

Maine Land Use Planning Commission

**Proposed Rulemaking to Repeal and Replace
the Commission’s Chapter 13 Rules,
*“Metallic Mineral Exploration, Advanced Exploration and Mining”***

and

**to Amend the Commission’s Chapter 10 Rule
Definitions, Section 10.02;
Planned Development Subdistrict, Section 10.21,G; and
Mineral Exploration and Extraction, Section 10.27,C**

In response to Public Law 2017, Chapter 142 (LD 820)

DRAFT -

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The following proposes to repeal and replace Chapter 13 *“Metallic Mineral Exploration, Advanced Exploration and Mining,”* and to amend certain sections of the Commission’s Chapter 10 rules. The proposed revisions to Chapter 13 will repeal and replace the existing rule in its entirety; revisions are not shown in strikeout and underline format. The proposed changes to Chapter 10 are shown in a strikeout and underline format.

CHAPTER 13
METALLIC MINERAL EXPLORATION,
AND MINING CERTIFICATIONS

TABLE OF CONTENTS

13.01	General Provisions	1
A.	Applicability.	1
B.	Definitions.....	1
C.	Prohibition.....	3
D.	Relation to Other Rules.....	3
E.	Relation to Chapter 10.	3
13.02	Exploration	4
A.	Purpose of Exploration Requirements.	4
B.	Applicability of Exploration Requirements.	4
C.	Requirements for Exploration Activities.	4
13.03	Requests for Certification of Advanced Exploration and Mining	9
A.	Certification of Metallic Mineral Mining.	9
B.	Acceptance of Requests for Certification.	10
C.	Request for Certification Content.	10
D.	Notice of Intent to File a Request for Certification.....	10
E.	Notice of Filing of a Request for Certification.	11
F.	When to Hold a Public Hearing.	11
G.	Notice of Hearings on Requests for Certification.	11
H.	Contents of Notice of Hearings.....	12
I.	Cancellation or Change of Hearing.....	12
J.	Comment Period Without Hearing.	12
K.	Procedures and Time Limits for Issuing a Certification.	13
L.	Appeals.	13
M.	Effective Date of Certification Determination.....	13
N.	Criteria for Approval of Mining Permit Certifications.	14

13.01 GENERAL PROVISIONS

A. Applicability.

This Chapter applies to all exploration activity and all mining activity, including advanced exploration, in the unorganized and deorganized areas of the State.

B. Definitions.

As used in this Chapter, unless the context otherwise indicates, the following terms have the following meanings:

1. **Advanced Exploration.** “Advanced exploration” or “advanced exploration activity” means any metallic mineral bulk sampling or exploratory activity that exceeds those activities that are exploration activities, but removes 10,000 tons or less of mine waste. Samples taken as part of “exploration” are not considered bulk sampling.
2. **Beneficiation.** “Beneficiation” means the treatment of ore to liberate or concentrate its valuable constituents. “Beneficiation” includes, but is not limited to, crushing, grinding, washing, dissolution, crystallization, filtration, sorting, sizing, drying, sintering, pelletizing, briquetting, calcining, roasting in preparation for leaching to produce a final or intermediate product that does not undergo further beneficiation or processing, gravity concentration, magnetic separation, electrostatic separation, flotation, ion exchange, solvent extraction, electrowinning, precipitation, amalgamation, and dump, vat, tank and in situ leaching.
3. **Bulk Sampling.** “Bulk sampling” means the removal of samples for the purpose of testing to determine the feasibility, method, or manner of extraction and/or processing of metallic minerals. Such testing may include milling or grinding tests, and/or pilot plant and processing tests. Methods of bulk sampling may include, but are not limited to, drilling and boring, digging of shafts and tunnels, or digging of pits and trenches. For purposes of this rule, bulk sampling of metallic mineral deposits is included in advanced exploration and is limited to the removal of no more than 10,000 tons of mine waste.
4. **Commission.** “Commission” means “the Maine Land Use Planning Commission” and, unless clearly stated otherwise or clearly evident from the context, 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.
5. **Department.** “Department” means the Maine Department of Environmental Protection.
6. **Director.** “Director” means the Director of the Maine Land Use Planning Commission.
7. **Drilling.** “Drilling” means the making of holes with a drill for exploration of a metallic mineral deposit.
8. **Drill Hole.** “Drill hole” means the cavity created by drilling.
9. **Exploration.** “Exploration” or “exploration activity” means activities conducted in accordance with this Chapter for the purpose of determining the location, extent and composition of metallic mineral deposits, test boring, test drilling, hand sampling, the digging of test pits, trenching or

outcrop stripping for the removal of overburden having a maximum surface opening of 300 square feet per test pit or trench, or other test sampling methods determined by the Commission, in consultation with the Department, to cause minimal disturbance of soil and vegetative cover.

