

Department of Agriculture, Conservation and Forestry

MAINE LAND USE PLANNING COMMISSION

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RULES OF PRACTICE

CHAPTER 4 OF THE COMMISSION'S RULES

Effective Date: May 16, 1975

Amended Effective: October 18, 2013

**CHAPTER 4
RULES OF PRACTICE**

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CHAPTER 4 RULES OF PRACTICE

4.01 Scope of Rules

Except as otherwise provided herein or by other applicable provisions of law, these rules shall be applicable to procedures before the Commission including the adoption and amendment of rules, land use standards and district boundaries; the processing of all applications made to the Land Use Planning Commission, including applications for permits required pursuant to 12 M.R.S.A. § 685-B; requests for variances or special exceptions pursuant to 12 M.R.S.A. § 685-A(10); petitions for changes in land use standards and district boundaries pursuant to 12 M.R.S.A. § 685-A(7-A); and the processing of requests for certification pursuant to 12 M.R.S.A. § 685-B(1-A)(B-1). 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.

4.02 Advisory Rulings

- (1) **General Provisions:** The 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
- (b) The advisory ruling shall be made in writing upon review and approval of the Director, and shall state that it is limited in application to the facts stated in the request.
- (2) **Rulings Not Binding:** The advisory ruling shall not be binding on the Commission but shall be subject to the provisions of 5 M.R.S.A. § 9001(3).
- (3) **Availability of Rulings:** All advisory rulings issued pursuant to this rule shall be made available to any person for inspection at no charge at the Commission offices and for copying for a reasonable fee.

4.03 General Provisions

- (1) **Application and Certification Forms:** Application forms for permits or zone changes shall be established and may be changed from time to time by the Commission and shall require such information as deemed necessary or desirable to obtain information relevant to the permit, petition or other request. The Commission may develop request for certification forms and may coordinate with the Department of Environmental Protection to incorporate any certification forms into the Department's Site Location of Development permit application materials.
- (2) **Signatures:** Applications 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 acceptance of an application for a permit or zone change for processing, an applicant shall demonstrate, to the Commission's satisfaction, legally enforceable title, right or interest in all the property proposed for development or use sufficient to permit the proposed development and use of the property, including closure and post closure care, where required. Requests for certification pursuant to 12 M.R.S.A. § 685-B(1-A)(B-1) shall not be subject to this subsection 4.03(3). Methods of proving title, right or interest include, but are not limited to, the following:
- (a) When the applicant owns the property, a copy of the 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 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 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 must be supplied. 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 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 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 must be supplied;
 - (f) When a project involving the State's submerged lands requires a grant of a submerged land lease or easement from the Bureau of Parks and Lands (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.
 - (i) When an application is submitted to the Commission involving a use of the State's submerged lands, the Commission will forward a copy to BPL. The Commission will not act upon an application until it has received written notice from 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 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 requiring a submerged lands lease or easement from BPL, construction may not commence unless the required interest has been granted by BPL.

- (ii) For projects involving the salvage of sunken logs from the state's submerged lands and which require a sunken log salvage authorization from BPL, the Commission shall not begin processing the application until BPL has issued an authorization allowing the salvage in the location proposed, unless 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 issue a permit for sunken log salvage prior to BPL's issuance of a sunken log authorization for the project. A permit issued by the Commission shall be effective for a period not to exceed the term of the authorization as granted or reissued by BPL.
- (iii) When the Department of Inland Fisheries and Wildlife or the Bureau of Parks and Lands files a notification to establish a public boat launch, title, right or interest to submerged lands shall be presumed for purposes of acceptance of the notification if the applicant demonstrated it has filed an application for a submerged lands lease with BPL. Work on the project may not begin until a lease or easement is obtained or the Bureau of Parks and Lands has provided notification that one is not necessary.

