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TESTIMONY BEFORE THE JOINT COMMITTEE ON AGRICULTURE,
CONSERVATION AND FORESTRY

In Favor of LD 207

LUPC Provisionally Adopted Chapter 1 - Fee Schedule

February 18, 2021

Senator Dill, Representative O'Neil, and honorable members of the Joint Standing Committee on Agriculture, Conservation and Forestry, my name is Judy East. I am the Executive Director of the Land Use Planning Commission, and I am speaking in favor of LD 207, Resolve, Regarding Legislative Review of Portions of Chapter 1: Fee Schedule, a Major Substantive Rule of the Department of Agriculture, Conservation and Forestry, Maine Land Use Planning Commission.

The Chapter 1: Fee Schedule Rules were provisionally adopted by the Land Use Planning Commission (LUPC or the Commission) on November 9, 2020, after an extended public hearing period of 42 days for public comment and a 19 day rebuttal period (statutory minimums are 30 days and 7 days respectively), during which the Commission received no comments from the public.

The new rules propose an entire repeal and replacement of Chapter 1 to improve the opportunity for consistency, brevity, and clarity. Some fees are new, some have increased, and several have decreased. Attachment A: Five Year Data Summaries provides a summary of which fees have changed and an analysis of the fiscal impact of those changes by permit type and activity.

The fee schedule for the LUPC has not been revised since 2007. Since then, digital methods have reduced the cost of how we interact with applicants and stakeholders and how we are able to provide copies of materials to them. Likewise, the type and complexity of certain applications have outstripped our ability to cover the hard costs to the agency and the State. Finally, the changes propose clerical corrections and organizational improvements. Attachment B: Generalized Summary of Proposed Revisions by Topic provides a summary of the revisions.

Fees are reduced where, in other adopted rulemaking actions, we seek to incentivize certain activities such as recreational lodging, certain subdivision designs, and residential development on Commission approved subdivision lots. Fees are also reduced where the availability of digital materials and processes have reduced Commission costs. We would now have a procedure to return fees in certain instances. Fees are established or increased where the workload draws



disproportionately on public resources and where those fees do not duplicate fees collected by other agencies of state government. This would include instances such as charging expenses incurred in the review of complex subdivisions and requests for certification,

At this time, we estimate the overall fiscal impact as potentially positive and in the range of \$10,000-\$13,000 per year. To inform our consideration of the fiscal impact, LUPC staff compiled assorted data for a range of activities (permitting and amendment of district boundaries). Attachments A, B, and C respectively include these analyses, a generalized summary of the proposed revisions by topic, and a summary of LUPC permit types.

Please note that consideration of the data in Attachment B should be limited to an approximation or general context for possible outcomes; trends about permit applications are not within our control, nor are they predictable. For instance, we based our estimate on the past 5 years of permit data, but historic application trends are not necessarily a reliable predictor of future application trends. However, prior application trends may be instructive in supplying reasonable context. Also, it should be noted that the LUPC does not have the resources nor the expertise to appropriately project any outcomes or corollaries between factors such as the pandemic, consumer confidence or related spending habits, and the health of the economy. And finally, please note that regardless of whether or not the revised fee schedule plays a role in addressing existing or anticipated budgetary shortfalls, the prospect of having in place an updated (and often lower cost) fee schedule may contribute to kickstarting the economy and state revenue when the pandemic is over.

Finally, a note and a request about timing relative to the adoption of these proposed changes. In support of the provisionally adopted Chapter 1 revisions, the Commission is working to propose revisions to several other agency rules. Each of these rulemakings serves numerous purposes, including notable improvements for user convenience, clarity, and simplification. However, the revisions to each of these rules relate back to and rely upon the Chapter 1 revisions; and in some ways, Chapter 1 relies upon the revisions to those rules. I offer these points this morning in the interest of transparency, and to the degree it informs the timing of legislative action.

