. The first page of each such document ~~shall~~ must be headed by the title:

STATE OF MAINE
LAND USE PLANNING COMMISSION

and ~~shall~~ must have a caption with:

1. The title of the matter, giving the name of the applicant, the action in issue and the location;
2. The Commission's application number; and
3. The title of the document (*e.g.*, Petition to Intervene).

The final page ~~shall~~ must be dated and signed.

D. **Representatives.**

The first document filed by any person in a proceeding ~~shall~~ must designate the name and address of a person on whom service ~~shall~~ should be made and to whom all correspondence from the Commission and staff ~~shall~~ will be sent.

5.075.05 CONFERENCES

A. Prehearing Conferences without Intervenors.

÷At the request of a ~~permit-an~~ applicant ~~or rezoning petitioner~~, the staff may confer with the applicant concerning the nature and types of information and testimony which the applicant will be expected to present at the hearing. Any conference is held for the benefit of the applicant and does not bind the Commission ~~or Presiding Officer~~ to matters discussed therein, nor limit the ability of the Commission ~~or Presiding Officer~~ to raise further issues at the hearing.

B. Prehearing Conferences with Intervenors or ~~Requests-Petitions~~ for Intervention.÷

The Presiding Officer or the staff may, upon notice to the applicant ~~or petitioner~~, to any parties intervening pursuant to Section ~~5.135.03(A)~~ of these regulations and to any other persons the Commission or the Presiding Officer deems appropriate, hold conferences and issue procedural orders for the purpose of formulating or simplifying the issues, obtaining admissions of fact ~~and of documents~~, arranging for the submission of proposed exhibits or written testimony, limiting the numbers of witnesses, consolidating the examination of witnesses, consolidating parties or specifying procedures in connection with the hearing, and such other matters which may expedite the orderly conduct and disposition of the proceedings.

C. Recording of Conferences.÷

The actions taken at or following any such conference and any agreements or orders arising there from ~~shall-must~~ be stated on the record by the Presiding Officer, ~~including without limitation or detailed~~ in a procedural order, and any person may ask questions about or raise objections to such actions at the time they are stated.

5.06 SUBPOENAS

A. Who May Request Subpoenas.:-

At the request of any party, or at the request of the Commission, or any member thereof, or on ~~his/her~~the Presiding Officer's own motion, the Presiding Officer may issue subpoenas for the attendance of witnesses or for the production of documents.

B. Content.:-

Every subpoena so issued ~~shall~~must bear the name of the Commission, bear the name of the issuing officer, and ~~shall~~must command the person to whom it is directed to attend and give testimony or produce specified documents or things at a designated time and place. The subpoena ~~shall~~must require the approval of the Attorney General or ~~his/her~~their designee. The subpoena ~~shall~~must also advise of the quashing procedure provided by ~~subsection 5 herein~~Section 5.06(E).

C. Service.:-

Unless receipt of the subpoena is acknowledged by the witness, it ~~shall~~must be served by a person who is not a party to the proceeding and is not less than 18 years of age. Service ~~shall~~must be made by delivering a copy of the subpoena to the person named in it and tendering to ~~him/her~~them the fees and mileage paid to witnesses in the Superior Courts of this State.

D. Proof of Service.:-

The person serving the subpoena ~~shall~~must make proof of service, by filing the subpoena and affidavit or acknowledgment of service with the Presiding Officer. Failure to make such proof of service ~~shall~~will not affect the validity of such subpoena and service.

E. Quashing.:-

On motion made promptly, and ~~in any event~~ before the time specified in the subpoena ~~for compliance by the person to whom the subpoena is directed~~, and on notice to the party at whose instance the subpoena was issued, the Presiding Officer may:

- (~~a~~)1. Quash or modify the subpoena if ~~he/she~~the Presiding Officer finds that it is unreasonable or requires evidence not relevant to any matter in issue; or
- (~~b~~)2. Deny the motion to quash.