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) Representation for a Subdivision Application in which Interests Have Been Sold without a Subdivision Permit:

The following provisions apply in the case of 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 person who subdivided the land 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 person who subdivided the land is unavailable or no longer holds an interest in the subdivision, persons having a current interest in any lot in the subdivision may apply for a subdivision permit provided that:
 - (i) All such persons coapply, or
 - (ii) 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 consider:
 - ((a)) The extent to which a decision reached in the person's absence might be prejudicial to his/her interests in the subdivision or to the interests of the other parties to the proceeding;

land use district boundaries, the Commission shall determine whether to accept the application or petition as complete for processing based upon whether it:

- (i) is properly signed;
- (ii) is accompanied by the proper fee;
- (iii) contains sufficient information for the Commission to begin its review; and
- (iv) contains sufficient documentation of Title, Right or Interest pursuant to 12 M.R.S.A. § 685-B(2)(D), the Commission's Chapter 10 rules, and Section 4.03(3) above.

The Commission shall make such determination prior to providing notice to the public of receipt of the application or petition and initiating substantive review. The Commission shall notify the applicant of any deficiency in the application or petition within a reasonable time after it becomes aware of the deficiency.

(b) 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 the Commission from requesting additional information during its review. Even if an application or petition is accepted as complete for processing, the Commission may deny the application or petition for failure to provide 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)

(c) Modification of Application:

If the applicant or petitioner (i) materially revises the application and the revised 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:

- (i) 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
- (ii) With the agreement of the applicant, accept the additional information or the revised application as an amended application, in which case, the date the application is accepted as complete for processing is the date of determination by the Commission that there is sufficient information to allow the Commission to begin review of the amended 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.

(9) Burden of Proof: Unless otherwise provided herein or by other applicable provisions of law, the burden of proof should be as follows:

The burden of proof and burden of going forward shall be upon the permit applicant, petitioner, or person requesting certification. A permit applicant; petitioner pursuant to 12 M.R.S.A. § 685-B, § 685-A(10), or § 685-A(8A); 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 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.

(10) Consolidation of Notices: Notice provided pursuant to Sections 4.04, 4.05, 4.06, 4.07 and 4.11 of this chapter may be included in a written statement providing notice of more than one such application, petition, or certification.**(11) 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.**4.04 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) 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.**(4) Notice of Receipt of Permit Applications:** Following receipt of a permit application, the Commission shall provide notice as follows:

(a) The Commission shall 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 be made available to the public upon request.

(b) For all requests for variances to the Commission’s standards pursuant to 12 M.R.S.A. § 685-A(10), the Commission shall provide notice of the pending application by regular

mail to all persons owning or leasing land within 1000 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.

- (c) For applications that the Director deems to be of general public interest due to their nature, location, or size, the Commission shall provide notice of the pending application by regular mail to:
 - (i) All persons owning or leasing land within 1000 feet of the proposed project as shown in the records of Maine Revenue Services or the applicable plantation or municipality;
 - (ii) The municipality or plantation where the project is proposed;
 - (iii) The county, if the proposed project site is in an unorganized township;
 - (iv) Legislators whose districts encompass the project;
 - (v) Persons who have made timely requests to be notified of a specific permit application; and
 - (vi) In any proceeding involving a proposed modification or amendment of a permit that was the subject of an earlier hearing, all persons admitted to formal party status in the earlier hearing.

The Commission may require as part of any application that the applicant submit the names and addresses of all persons owning or leasing land within 1000 feet of the project and/or that the applicant provide the notice required by this paragraph to all such persons.

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

(5) When to Hold a Public Hearing:

- (a) As provided by these rules, interested persons may prepare and submit evidence and argument to the agency and request a hearing on an application.
- (b) The Commission shall consider all requests for a hearing submitted in a timely manner. Hearings on an application are at the discretion of the Commission unless otherwise required by the Constitution of Maine or statute. In determining whether a hearing is advisable, the Commission shall consider the degree of public interest and the likelihood that information presented at the hearing will be of assistance to the Commission in reaching its decision.
- (c) The Commission shall not amend or modify any permit unless it has afforded the permit holder an opportunity for hearing, nor shall it refuse to renew any permit unless it has afforded the permit holder an opportunity for a hearing.