Obviously, the Chapter 1 revisions constitute major substantive rulemaking. Title 5 Section 8072(8) requires, in part, that: i) final adoption of the rule must occur within 60 days of the effective date of the legislation approving that rule; and, ii) the finally adopted rule must become effective no less than 30 days after filing with the Secretary of State.

The separate but complementary proposals constitute routine technical rulemaking, and the Commission anticipates that neither one will warrant a public hearing, nor are hearing requests likely. However, a tentative schedule for these rulemakings seeks to provide the public with ample time to contemplate and comment on the proposals. Consequently, this approach would set possible Commission approval of the second rulemaking part at their August or September meeting.

Therefore, we ask that, if approved, the Legislature allow the Commission until October 1, 2021, for the Chapter 1 Rule changes to become effective and so align them with the coincident improvements to the Commission's other rules.

Thank you for your time. I would be happy to answer questions.

Attachments

Attachment A: Five Year Data Summaries

Attachment B: Generalized Summary of Proposed Revisions by Topic

Attachment C: Summary of LUPC Permit Types and Activities Described

Attachment A: Five Year Data Summaries

Five Year Data Summaries (1/1/2015 – 12/31/2019)

The base data represents each application “accepted for processing”¹ by the Commission between January 1, 2015 and December 31, 2019.

Residential Development

[Revisions increased the base fee and the fee per square foot of structures for residential development not located on Commission approved lots (i.e., lots within Commission approved subdivisions). There is no change in the base fee or the per square foot of structures for residential development located on Commission approved lots.]

Total BP Applications: 2,069 Annual Average: 413.8

on LUPC approved lots: 168 (8.1%²)

not on LUPC approved lots: 1,900 (91.9%)

Of the applications not located on lots approved by the Commission, 72 (or 14.4 annually) constituted a “Minor Change”; minor changes are not assessed an application fee (neither base fee nor the activity specific fee).

Home-based Businesses

[Revisions decreased the base fee from \$200 to \$100.]

Total Applications for Home-Based Businesses: 6 Annual Average: 1.2

on LUPC approved lots: 0 (0%)

not on LUPC approved lots: 6 (100%)

Advisory Rulings

[Revisions would assess fees by two categories: those regarding subdivision interpretations, and those not regarding subdivision interpretations. The fee for AR’s regarding subdivision interpretations are being increased into three levels; the fee for all other AR’s will remain the same.]

Total AR Applications: 31 Annual Average: 6.2

Total ARs regarding subdivision interpretations: 23 Annual Average: 4.6

Total ARs for other activities: 8 Annual Average: 1.6

Zoning Petitions

¹ For the purposes of this assessment, whether or not an application was approved, disapproved, withdrawn, or returned is less informative; the number of applications is a more appropriate gauge of the interest in seeking a permit and therefore the submission of applicable fees.

² Permitting and Compliance staff estimations: less than 5% in the Downeast Region; approximately 14% in the Western Region; less than 1% in the Northern Region (as they have experienced very few subdivisions);

[Revisions decreased the base fee and per acre fee for: CGPZ development zones³ and zones for recreational lodging facilities. Otherwise there was no change to the fees for other subdistricts/purposes.]

Total Zoning Petitions: 35 Annual Average: 7

Total CGPZ Petitions: 2 Annual Average: 0.4

Total Recreational Lodging Facility Petitions: 7 Annual Average: 1.4

Total Development-Zone Petitions (No change): 10 Annual Average: 2

Total Protection- or Management-Zone Petitions (No change): 10 Annual Average: 2

Total No Fee (Deorganizations⁴, FEMA, and Governmental Agencies): 6 Annual Average: 1.2

Shoreland & Wetland Alterations

[The revisions increased the fee for non-expedited activities and retained the current fee for expedited activities.]

* * * Existing tabulated data is not consistently detailed to enable thorough assessment of expedited activities versus non-expedited activities. However, an educated estimation by senior Permitting and Compliance staff is approximately 90% of all relevant permit types (WL, SA, and GP⁵) are for expedited activities.