F. Confidentiality.:-

If any person served with such subpoena claims, at or before the hearing, that the production of books, records or other data under such person's control may disclose secret processes, formulae or methods used by or under the direction of such person, which are entitled to protection as trade secrets or as to which the confidentiality is otherwise entitled to protection by law, and the Presiding Officer determines that such claim is valid after consultation with a representative of the Attorney General, such information from such books, records, or other data ~~shall~~must be disclosed at a nonpublic portion of the hearing and the record thereof ~~shall~~must be confidential.

G. Court Orders.:-

Failure to comply with a subpoena lawfully issued under Section 5.06 will be punishable as for contempt of court. (5 M.R.S. § 9060(1)(D))~~If any person refuses to obey a subpoena issued by the~~

~~Commission under this section, the Commission may apply to any Justice of the Superior Court for an order compelling such person to comply with the requirements of the subpoena and for such other relief as the law may allow.~~

H. Costs.:-

Any costs incident to complying with a subpoena ~~shall~~must be borne by the party requesting the subpoena.

5.07 EVIDENCE

A. Admissible Evidence.

Evidence ~~shall will~~ be admissible if it is relevant and material to the subject matter of the hearing and is of a type customarily relied upon by reasonable persons in the conduct of serious affairs. Evidence which is irrelevant, immaterial, or unduly repetitious ~~shall may~~ be excluded. Notwithstanding ~~subsection 2 of this section~~ Section 5.07(B), the ~~Commission's~~ experience, technical competence and specialized knowledge of the Commission or Presiding Officer may be utilized in the evaluation of all evidence submitted ~~to the Commission~~.

B. Official Notice.

The Commission or Presiding Officer may, at its discretion and at any time, take official notice of any facts of which judicial notice could be taken, including relevant statutes, regulations, transcripts of other hearings, non-confidential agency records, generally recognized facts of common knowledge to the general public, and physical, technical or scientific facts.

In a hearing of the type described in Section ~~5.16(4)~~ 5.08(A) of these regulations, the Commission ~~shall must~~ include in its final decision those facts of which it took official notice, unless those facts are included in the recording of the proceedings.

C. Documentary and Real Evidence.

1. All documents, materials and objects offered in evidence as exhibits ~~shall must~~, if accepted, be numbered or otherwise identified.
2. Documentary evidence may be received in the form of copies or excerpts if the original is not readily available.
3. The Presiding Officer may require that any person offering documentary or photographic evidence ~~must shall~~ provide the Commission with a specified number of copies or provide the materials in digital form.
4. Any documentary or real evidence must:
 - a. ~~shall~~ be produced, compiled and submitted by the person offering the same, who ~~must shall~~ not request the Commission or its staff to produce or compile the same on his behalf; ~~and~~
 - b. be clearly labeled indicating date and source, and indicating whether the evidence is in the existing record or is proposed supplemental evidence. Unlabeled exhibits may be rejected by the Presiding Officer, and electronic links to documents will not be accepted.
6. In a hearing of the type described in Section ~~5.08(A)~~ 5.16(4) of these regulations, the applicant ~~or petitioner~~, intervening parties, and state, federal or municipal agencies ~~must shall~~ provide each other with copies of any exhibit offered in evidence unless otherwise ordered by the Presiding Officer.
7. All documents, materials and objects admitted into evidence ~~must shall~~ be made available during the course of the hearing for public examination. All such evidence will also be

available for public examination at the Commission's primary office during normal business hours.

D. Objections.

All objections to rulings of the Presiding Officer and the grounds therefore ~~must shall~~ be timely stated. If, during the course of or after the close of the hearing and during its deliberations, the Commission determines that the ruling of the Presiding Officer was in error, the Commission may reopen the hearing or take such other action as it deems appropriate to correct such error.

E. 5.12 Offer of Proof.

-An offer of proof may be made in connection with an objection to a ruling of the Presiding Officer excluding or rejecting any testimony, evidence, or questions on cross-examination. Such offer of proof ~~must shall~~ consist of a statement of the substance of the proffered evidence which is expected to be shown.