(6) Notice of Hearings on Permit Applications: Notice of all public hearings in regard to permit applications and appeals thereof must be given by the Commission as follows:

- (a) By regular mail, or electronic mail with the agreement of the person receiving notice, at least 30 days prior to the initial scheduled hearing, to:

- (i) The applicant;
 - (ii) All persons owning or leasing land within 1000 feet of the proposed project according to the records of Maine Revenue Services or the applicable plantation or municipality;
 - (iii) The municipality or plantation where the project is proposed;
 - (iv) The county, if the proposed project site is in an unorganized township;
 - (v) The legislators whose districts encompass the project;
 - (vi) Intervenors;
 - (vii) Persons who have made a timely request to be notified of a specific hearing;
 - (viii) Persons who have filed a written request, within the calendar year, to be notified of hearings;
 - (ix) Appropriate State and federal agencies, as determined by the Commission; and
 - (x) In any proceeding involving a proposed modification or amendment of a permit which was the subject of an earlier hearing, all persons admitted to formal party status at the earlier hearing.
- (b) By publication twice in a newspaper of general circulation in the area affected by the permit application as determined by the Commission.
- (i) Notice must be published in the legal notices section of the newspaper.
 - (ii) The date of the initial publication must be at least 30 days before the hearing. The date of the second publication shall be at least 7 days and no more than 13 days before the date of the hearing.
- (c) In any other manner the Commission deems appropriate.
- (7) Contents of Notice:** Notice required under this section must indicate:
- (a) The name and address of the applicant;
 - (b) The legal authority and jurisdiction under 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, the manner and time within which petitions for intervention under Chapter 5 may be filed.
 - (j) Such other information as the Commission deems appropriate.
- (8) **Cancellation or Change of Hearing:** If a scheduled hearing is canceled or postponed to a later date, the Commission shall provide timely notice to the persons described in Section 4.04(6)(a). When hearings are continued, the Commission shall provide such additional notice as it deems appropriate to inform the parties and interested persons, but the Commission shall be entitled to continue a hearing to a later date and place as is announced at the hearing.
- (9) **Comment Period Without Hearing:** The Commission shall allow a period of not less than 7 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.
- (10) **Procedures and Time Limits for Issuing a Permit Decision:**
- (a) Within 60 days after closure of a public hearing concerning a permit, the Commission shall make written findings of fact and issue an order 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) 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 make written findings of fact and issue an order 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) The Commission shall 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) The Commission shall 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 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 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) 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.
- (j) 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 an application it has considered.

(11) Appeals:

- (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:
 - (i) The findings, conclusions and conditions to which the petitioner objects;
 - (ii) The basis of the objection;
 - (iii) A summary of the information that will be presented at the public hearing that could not be reasonably presented during the administrative review process;
 - (iv) A statement describing the reasons why holding a public hearing will be of assistance to the Commission in rendering a decision;
 - (v) The nature of the harm caused the petitioner by the decision; and
 - (vi) The nature of the relief requested.

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

4.05 Petition for Adoption or Amendment of Land Use District Boundary

- (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. Zoning changes requested by these petitions, if approved, will be reflected on the Commission's land use maps.
- (2) **Who May Petition:** 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 petition for the adoption or amendment of land use district boundaries. A lessee must provide written notice to the landowner of the intent to file a petition for adoption or amendment of land use district boundaries.
- (3) **Petition Content: Petitions must be in writing and must state:**
 - (a) The district boundary that the petitioner requests to adopt or amend;
 - (b) The nature of the change requested;
 - (c) The basis for the change requested;
 - (d) Substantial evidence that the requested change is in conformity with the applicable criteria for changes in district boundaries set forth in 12 M.R.S.A. § 685-A(8-A).
- (4) **Notice of Receipt of Petitions for Changes in Land Use District Boundaries and Opportunity for Hearing:** Promptly after initiation or receipt of a petition for a change in district boundary, the Commission shall provide notice as follows:
 - (a) For All Petitions:
 - (i) Include such petitions on the periodic list of applications received as provided for in Section 4.04(4)(a);
 - (ii) Provide notice of the petition to any person who has requested in writing to be notified of the particular petition;
 - (iii) Provide notice by certified mail to all persons owning or leasing land within 1000 feet of the land which is the subject of the proposed change, according to their

names and addresses as shown on the records of Maine Revenue Services or plantation or town tax assessors. 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.