Total Applications: 300 Annual Average: 60

Subdivisions

[The revisions did not change the base fee for subdivisions, but increased the fee per lot (according to three categories).]

Total Subdivision Applications: 22 Annual Average: 4.4

- 8 constituted a Minor Amendment (i.e., base fee would now be 50% of base fee otherwise)
- 1 was a permit transfer
- 4 created lots though the extent of the increased per lot fee cannot be determined because significantly different standards applied.
- 9 constituted a Minor Change (i.e., no fee applied)

Towers

[The revisions increase the per foot of tower cost into two groups.]

Total DP Applications for towers: 45 Annual Average: 9

Total Short Towers: 38 Annual Average: 7.6

³ Prequalified development subdistricts made available as a result of a Community Guided Planning and Zoning (CGPZ) process.

⁴ Deorganizations regard the outcome of a town or plantation being dissolved. Specifically, pursuant to [Title 30-A Chapter 302](#), the town or plantation becomes a township without any local government, and the LUPC is charged with land use regulatory authority and responsibility. The first step for the LUPC often includes establishing zones or subdistricts to reflect existing resources, uses, and development.

⁵ WL=Wetland Protection, SA=Shoreland Alteration, GP=Great Pond Protection

Total Tall Towers: 7 Annual Average: 1.4

* 29 of the 45 were for meteorological towers; 16 were for radio or communications towers

Site Law certifications

[The revisions add a base fee and the opportunity for activity specific fees. While we do not intend to duplicate fees charged by the Maine DEP, this new approach will enable the Commission to assess fees for these projects that can be large, complex, or controversial. Further, as demonstrated by [the standards involved within the Commission's review](#), the Commission is conducting work beyond that captured by the DEP.]

Total Certification Request: 11 Annual Average: 2.2

No Change in Fee

[This dataset overlaps with others summarized above.]

Total Applications where the Base Fee did not change: 757 (26%) Annual Average:
151.4 (5.2%)

Attachment B: Generalized Summary of Proposed Revisions by Topic

(Chapter 1, provisionally adopted by the LUPC 11/9/2020)

Reorganization: The whole chapter is proposed to be reorganized to improve the opportunity for consistency, brevity, and clarity.

Clarification: Clarify the agency's ability to charge processing fees related to the hard costs associated with site law certifications, including in some cases hiring temporary staff to replace staff time devoted to one project;

Additions: Revise this rule to improve the agency's ability to recoup costs related to the review of requests for certifications;

Updates: Revise assorted fees to reflect or otherwise respond to:

- other Commission rulemaking to incentivize certain activities – *such as recreational lodging, certain subdivision designs, and residential development on Commission approved subdivision lots*;
- the relevant workload or draw upon public resources otherwise related to application reviews – *such as charging for expenses incurred in reviewing applications and requests for certification*;
- agency policies – *such as instances where application fees may be returned*;
- availability of digital materials and processes; and
- fees regarding footprint as they relate to solar energy development

Clerical Edits:

- Revise visual characteristics to contribute to improved function of the rule – *such as formatting and spacing*;
- Correct or otherwise unify the format and phrasing of citations and references – *such as proper citation to Maine statutes (M.R.S.)*; and
- Refer to authorizing or supporting law to aid the reader in identifying and understanding applicable requirements and rights without reiterating statute;

Attachment C: Summary of LUPC Permit Types and Activities Described

The following describe the permit types and activities discussed in the attached testimony or otherwise referenced in the related Chapter 1 revisions.

Home-based Business:

A business, profession, occupation, or trade undertaken for gain or profit which: a) is clearly incidental and secondary to the use of the dwelling unit for residential purposes; b) is wholly carried on within a dwelling unit or other structure accessory to a dwelling unit; c) is carried on by a resident of the dwelling unit; and d) utilizes no more than 50 percent of all floor area of the dwelling unit or of the total combined floor area of the dwelling unit and accessory structure(s) in which the occupation is carried out.