5.08 TESTIMONY AND QUESTIONS

A. ~~Hearings on permit applications, or petitions for a change in district boundaries:~~

In those hearings concerned with a permit application pursuant to 12 M.R.S.A. § 685-B(4) or with ~~an application~~ petition for variance or special exception pursuant to 12 M.R.S.A. § 685-A(10) or with ~~a petition for the change of land use district boundaries~~ an application for zone change pursuant to 12 M.R.S.A. § 685-A(7-A), testimony ~~shall~~ must be offered as follows:

~~(a)~~1. Direct Testimony:

Direct Testimony ~~shall~~ will be offered in the following order:

- a. ~~(i)~~ The applicant ~~or petitioner~~ and such representatives and witnesses as ~~he/she/the~~ applicant selects;
- b. ~~(ii)~~ Governmental agencies and representatives thereof;
- c. ~~(iii)~~ ——— Intervenor; and
- d. ~~(iv)~~ ——— Other interested persons.

The staff of the Commission and its representatives and consultants may offer testimony at any time, at the discretion of the Presiding Officer.

~~(b)~~2. Cross-Examination and Questions:

At the conclusion of the testimony of each witness, the Commissioners, staff and consultants, Federal and State and other governmental representatives, the applicant ~~or petitioner~~, and intervenors ~~shall~~ must have the right of oral cross-examination. Cross-examination ~~shall~~ will be conducted in the following order:

- a. ~~(i)~~ Commissioners, counsel, staff members and consultants may be permitted, by the Presiding Officer, to ask questions at any time;
- b. ~~(ii)~~ The applicant or petitioner;
- c. ~~(iii)~~ ——— Intervenor; and
- d. ~~(iv)~~ ——— Federal, State, and other governmental representatives.

~~(c)~~3. Redirect and Rebuttal Evidence:

- a. ~~(i)~~ A person who has concluded ~~his/her/their~~ presentation cannot thereafter introduce further evidence except in rebuttal, unless by leave of the Presiding Officer. Rebuttal evidence ~~shall~~ must be directed only to contradict or respond to evidence presented by another party ~~matters brought out by another person~~, except by leave of the Presiding Officer.
- b. ~~(ii)~~ All parties ~~shall~~ must have the right to redirect and re-cross-examination of any witness, unless otherwise directed by the Presiding Officer. Such re-examination ~~shall~~ must be limited to evidence or issues presented by another party ~~matters brought out in the last examination by any other person~~, except by leave of the Presiding Officer.

~~(d)4.~~ Varying Order of Appearance:

When circumstances warrant, the Presiding Officer may vary the order in which witnesses appear and the order or manner in which testimony is given or witnesses cross-examined.

B. ~~All other~~ **Other hearings** ~~Hearings.~~

In all other hearings, testimony may be offered first by the staff and then by any interested persons in such order and on such conditions as the Presiding Officer may designate.

C. ~~5.17~~ **Oral Argument.**

For hearings conducted under Section ~~5.08(A)5.16(1)~~, oral argument may be permitted before the Commission at the conclusion of the evidence or at a time and place fixed by the Presiding Officer, at ~~his/her~~ their discretion.

5.09 CONDUCT OF THE HEARING

A. Opening Statement.:-

The Presiding Officer, or their designee, must ~~shall~~ open the hearing by describing in general terms the purpose of the hearing and the general procedure governing its conduct.

B. Recording of Testimony; Report to Commission.:-

All testimony at hearings before the Commission must be recorded and may, as necessary, be transcribed.

If the hearing is conducted by a single commissioner or qualified employee or representative, the commissioner, employee, or representative ~~shall~~ must report the findings of fact and conclusions to the Commission together with a transcript of the hearing and all exhibits. The findings of fact and conclusions become part of the record. The Commission is not bound by the findings or conclusions when acting upon the record, but will shall take action, issue orders, and make decisions as if it had held and conducted the hearing itself.

C. Oral Testimony.

1. Witnesses: Hearings on Applications

Witnesses ~~shall~~ must be sworn. Witnesses may be compelled to attend, testify and produce records if subpoenaed by the Commission. Witnesses will state for the record their name, place of residence, business or professional affiliation, if any, and whether or not they represent another individual, firm, association, organization, partnership, trust company, corporation, state agency, or other legal entity for the purpose of the hearing.