(iv) Provide additional notice as the Commission deems appropriate.

(b) For Petitions of General Public Interest:

For petitions that the Director deems to be of general public interest due to their nature, location or size, the Commission shall also provide notice of the pending petition in accordance with Section 4.04(4)(c).

(c) The Commission may require as part of any petition for a change in district boundaries that the petitioner submit the names and addresses of all landowners or lessees and/or that the petitioner provide the notice required by 4.05(4)(a)(iii) above.

(5) When to Hold a Public Hearing: The Commission shall consider all requests submitted in a timely manner for a hearing on a petition for a change in district boundaries. Holding the hearing is at the discretion of the Commission unless otherwise required by the Constitution of Maine or statute or if five or more interested persons request in writing that the Commission hold a hearing, in which case a hearing must be held. In determining whether a hearing is advisable, the Commission shall consider the degree of public interest and the likelihood that information presented at the hearing will be of assistance to the Commission reaching its decision.

A hearing is not required for changes in land use district boundaries in the case of changes proposed on motion of the staff which involve only correction of clerical mistakes.

(6) Notice of Hearings on Petitions: Notice of all public hearings in regard to petitions for changes to district boundaries must be given as follows:

(a) By regular mail, or electronic mail with the agreement of the person receiving notice, 17-24 days prior to the scheduled hearing, to:

(i) The applicant;

(ii) All persons owning or leasing land within 1000 feet of the proposed project according to the records of Maine Revenue Services or the applicable plantation or municipality;

(iii) The municipality or plantation where the project is proposed;

(iv) The county, if the proposed project site is in an unorganized township;

(v) The legislators whose districts encompass the project;

(vi) Intervenors;

(vii) Persons who have made a timely request to be notified of a specific hearing;

- (viii) Persons who have filed a written request, within the calendar year, to be notified of hearings;
 - (ix) Appropriate State and federal agencies, as determined by the Commission; and
 - (x) In any proceeding involving a proposed modification or amendment of a permit which was the subject of an earlier hearing, all persons admitted to formal party status at the earlier hearing.
- (b) By publication in a newspaper of general circulation in the area affected by the permit application as determined by the Commission.
- (i) Notice must be published in the legal notices section of the newspaper.
 - (ii) The date of the publication must be 17-24 days before the hearing.
- (c) In any other manner the Commission deems appropriate.
- (7) Contents of Notice:** Notice of hearings on petitions must be as provided for in Section 4.04(7).
- (8) Cancellation or Change of Hearing:** Notice of cancellation or change of hearing shall be as provided for in Section 4.04(8).
- (9) Comment Period Without Hearing:** The Commission shall provide for a period of not less than 7 days after providing notice of receipt of a petition for changes in land use district boundaries, during which time any interested persons may submit written comments to the Commission office.
- (10) Procedures and Time Limits for Issuing a Decision on a Petition to Adopt or Change a District Boundary:**
- (a) Within 45 days after receipt of a petition for a change in a district boundary, the Commission shall 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 within 90 days after the final closure of the public hearing, or where the Commission determines to proceed without 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.
 - (c) At any time 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 be effective 15 days after adoption, provided all applicable requirements for their adoption have been met and the same have been filed with the appropriate registry of deeds for each county involved;
 - (e) A notice of adoption of land use district boundaries must be filed 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 the method by which copies may be obtained;

- (f) Public notice of adoption must be provided by publication one time in a newspaper or newspapers of general circulation in the area affected;
 - (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.
- (11) **Appeals:** 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 in 4.04(11)(b).