Residential Development:

Pertaining to a dwelling unit (e.g., home, camp, cabin, etc)

Shoreland Alteration:

Any land use activity, which alters the shoreland area, either at, adjacent to or below the normal high water mark, of any surface water body, including but not limited to:

- a. dredging or removing materials from below the normal high water;
- b. construction of or repairing any permanent structure below the normal high water mark.

LUPC Permit Types

The Commission uses a variety of action types to identify and record various permitting actions and land use determinations. Each action includes the action type and number (e.g., AR 95-001, BP 123, and ZP 456) at the top of the document and a corresponding entry in the LUPC's database – Geographic Oriented Action Tracker (GOAT). The following summarizes the various types of permits and land use determinations:

Type	Permit Type	General Description ⁶
AR	Advisory Ruling	A documented yet informal staff opinion requested at the option of the landowner / developer. Applicants typically seek advisory rulings in order to receive advice as to whether or not a permit is required for specified activities, or for the interpretation of specified provisions of the Commission's rules. (<i>See LAR and LOE below.</i>)
BCP	Bridge Construction Permit	Permits for the construction, replacement or repair of bridges.
BLN	Boat Launch Notice	A landowner notification to the LUPC, after providing their intent to file notice yet prior to construction or repair of a boat launch, in accordance with Section 10.27,L of the Commission's <i>Land Use Districts and Standards</i> .

⁶ [Chapter 10 of the Commission's rules, *Land Use Districts and Standards*](#), contains specific criteria and standards.

Type	Permit Type	General Description ⁶
BP	Building Permit	Permits for activities associated with residential development that requires a permit (<i>e.g.</i> , activities involving: a camp, a garage, porches, etc.).
DP	Development Permit	Permits for activities associated with non-residential development that requires a permit (<i>e.g.</i> , activities involving: commercial sporting camps, retail store, warehouse, mill, wind turbines, campground, resort, etc.)
FOP	Forestry Operations Permit	Permits for forest operations that exceed the standards of Section 10.27,E of the Commission's <i>Land Use Districts and Standards</i> or are located within a Development Subdistrict or the Mountain Area Protection (P-MA) Subdistrict. FOPs issued after July 15, 2013, depending upon the subdistricts involved, may differ from FOPs issued before that date. (<i>See</i> MFS-RA below for more details.)
GP	Great Ponds Permit	Permits for activities affecting great ponds (<i>i.e.</i> , bodies of standing water greater than 10 acres in size). Activities permitted as a Great Ponds Permit include but are not limited to, permanent docks, dredging, some boat launches/ramps, breakwaters, and retaining walls.
HP	Hydropower Permit	Permits for and relating to hydropower activities.
IFN	Intent to File Notice	A landowner notification to the LUPC, of their intent to file a Boat Launch Notification (BLN) described above, in accordance with Section 10.27,L of the Commission's <i>Land Use Districts and Standards</i> .
LAR	Letter of Exemption/Advisory Rulings	A letter from the LUPC staff confirming the proposed activity is exempt from one or more provisions of the Commission's rules and therefore does not require permit approval and a documented, but informal, staff opinion regarding other aspects of the specified project. LARs are issued when both an Advisory Ruling and a Letter of Exemption are appropriate. (<i>See</i> AR and LOE herein.)

