

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

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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 Department of Environmental Protection (the MDEP).

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

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

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

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

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

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.

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 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).

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).

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 MDEP to incorporate any Commission certification forms into the MDEP'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 MDEP 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 MDEP 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;
- 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;
 - (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.
- 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
 - (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.

- 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.
- 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.

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.

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(D)(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.
- 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;
 - 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; and
 - 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

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 4.08(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.

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; and
- 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

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

A. (RESERVED)

B. STAFF DECISIONS

1. Unless otherwise indicated in statute (e.g. 12 M.R.S. § 685-A(7-A)(B)(5)) or 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) or as otherwise indicated in statute (e.g. 12 M.R.S. § 685-A(7-A)(B)(5)) or as a condition of the permit or certification. Where a request for a public hearing 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 a public hearing has been held.

D. CORRECTIONS

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 and Chapter 5, Section 5.07(B) of the Commission's rules. 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

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

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 carry forward 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).

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

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 MDEP permit decision that includes a certification determination to state court, the Commission certification determination record must be considered part of the MDEP 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.

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 staff's 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

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.
2. For the purposes of this section, applications for zone changes considered to be routine in nature are limited to:
 - a. Requests to amend subdistrict boundaries on a parcel based on a site-specific wetland delineation completed by a qualified professional in accordance with the "Corps of Engineers Wetlands Delineation Manual," U.S. Army Corps of Engineers (1987) and the "Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Northcentral and Northeast Region," U.S. Army Corps of Engineers (Version 2.0, January 2012); and
 - b. Proposals to adopt new or amended Flood Insurance Rate Maps, Flood Boundary and Floodway Maps, or Flood Hazard Boundary Maps prepared by the Federal Emergency Management Agency, which the Commission is required to adopt as a participating community in the National Flood Insurance Program.
3. Notwithstanding the provisions of Sections 4.08(B)(1) and (2), 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.

C. EXCEPTIONS

1. Except as provided above, 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. Preside over a hearing regarding, or decide on, appeals of staff actions;
 - c. Approve or disapprove requests for a variance;
 - d. Initiate, approve, disapprove, or terminate rulemaking;
 - e. Approve or disapprove 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).

STATUTORY AUTHORITY:

12 M.R.S. § 684, 685-B(1-B), and 685-C(5)

EFFECTIVE DATE:

May 16, 1975

ADMINISTRATIVE REFILING:

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AMENDED:

June 27, 1980 – filing 80-186

June 13, 1988 – filing 88-186

EFFECTIVE DATE (ELECTRONIC CONVERSION):

May 4, 1996 – filing 1996-165

NON-SUBSTANTIVE CORRECTIONS:

April 18, 1997 – filing 1997-071

REPEALED AND REPLACED:

October 12, 2000 – filing 2000-448

AMENDED:

October 14, 2011 – filing 2011-368

September 6, 2013 – filing 2013-219

September 6, 2013 – filing 2013-220

(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.)

REPEALED AND REPLACED:

November 1, 2021 – filing