4.06 Rulemaking Procedures

- (1) **Applicability:** This section governs the adoption or amendment of rules 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 are governed by Section 4.05.
- (2) **Who May Petition:**
- (a) The Commission or its staff may initiate the adoption or amendment of land use district standards.
 - (b) Any person may petition the Commission in writing to request the adoption or modification of any rule. Such petition must specify the change requested. Within 60 days after receipt of such petition, the Commission shall either:
 - (i) Deny the proposed amendment, indicating in writing the reasons for denial; or
 - (ii) Initiate rulemaking proceedings on the proposed amendment.
 - (c) Whenever a petition to adopt or modify a rule is submitted by 150 or more registered voters of the State, the Commission shall initiate rulemaking within 60 days after receipt of the petition. The petition must conform to the applicable provisions of the Administrative Procedures Act, including with respect to the certification of names on the petition.
- (3) **Petition Content:** Petitions must be in writing, and must state the change requested and the basis for the change requested.
- (4) **When to Hold a Public Hearing:** The Commission shall consider all requests for a hearing on a rulemaking petition in accordance with the applicable provisions of the Administrative Procedures Act. If five or more interested persons request in writing that the Commission hold a hearing on a Commission or staff initiated petition, a hearing must be held.
- (5) **Notice of Rulemaking:** Notice of rulemaking, with or without a hearing, must be provided as required by 5 M.R.S.A. § 8053(1), (2), (3A), and (5).
- (6) **Contents of Notice:** Notice of rulemaking must include all provisions in 5 M.R.S.A. § 8053 (3).
- (7) **Cancellation or Change of a Hearing:** If a scheduled hearing is cancelled or postponed to a later date, the Commission shall provide notice as provided in 4.06(5). When a hearing is

continued, the Commission shall provide additional notice as it deems appropriate, but the Commission may continue a hearing to a later date and place as announced at the hearing.

(8) Time Limits for Rule Adoption:

(a) Land Use District Standards:

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.

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:

Except as provided in paragraph (a), 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.

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.

(9) Adoption Requirements: With respect to all rules adopted or amended by the Commission, the Commission shall 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.

(10) Coordination with the Legislature: The Commission shall:

- (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 (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 5 M.R.S.A. § 8053-A(3);

- (11) **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 emergency rule must be adopted in accordance with 5 M.R.S.A. § 8054.
- (12) **Effective Date of Adopted Rules:** Unless a later effective date is provided, rules adopted or amended by the Commission become effective 5 days after filing with the Secretary of State, except for emergency rules, which become effective immediately upon adoption by the Commission.

Land use district standards are effective 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.

4.07 Final Action

- (1) **Staff Decisions:** Any person aggrieved by a decision of the staff has a 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.
- (2) **Commission Decisions:** 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) or 4.05(11). 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 the request for public hearing or of the Commission's decision after public hearing.
- (3) **Re-application:** After receipt of a final decision as described in subsections 4.07 (1) and (2) 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.
- (4) **Requests for Certification:** Section 4.07 does not apply to requests for certification.

4.08 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 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 or any other means specified by the Commission; or
 - (b) Upon a party, when the paper is mailed to the party or the party's attorney, by in-hand delivery 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 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, permit the act to be done where the failure to act was the result of excusable neglect.

4.09 Revocation or Suspension of Approvals

The Commission may revoke or suspend, or seek revocation or suspension of, approvals or permits granted by it in accordance with applicable provisions of the Maine Administrative Procedure Act.

4.10 Public Access to Information

- (1) **Availability of Documents:** The Commission shall make available to any person for inspection at no charge, and for copying at a reasonable fee, the following information:
- (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.
- (2) **Confidentiality:** The Commission shall keep confidential any record, plan, report or other information only in consultation with the Attorney General's Office in connection with an enforcement proceeding or other litigation or other matters where such confidentiality may be provided by law.