10. **Exploration Permit.** “Exploration permit” means a permit issued by the Commission pursuant to Chapter 10, *Land Use Districts and Standards*, and in accordance with Chapter 13, authorizing metallic mineral exploration activities.
11. **Exploration Site.** “Exploration site” means the area within which exploration or activities incidental thereto occur, or may reasonably be expected to occur.
12. **Groundwater.** “Groundwater” means all the waters found beneath the surface of the earth which are contained within or under this State or any portion thereof, except such waters as are confined and retained completely upon the property of one person and do not drain into or connect with any other waters of the State.
13. **Metallic Mineral.** “Metallic mineral” means any ore or material to be excavated from the natural deposits on or in the earth for its metallic mineral content to be used for commercial or industrial purposes. “Metallic mineral” does not include ores of thorium or uranium.
14. **Mine Waste.** “Mine waste” means all material, including, but not limited to, overburden, rock, lean ore, leached ore, or tailings, that in the process of mining and beneficiation has been exposed or removed from the earth during advanced exploration and mining activities.
15. **Mining.** “Mining,” or “mining activity” means activities, facilities or processes necessary for the extraction or removal of metallic minerals or overburden or for the preparation, washing, cleaning or other treatment of metallic minerals and includes the bulk sampling, advanced exploration, extraction or beneficiation of metallic minerals as well as waste storage and other stockpiles and reclamation activities, but does not include exploration.
16. **Ore.** “Ore” means rock containing sufficient metallic mineralization to process using technologies that exist at the mining operation.
17. **Overburden.** “Overburden” means soil, rock, or other materials which lie above or between the natural mineral deposits to be mined.
18. **Person.** “Person” shall mean an individual, firm, association, organization, partnership, trust, company, corporation, state agency or other legal entity.
19. **Qualified Professional.** “Qualified professional” or “qualified person” means a scientist, engineer, or professional in a technical discipline with sufficient training and experience to enable the individual to make sound professional judgments regarding conducting technical analyses or regarding the design, construction, and operation of regulated units and ancillary structures who, if accreditation is the norm in the profession, is accredited in the State of Maine, or subject to review and approval by the Commission, is accredited in another jurisdiction.
20. **Reclamation.** “Reclamation” means the rehabilitation of the area of land affected by the exploration activities, including but not limited to, the stabilization of slopes and the creation of safety benches, the planting of vegetation including grasses, crops, shrubs, and/or trees, and the enhancement of wildlife and aquatic habitat and aquatic resources.
21. **Tailings.** “Tailings” means the product resulting from the milling and mineral concentration process remaining after extraction of minerals by physical or chemical means.

22. **Topsoil.** “Topsoil” means the material at the earth’s surface which has been so modified and acted upon by physical, chemical, and biological agents that it will support rooted plants.

C. Prohibition.

It shall be unlawful for any person to engage in any exploration or mining activity, including advanced exploration, or to initiate construction in preparation for conducting these activities, except as authorized pursuant to this Chapter.

D. Relation to Other Rules.

This Chapter is intended to supplement rules administered by the Commission. No activity described in this Chapter is exempt from a requirement contained in any Commission rule unless such requirement, and rule, is specifically cited and described as inapplicable.

1. **Obligation to Comply.** Compliance with the provisions of this Chapter, or an exploration permit or certification determination issued in accordance with this Chapter does not relieve a person of the obligation to comply with all other applicable state or federal statutes or regulations, including but not limited to, the regulations for air emissions, waste discharges, solid and hazardous waste management, underground oil storage facilities, oil discharge pollution prevention measures and facilities, and waste oil.
2. **Other Permits.** Depending upon the location, type and extent of activity, a permit may be required under other rules or statutes. Persons seeking to conduct exploration or mining activities should check with the appropriate agencies, including the Department and the Maine Geological Survey to determine applicable requirements.

E. Relation to Chapter 10.

The Commission’s Chapter 10 rules, *Land Use Districts and Standards*, establishes in which subdistricts exploration activities and mining activities, including advanced exploration, are an allowed use. Chapter 10 categorizes all exploration and advanced exploration activities as falling into one of the following two use listings: Level A Mineral Exploration and Level B Mineral Exploration. The Chapter 10 use listing “Level A Mineral Exploration” solely consists of activities defined as exploration in this Chapter. The Chapter 10 use listing “Level B Mineral Exploration” consists of exploration activities, as well as some advanced exploration activities, as defined in this Chapter. All Level A Mineral Exploration, as well as Level B Mineral Exploration that qualifies as exploration under this Chapter, is subject to Section 13.02. Level B Mineral Exploration that qualifies as advanced exploration under this Chapter, is subject to Section 13.03.