2. All Other Hearings

Persons testifying are not required to be sworn, but must state for the record their name and place of residence. If the person testifying represents another individual, firm, association, organization, partnership, trust company, corporation, state agency or other legal entity for the purpose of the hearing, the person testifying must identify the business or professional affiliation.

D. Written Testimony, ~~in Written Form:~~

At any time prior to or during the course of the hearing, the Presiding Officer may require that all or part of the testimony to be offered at such a hearing be submitted in written form. Any written testimony must shall be submitted and be in such form and at such time as the Presiding Officer may specify. All persons offering testimony in written form must shall be available for cross-examination as provided in Section 5.165.11(A) of these rules. Testimony offered in written form must shall be available for public inspection. The person submitting the written testimony may be required within a specified time to serve a copy thereof on the applicant or petitioner, on all intervenors and on any other person whom the Presiding Officer deems appropriate.

This rule must shall not be construed to prevent oral testimony at a scheduled hearing by a member of the public who is not affiliated with a party required to file testimony in writing and who requests and is granted time to testify at a hearing.

E. Continuance; Multiple Hearings on Matter. ~~:-~~

All hearings conducted pursuant to these rules may be continued and reconvened from time to time and from place to place by the Presiding Officer as circumstances require. Any hearing may also be convened in multiple hearing sessions, on multiple dates and in multiple locations, in the interest of providing the public with an opportunity to be heard across the Commission's jurisdiction. When the Commission elects to hold multiple public hearings on any matter, either by continuance of a hearing or by holding multiple scheduled hearing sessions, all hearings within a 45-day period are considered one hearing for administrative purposes. All orders for continuance ~~must shall~~ specify the time and place at which such hearing ~~will shall~~ be reconvened, or ~~must shall~~ set forth the manner in which such information may be later publicized by the Commission and obtained by interested persons. The Presiding Officer, ~~or the staff under the direction of the Presiding Officer, must shall~~ give notice to interested persons and the public in such a manner as is appropriate to ~~insure ensure~~ that reasonable notice will be given of the time and place of such reconvened hearing.

5.09F. ——— Regulation of Certain Devices and Signage.

The placement and use ~~of signage or devices for recording of audio or video of television cameras, still cameras, motion picture cameras, tape recorders, microphones or similar devices~~ at Commission hearings may be regulated by the Presiding Officer in a manner consistent with the provisions of 1 M.R.S. ~~A.~~ §§ 401 *et seq.*

~~5.18~~ 5.10 CLOSURE OF THE HEARING

A. Closure of the Hearing Record.⚡

Except as provided in ~~Sections 5.20 and 5.21~~Sections 5.07(B) and 5.10(D), of these rules, after final closure of the public hearing, including any period when the record remains open as provided in this section or as directed by the Presiding Officer, no further evidence will be allowed into the record.

B. Time Periods for Written Comments After the Conclusion of a Hearing.⚡

After the conclusion of a hearing the record will remain open for:

~~(a)~~ 1. A period of 10 days for the purpose of allowing interested persons to file written statements with the Commission; and

~~(b)~~ 2. A period of seven ~~(7)~~ additional days for the purpose of allowing interested persons to file statements in rebuttal of those filed pursuant to Section ~~5.10(B)(1)~~5.18,(2)(a) above.

C. Reopening a Hearing Prior to a Decision.⚡

Prior to issuance of a final order or decision, the Commission or Presiding Officer may elect to reopen a hearing and extend the time period for public comment in compliance with Chapter 4 of ~~these~~the Commission's rules.

~~Final closure: The date of final closure of the hearing record, including any extension of the open record or reopening of the hearing or record, constitutes final closure of the public hearing and the final date by which data, views or arguments may be submitted to the Commission for consideration in acting upon an application or petition or in adopting the rule.~~

D. ~~5.21~~ 5.21 — Reopening the Hearing after Decision on Permit Applications for Permit or Zone Change. Rezoning Petition

Within 30 days after the Commission has rendered a decision on a ~~permit~~an application or a rezoning petition following a hearing, any person aggrieved by such decision or order may petition the Commission to reopen the hearing for the purpose of introducing new evidence with regard to any provision of such order or decision. The petitioner ~~shall~~must deliver or mail a copy of any such petition simultaneously to any other party to the proceeding. Upon receipt of such petition, the Commission ~~shall~~will consider the offer of evidence contained therein and determine whether to dismiss the petition as offering no material evidence not already before the Commission or to reopen the hearing. Upon reopening the hearing, the Commission ~~shall~~will amend its original order only if new evidence is presented to support such amendment. Failure to invoke the provisions of this section shall have no effect upon an aggrieved party's right of appeal to a court of law.

