

**MAINE LAND USE PLANNING COMMISSION**

Department of Agriculture, Conservation, and Forestry



**BASIS STATEMENT AND SUMMARY OF COMMENTS**

**FOR AMENDMENTS TO**

**CHAPTER 1: GENERAL PROVISIONS**

November 9, 2020

**Provisionally Adopted**

**STATUTORY AUTHORITY**

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

**FACTUAL AND POLICY BASIS FOR THE RULE AMENDMENT**

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

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

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

Use Districts and Standards – over 260 definitions; Chapter 11, Administrative Regulations for Hydropower Projects<sup>1</sup> – 10 definitions; and Chapter 16, Rules Relating to Large Lot Land Divisions<sup>2</sup> – three definitions. However, while Chapter 11 includes definitions, it is a joint rule with the Maine Department of Environmental Protection (DEP); some definitions in Chapter 11 regard the DEP and others regard the Commission but are instructive to the DEP in administering the rule.

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

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

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## ~~“1.02 — DEFINITIONS~~

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

~~A. — Amendments:~~

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

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

- ~~a. Expanding existing or approved development which does not increase the total footprint or height of structures, impervious area, or limit of disturbance by more than 20 percent and does not involve a new land use activity for the parcel;~~
  - ~~b. Relocating or reorienting structures, roadways, parking lots, or lot lines for the purpose of reducing nonconformance with the Commission’s dimensional requirements;~~
  - ~~c. Permit transfers (in accordance with Chapter 4 of the Commission’s rules); and~~
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<sup>1</sup> Chapter 11 is a joint rule with the Maine Department of Environmental Protection.

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

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

2. *Footprint of Structures.*

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

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

**Commenter(s):** Maine Land Use Planning Commission staff

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

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

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

...

2. Activity Specific Fees.

...

e. Structures: Per square foot (footprint<sup>#</sup>) structures

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