13.02 **EXPLORATION**

A. Purpose of Exploration Requirements.

The purpose of this subchapter is to establish procedures and standards for exploration activities.

B. Applicability of Exploration Requirements.

This subchapter applies to any person proposing to conduct metallic mineral exploration activities in the area served by the Commission.

NOTE: Geophysical surveys are considered as exploration for the purposes of this Chapter and the standards and submissions under Section 13.02,C, provided that they require some disturbance of soil or vegetation, such as cutting or clearing of vegetation along a survey grid. Non-intrusive methods, such as aeromagnetic surveys or other remote-sensing methods that do not involve any disturbance of soil or vegetation are not considered part of exploration for the purposes of this Chapter.

C. Requirements for Exploration Activities.

1. **Applicability of Standards.** The Commission's Chapter 10 rules identify in which subdistricts exploration is an allowed use. Where an allowed use, exploration is allowed without a permit subject to standards, allowed with a permit, or allowed with a permit upon obtaining special exception approval. To be allowed without a permit subject to standards, the person engaging in exploration must comply with the standards in Section 13.02,C,2, and not the standards in Section 10.27,C,1, of the Commission's Chapter 10 rules. Where exploration is allowed only after obtaining a permit, whether or not special exception approval is required, the person applying for a permit must demonstrate compliance with the standards in Section 13.02,C,2, and not the standards in Section 10.27,C,1, of the Commission's Chapter 10 rules. Notwithstanding the general requirement that a person engaging in exploration must comply with the standards in Section 13.02,C,2, exploration that would not comply with these standards may be allowed upon issuance of a permit from the Commission, provided that exploration is an allowed use in the subdistrict involved. An applicant for such a permit shall show by a preponderance of the evidence that the proposed activity, which is not in conformance with the standards in Section 13.02,C,2, shall be conducted in a manner that produces no undue adverse impact upon the resources and uses in the area.
2. **Standards.** Except as provided in Section 13.02,C,1, the following minimum standards must be met for exploration activities:
 - (a) New access ways shall involve little or no recontouring of the land or ditching, and shall not include the addition of gravel or other surfacing materials. Clearing of the vegetative cover shall be limited to the minimum necessary to allow for the movement of equipment. Existing access ways shall be maintained to ensure that runoff is delivered immediately to stable ditches, if any, and vegetated buffer areas.
 - (b) Access way approaches to stream channels shall be located and designed so as to divert water runoff from the way in order to prevent such runoff from directly entering the stream.

- (c) Erosion control measures must be implemented to prevent unreasonable erosion of soil or sediment beyond the exploration site or into sensitive areas such as slopes exceeding 15% and areas that drain directly into water bodies, drainage systems, water crossings, or wetlands; these measures must be in place before exploration activity, or related activities including, but not limited to, clearing and road construction, begins. Measures must remain in place and functional until the site is permanently stabilized. Adequate and timely temporary and permanent stabilization measures must be taken and the site must be maintained to prevent unreasonable erosion and sedimentation.
- (d) Exploration activities or associated access ways where the operation of machinery used in such activities results in the exposure of mineral soil, shall be located such that an unscarified filter strip of at least the width indicated below is retained between the exposed mineral soil and the normal high water mark of a flowing water, body of standing water, coastal wetland, or wetland identified as a P-WL1 subdistrict as defined in the Commission's Chapter 10 rules or identified on the Commission's official Land Use Guidance Maps:

Average Slope of Land Between Exposed Mineral Soil and Normal High Water Mark (Percent)	Width of Strip Between Exposed Mineral Soil and Normal High Water Mark (Feet Along Surface of the Ground)
0-29	75
30-39	85
40-49	105
50-59	125
60-69	145
70 or more	165

Table 13.02,C-1. Unscarified filter strip width requirements for exposed mineral soil created by mineral exploration activities or associated access ways.

The provisions of Section 13.02,C,2,(d) apply only on a face sloping toward the water, provided, however, no portion of such exposed mineral soil on a back face shall be closer than 75 feet; the provisions of Section 13.02,C,2,(d) do not apply where access ways cross such waters.