Type	Permit Type	General Description ⁶
LOE	Letter of Exemption	<p>A letter from the LUPC staff confirming the proposed activity is exempt from one or more provisions of the Commission's rules and therefore does not require permit approval. Historically, LOEs were issued only for utility lines that were exempt; however, as of 2011 they are used for any proposed activity that is exempt from either the Commission's review or exempt from permit approval. (<i>See</i> AR and LAR above.)</p>
MFS-RA	Maine Forest Service Review and Approval	<p>Review and approvals issued by the Commission for timber harvesting activities that are permitted by the Maine Forest Service (MFS) (12 M.R.S. § 685-A(12)). As of July 15, 2013, the MFS regulates timber harvesting, land management roads, water crossings on/for land management roads, and gravel pits less than five acres in size in management and protection subdistricts. When these activities require a permit from the MFS and are conducted in the Unusual Area Protection (P-UA), Recreation Protection (P-RR) and Special River Transition Protection (P-RT) subdistricts, Commission approval is required before the MFS may issue a permit. In these cases, the Commission must determine whether or not the project conforms to its standards that are not otherwise regulated by the MFS. Commission review focuses largely on impacts to existing uses, such as recreational, historic, cultural, or scenic resources, with the technical review of these activities remaining with the MFS. These activities, when conducted in development subdistricts and in development areas in Resource Plan Protection Subdistricts (P-RP) are regulated by the Commission, and not the MFS.</p>
RP	Road Construction Permit	<p>Permits for the construction, realignment, and substantial repair of roads (excluding land management roads).</p>
SA	Shoreland Alteration Permit	<p>Permits for activities affecting the shoreline of lakes, ponds, rivers, or streams (<i>e.g.</i>, activities involving: riprap, dredging, permanent docks, the intrusion of structures into or over a wetland or waterbody, and utility lines within or buried beneath a wetland or waterbody).</p>

Type	Permit Type	General Description ⁶
SD	Service Drop	Permits for certain utility lines. See Section 10.02 of the Commission's <i>Land Use Districts and Standards</i> . Some building permits (BP) and development permits (DP) include (d) authorization of a service drop.
SP	Subdivision Permit	Permits to create new lots where the lot(s) do not qualify as exemptions, see Section 10.25,Q,1 of the Commission's <i>Land Use Districts and Standards</i> .
SLC	Statutory LUPC Certification or Site Law Certification	Certifications issued by the Commission for projects that trigger review by the DEP according to Site Law. In these cases, the Commission must certify whether the use is allowed in the subdistrict(s) in which it is proposed and whether the project conforms to Commission's standards that are not otherwise effectively applied by the DEP. Projects that typically trigger Site Law include: larger subdivisions, larger commercial development, and grid-scale wind development.
ULP	Utility Line Permit	Permits for certain utility lines (<i>e.g.</i> , activities involving: electric power transmission or distribution lines, telephone lines, etc.) that require a permit and therefore do not qualify as an exemption or as a Service Drop described above.
WL	Wetlands Alteration Permit	Permits related to the alteration of wetlands (<i>e.g.</i> , activities involving: filling or dredging of wetlands, etc.).
WQC	Water Quality Certification	A Commission action certifying that activities meet applicable water quality standards, pursuant to Section 401 of the U.S. Clean Water Act. ⁷ When permits are required the Commission incorporates the WQC into the permit; stand-alone WQC actions represent certification of projects that did not also require permit approval (<i>e.g.</i> , FERC relicensing).

⁷ Executive Order #16 FY 91/92 designated LURC (now the LUPC) as the certifying agency for issuance of Section 401 Water Quality Certifications for all activities located wholly within its jurisdiction. Section 401 is a reference to the U.S. Clean Water Act, 33 U.S.C. § 1341.

Type	Permit Type	General Description ⁶
ZP	Zoning Petition	Petitions to rezone a specified land area to another subdistrict(s) ⁸ . <i>See</i> Section 10.08 of the Commission's <i>Land Use Districts and Standards</i> .

⁸ The Commission's rules implement thirty-two subdistricts. Protection subdistricts regard certain natural or cultural resources (e.g., wetlands, high mountain areas, fish and wildlife) in need of certain protections; management subdistricts focus on the management of resources such as forest products; and development subdistricts regard locations of existing or proposed (generally more intensive) development. All subdistricts include a specific purpose and most pre-identify a range of uses and development which are compatible with the purpose and the other uses allowed.