
**PUBLIC COMMENTS RECEIVED REGARDING
PROPOSED REPEAL AND REPLACEMENT OF
CHAPTER 1 – GENERAL PROVISIONS**

The following pages compile all written comments about the Chapter 1 rulemaking submitted between August 26, 2020 and October 7, 2020.

Rebuttal Comments: The deadline for submissions in rebuttal to those comments is **October 26, 2020**. Rebuttal comments will be posted on the adjacency rules webpage following the close of the rebuttal period.



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AMANDA E. BEAL
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Memorandum

To: Land Use Planning Commission
CC: Judy C. East
From: Tim Beaucage, Senior Planner
Date: September 1, 2020
Re: Staff Comments – Proposed Chapter 1 Rule Revisions

The Maine Land Use Planning Commission staff offer two comments regarding the proposed repeal and replacement of Chapter 1 (draft dated July 7, 2020).

1. Definitions

Among other changes, the Chapter 1 revisions propose to add a new definition section. Since posting revisions to Chapter 1 to a public hearing process, staff have been preparing recommended revisions to Chapter 4 of the Commission's rules, Rules of Practice. Consequently, staff have determined that definitions in Chapter 1 could directly influence the scope and phrasing of revisions to Chapter 4.

The Commission has adopted several rules that include definitions, specifically: Chapter 10, Land Use Districts and Standards – over 260 definitions; Chapter 11, Administrative Regulations for Hydropower Projects¹ – 10 definitions; and Chapter 16, Rules Relating to Large Lot Land Divisions² – three definitions.

Recommendation:

In light of the evolving relationship between revisions to Chapters 1 and 4, and long-term rulemaking goals, staff recommend the Commission relocate all definitions from its rules as appropriate, into one separate rule. Specifically:

¹ Chapter 11 is a joint rule with the Maine Department of Environmental Protection.

² 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).



- The proposed Chapter 1 revisions, dated July 7, 2020 should not include a definition section; revise the rule in the following manner:

“1.02 (Reserved) Definitions

~~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~~
- ~~d. Modifications to permit conditions which do not result in a substantially different outcome or impact on natural resources;~~

~~**2. Major Amendments** include an action to modify a permit, petition, or certification previously issued by the Commission that does not qualify as a minor change or minor amendment.~~

~~**D. Commission:**~~

~~The Maine Land Use Planning Commission.~~

~~**E. Development Costs:**~~

~~All costs of a proposed project including, without limitation, site preparation, building and road construction, installation of wastewater disposal systems and monitoring, and erosion control devices, but does not include the cost of acquiring the land.~~

~~**F. Director:**~~

~~The Director of the Maine Land Use Planning Commission is the principal administrative, operational, and executive employee of the Commission.~~

~~**G. Minor Changes:**~~

~~An action to modify a permit previously issued by the Commission where the revision is a result of:~~

- ~~1. updating current ownership or indicating a new permit holder;~~
- ~~2. correcting clerical errors;~~

- ~~3. clarifying the Commission's decision, which clarification is consistent with the intent of the Commission's decision and does not materially change any findings of fact or conclusions of law;~~
- ~~4. correcting the dimensions of structures, approving minor variations to the dimensions of structures previously approved, or approving expansions or changes affecting less than 10 percent of a structure or project; or~~
- ~~5. renewing a permit and extending the deadline for a substantial start or for substantial completion by up to two years.~~

H. — Permits:

~~Any approval, license, certification, or other authorization issued by the Commission, including amendments thereto.~~

...”

- Through a separate rulemaking process, the staff suggest the Commission consider repealing Section 10.02 in Chapter 10, and draft a new chapter (perhaps Chapter 2 Definitions) to include the provisions from Section 10.02, Section 1.02, and any new definitions appropriate to Chapter 4. Ideally, the resulting rule would be effective within a timeline consistent with any Legislative directive regarding the Chapter 1 rulemaking, and perhaps any potential adoption of Chapter 4 revisions. Any other definitions within other LUPC rules would then be addressed as the need and opportunities arise.

2. Footprint of Structures

Solar energy generation development is a relatively new land use, particularly those that involve more than one or two panels. While the Commission has reviewed proposals for a couple of solar energy generation facilities, which involve one or more acres of land, the Commission's permitting fee schedule did not apply to those projects³. One of the first proposals slated to be entirely reviewed by the Commission has highlighted a new perspective to long-standing provisions.

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. For example, a solar energy generation facility that includes a one acre array field would be assessed a fee of \$17,424.00 just for the “footprint” of structures. Otherwise, the development proposals in the Commission's service area do not include structures of this size or characteristic.

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

³ The Commission either reviewed the related petitions to amend district boundary designations, or the proposals were reviewed as part of a certification in the Site Law permitting process.

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.

Recommendation:

Staff suggest adding the following footnote:

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

...

2. Activity Specific Fees.

...

e. Structures: Per square foot (footprint[#]) structures

...

[#] 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.”