4.11 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 Department of Environmental Protection 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 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 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 notice and map may be provided by the person proposing development directly to the Commission or to the Department for the Department to provide to the Commission.
- (b) A Commission certification determination will be issued:
 - (i) Solely to the Department for inclusion in the Department's Site Location of Development permitting decision if the determination approves a request for certification.
 - (ii) Solely to the Department for inclusion in the Department's Site Location of Development permitting decision if the determination denies a request for certification and the request is 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.
 - (iii) Both to the Department and to the person proposing development if the determination denies a request for certification and 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.
- (c) A Commission determination 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 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 as a single certification determination or in two parts. If provided in two parts, the first part will include a determination of whether to certify that the proposed development is an allowed use within the subdistrict or subdistricts for which it is proposed. The second part will include a determination of 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 title, right or interest of a person requesting certification in the property proposed for development or use as follows:
 - (i) If a person requesting certification elects to simultaneously apply to the 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 Department's title, right or interest review. If at any point the Department determines the person does not possess sufficient title, right or interest, the Commission may stop its review 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.

- (ii) If a person requesting certification elects to seek certification prior to filing a Site Location of Development permit application with the 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 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 be made in consultation with the 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 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 a request for certification, or to deny a request for certification when the request is 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 not final agency action. Pursuant to 5 M.R.S.A. §§ 11001 *et seq.*, a person aggrieved by a 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 Department's final agency action, including the Commission's certification determination that is incorporated into the Department's permitting decision.
- (g) 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.

(2) Acceptance of Requests for Certification:

- (a) Request for Certification Accepted as Complete for Processing:

Upon receipt of a request for certification the Commission shall determine whether to accept the request for certification as complete for processing based upon whether it:

- (i) contains a notice of an intent to develop and a map indicating the location of the proposed development;
- (ii) is accompanied by the proper fee;
- (iii) contains sufficient information for the Commission to begin its review; and

- (iv) contains sufficient documentation of title, right or interest if the Commission elects to evaluate title, right or interest pursuant to Section 4.11(1)(e)(ii) above.

The Commission shall make such determination prior to initiating substantive review. The Commission shall notify the person requesting certification of any deficiency in the request for certification within a reasonable time after it becomes aware of the deficiency. The Commission shall determine whether to accept a request for certification as complete for processing within 15 working days of receipt of the request.

- (b) Additional Information May Be Required:

A determination that a request for certification is accepted as complete for processing is based upon satisfying the factors in Section 4.11(2)(a) above, but does not preclude the Commission from requesting additional information during its review. Even if a request for certification is accepted as complete for processing, the Commission may deny the certification for failure to provide information necessary to enable the Commission to make necessary findings under applicable review criteria including, but not limited to, the applicable land use standards in 12 M.R.S.A. § 685-B(4), Criteria for Approval, and in the Commission's Land Use Districts and Standards (Chapter 10).

- (c) Modification of Request for Certification:

If the person requesting certification (i) materially revises the request or the development proposal, and the revised request for certification or development proposal requires new or supplemental review by the Commission; or (ii) submits additional information necessary to enable the Commission to make the necessary certification determination under applicable review criteria including, but not limited to, the applicable land use standards in 12 M.R.S.A. § 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:

- (i) If there is insufficient time to make the certification determination required by law within the time limits contained in this rule Chapter, deny the request for certification; or
- (ii) With the agreement of the person requesting certification, accept the additional information or the revised request for certification as an amended request, in which case, the date the request for certification is accepted complete for processing is the date of determination by the Commission that there is sufficient information to allow the Commission to begin review of the amended request. No additional fee will be required.

- (3) **Request for Certification Content:** A person requesting certification shall 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 request for certification.
- (4) **Notice of Intent to File a Request for Certification:** Within 30 days prior to filing a request for certification either directly with the Commission or with the Department of Environmental Protection for the Department to provide to the Commission, a person requesting certification shall give public notice of the intent to file such a request. If the request for certification is included as part of the Department Site Location of Development permit application or filed

with the Commission simultaneously with the filing of the Department permit application, the person requesting certification may give public notice as part of the notice required by the Department in accordance with the Department's rules, provided the notice includes the information required in Section 4.11(8) of these rules.

If a person requesting certification elects not to give the notice required by this section as part of a 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 Department, the person requesting certification shall give notice containing the information required in Section 4.11(8) below, by regular mail or by electronic mail with the consent of the recipient, to the persons listed in Section 4.04(4)(c)(i) through (vi). For the purpose of applying the referenced paragraphs within Section 4.04(4)(c), a request for certification shall be treated as a permit application.