Within ~~(7)~~seven days of the filing of a petition to reopen hereunder, any other interested person may file an answer in opposition to the petition.

E. ~~Final~~ Final Closure.

⚡—The date of final closure of the hearing record, including any extension of the open record or reopening of the hearing or record, constitutes final closure of the public hearing and the final

date by which data, views or arguments may be submitted to the Commission for consideration in acting upon an application or petition or in adopting the rule.

5.19—5.11 HEARING RECORD

A. The record of the hearing ~~shall~~**must** consist of all applications, petitions, motions, preliminary and introductory rulings and orders, the recording of the hearing or the transcript, all exhibits or written testimony submitted at the hearing or pursuant to Section ~~5-18~~**5.12** of these regulations, any other evidence received or considered, all briefs and proposed findings and comments thereon, the findings of fact and conclusions of the Presiding Officer, any facts officially noticed, any offers of proof, objections and rulings thereon, and all staff memoranda to the Commission together with the decision or order of the Commission.

5.22 — Copies of the Record.

B. Copies of the record must be available in accordance with Chapter 4 of the Commission's rules. Where available, a transcript of the testimony of any hearing and copies of evidentiary materials may be purchased directly from the independent official Commission reporter or from the person having submitted such materials, if any, or if necessary, through the Commission, provided that no undue burden is placed upon the Commission in responding to such request, and further provided that such materials are in a form or size susceptible of reproduction possible to reproduce by photocopying or similar means.

[Revision Note: The current Section 5.20 is more appropriately addressed with other procedural items; this section is proposed to be relocated to Chapter 4 as part of Section 4.07(D).]

~~5.20 — PETITION FOR CORRECTION IN REGARD TO PERMIT APPLICATION OR REZONING PETITION~~

~~Within 30 days after receipt of any decision concerning a permit application or rezoning petition following a hearing, any person aggrieved by the decision or order of the Commission may petition to seek the correction of any misstatement of fact or clerical error contained in the final decision or to challenge any material fact of which the Commission took official notice. The Commission shall determine whether to dismiss the petition as without merit, to correct the error, to reopen the hearing pursuant to Section 5.21 herein, or to take such other steps as it deems appropriate. Failure to invoke the provisions of this section shall have no effect upon an aggrieved party's right of appeal to a court of law.~~

~~5.21 — REOPENING THE HEARING AFTER DECISION ON PERMIT APPLICATION OR REZONING PETITION~~

~~Within 30 days after the Commission has rendered a decision on a permit application or a rezoning petition following a hearing, any person aggrieved by such decision or order may petition the Commission to reopen the hearing for the purpose of introducing new evidence with regard to any provision of such order or decision. The petitioner shall deliver or mail a copy of any such petition~~

~~simultaneously to any other party to the proceeding. Upon receipt of such petition, the Commission shall consider the offer of evidence contained therein and determine whether to dismiss the petition as offering no material evidence not already before the Commission or to reopen the hearing. Upon reopening the hearing, the Commission shall amend its original order only if new evidence is presented to support such amendment. Failure to invoke the provisions of this section shall have no effect upon an aggrieved party's right of appeal to a court of law.~~

~~Within (7) seven days of the filing of a petition to reopen hereunder, any other interested person may file an answer in opposition to the petition.~~

~~5.22 — Copies of the Record.~~

~~Where available, a transcript of the testimony of any hearing and copies of evidentiary materials may be purchased directly from the independent official Commission reporter, if any, or if necessary, through the Commission, provided that no undue burden is placed upon the Commission in responding to such request, and further provided that such materials are in a form or size susceptible of reproduction by photocopying or similar means.~~

Effective Date: May 16, 1975,

Amended Effective: July 1, 2011