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.

- (5) **Notice of Filing of a Request for Certification:** Following receipt of a request for certification, the Commission shall generate a list of all requests for certification received on a periodic basis indicating the name of the person making the request and the location and nature of the proposed activity. This list must be made available to the public upon request.
- (6) **When to Hold a Public Hearing:**
- (a) As provided by these rules, interested persons may prepare and submit evidence and argument to the Commission and request a hearing on a request for certification.
 - (b) The Commission shall consider all requests for a hearing submitted in a timely manner. Hearings on a request for certification are at the discretion of the Commission unless otherwise required by the Constitution of Maine or statute. In determining whether a hearing is advisable, the Commission shall consider the degree of public interest and the likelihood that information presented at the hearing will be of assistance to the Commission in making its certification determination.
 - (c) The Commission shall not amend or modify any certification, or refuse to renew a certification, unless it has afforded the person who requested certification, or its successor with regard to the certification, an opportunity for hearing.
- (7) **Notice of Hearings on Requests for Certification:** Notice of all public hearings in regard to requests for certification and appeals of staff certification determinations must be given by the Commission or, at the discretion of the Commission, by the person requesting certification, as follows:
- (a) By regular mail, or electronic mail with the agreement of the person receiving notice, at least 30 days prior to the initial scheduled hearing, to the persons listed in Section 4.04(6)(a)(i) through (x). For the purpose of applying the referenced paragraphs within Section 4.04(6)(a), a request for certification shall be treated as a permit application.
 - (b) By publication twice in a newspaper of general circulation in the area affected by the proposed development for which certification is sought, as determined by the Commission, and in accordance with Section 4.04(6)(b)(i) and (ii). For the purpose of

applying the referenced paragraphs within Section 4.04(6)(b), a request for certification shall be treated as a permit application.

- (c) In any other manner the Commission deems appropriate.
- (8) **Contents of Notice:** Notice required under this section must contain the components listed in Section 4.04(7)(a) through (j). For the purpose of applying the referenced paragraphs within Section 4.04(7), a request for certification shall be treated as a permit application.
- (9) **Cancellation or Change of Hearing:** If a scheduled hearing is canceled or postponed to a later date, the Commission shall provide timely notice to the persons described in Section 4.11(7)(a). When hearings are continued, the Commission shall provide such additional notice as it deems appropriate to inform the parties and interested persons, but the Commission shall be entitled to continue a hearing to a later date and place as is announced at the hearing.
- (10) **Comment Period Without Hearing:** The Commission shall 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 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.
- (11) **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 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 issue a written certification determination.
 - (c) The Commission shall 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 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.
 - (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 staff determination.

- (g) 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.
- (h) 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.

(12) Appeals:

- (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) A Commission determination to approve a request for certification, or to deny a request for certification when the request is 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 not final agency action and is not appealable except as part of the Department of Environmental Protection permit decision. 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.
- (c) 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 must set forth in detail:
 - (i) The portions of the determination to which the petitioner objects;
 - (ii) The basis of the objection;
 - (iii) A summary of the information that will be presented at the public hearing that could not be reasonably presented during the administrative review process;
 - (iv) A statement describing the reasons why holding a public hearing will be of assistance to the Commission in reviewing the determination;
 - (v) The nature of the harm caused the petitioner by the determination; and
 - (vi) The nature of the relief requested.
- (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.

- (e) Within 45 days after receipt of such petition for a public hearing, the Commission shall either:
 - (i) Deny the petition for public hearing and notify the petitioner in writing of the denial of the request; or
 - (ii) Schedule a public hearing in accordance with the rules in this section and Chapter 5.

(13) Effective Date of Certification Determination:

- (a) Staff Decisions: Any person aggrieved by a certification determination of the staff has a right to a review of that determination by the Commission. A request for such a review must be made in writing in accordance with Section 4.11(12)(a) above. The staff decision is effective on the date it is rendered, unless a request for Commission review is made.
- (b) Commission Decisions: 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.

Effective Date: May 16, 1975

Amended Effective: October 18, 2013