- (e) Except when surface waters are frozen, access ways for exploration activities shall not utilize stream channels bordered by P-SL2 Shoreland Protection Subdistricts except to cross the same by the shortest possible route. Unless culverts or bridges are installed in accordance with Sections 10.27,D,2 and 5 of the Commission's Chapter 10 rules such crossings shall only use channel beds which are composed of gravel, rock or similar hard surface which would not be eroded or otherwise damaged.
- (f) Topsoil which is stripped or removed must be stockpiled for use in reclaiming disturbed land areas. Soil stockpiles shall be seeded, mulched, and anchored or otherwise stabilized.
- (g) The exploration site shall be restored to a physical state that is similar to and compatible with that which existed prior to any exploration. Within 30 working days following completion of exploration at an exploration site, any person conducting exploration activities shall accomplish the following:
- (1) Disposal of all debris in accordance with applicable state laws and regulations;
 - (2) Grading of the surface of the site so that the final graded slope conforms with the original contour of the land; and

- (3) Placement of topsoil, and reseeded and stabilization of graded topsoil with vegetation native to the area. Any person conducting exploration activities shall follow the “Guidelines for Vegetative Stabilization,” Appendix B of the Commission’s Chapter 10 rules.
- (h) Within 30 working days after completion of exploration activities, all excavations including trenches, test pits, and mud pits shall be capped, refilled or secured. All settling ponds or sumps must be backfilled, covered with topsoil and seeded.
- (i) In accordance with the provisions of Section 10.26,G,5 of the Commission’s Chapter 10 rules, drill pump stations may be located closer than the setbacks required for structures from waterbodies or wetlands in Section 10.26,D,2 of the Commission’s Chapter 10 rules, but at no time shall the drill pump station be located closer than 25 feet to a waterbody or wetland identified as P-WL1.
- (j) All drill additives shall be non-toxic as indicated by the manufacturer’s product publications, such as Safety Data Sheets, and biodegradable to the extent reasonably possible. Except for samples collected for exploration purposes, all drilling mud, water and other fluids, as well as waste cuttings must be confined to the drill site by the use of storage tanks or sumps. All excavation sites and resulting waste must be managed to ensure no untreated water is released to the environment and released volumes will not adversely impact existing stream flows.
- (k) Sealing of all drill holes, whether temporary or permanent, shall be completed within 30 days of cessation of drilling or testing activities such as “down-the-hole” geophysical surveys or other similar activities. All artesian wells shall be capped or sealed within 48 hours after cessation of drilling or the onset of artesian conditions. No drill hole may be temporarily sealed for more than 3 years unless the drill hole is being used during the time it is temporarily sealed for sampling or other studies related to a mineral deposit or general hydrological conditions of the area. A drill hole that has remained temporarily sealed for more than 3 years and is not being used for sampling or other studies shall be sealed permanently. All sealing activities shall be conducted according to the “Guidance for Well and Boring Abandonment,” produced by the Department’s Bureau of Remediation and Waste Management, Division of Technical Services, dated January 7, 2009.
- (l) All facilities and equipment shall be promptly removed from the exploration site when they are no longer needed for the exploration activity, or for any reclamation activities or monitoring required for the exploration activity. However, such facilities or equipment which are otherwise allowed under the Commission’s rules, or that would be used for an advanced exploration or mining activity under review by the Department, may remain on site, provided that any required permits are obtained.
- (m) The Commission may enter any exploration site, take samples, and conduct tests in order to determine compliance with any provision of this Chapter or other applicable requirements. The Commission may require the submission of annual self-inspection reports, signed by a qualified professional on exploration activities conducted by the permittee.
- (n) Any person conducting exploration activities shall notify the Commission orally within 24 hours and in writing within 5 working days of any activity or occurrence during the course of exploration or reclamation which has the potential to damage public health or the environment.

3. Submission Requirements.

- (a) At least 30 days prior to commencing Level A Mineral Exploration drilling activities as defined in Chapter 10, Section 10.02, any Level B Mineral Exploration activities as defined in Chapter 10, Section 10.02, or when submitting an application for an exploration permit, a person planning such activity or filing an application shall submit a work plan to the Commission. The work plan shall be prepared and signed by a qualified professional and provide the following information, at a minimum:
- (1) Documentation of the property boundaries, landowner information, and description of the area to be explored;
 - (2) Evidence of the person's title, right or interest for access to the area to be explored and to conduct exploration and restoration activities;
 - (3) A site plan showing the proposed access routes and exploration areas;
 - (4) Identification of any existing access ways, roads, or clearings;
 - (5) A site plan with wetlands or other sensitive environmental features identified;
 - (6) A sediment and erosion control plan, including a stormwater management plan for access roads, excavation and stockpile areas, and other areas affected by the activity;
 - (7) A description of proposed drilling and excavation activities and methods, including petroleum products and chemical handling procedures and spill management, estimated quantities of material that must be removed to obtain samples, and best management practices to be employed in conducting the exploration activities. If specified by the Commission, additional measures to protect the environment shall be adopted by the person engaged in exploration activities;
 - (8) A plan for backfill and restoration of exploration sites which will address subsidence, drill holes, structural safety, water management, restoration of disturbed areas including access roads, and the abatement of any physical hazards; and
 - (9) A site plan showing the exploration drilling area, maximum number of drill holes, and the maximum total drilling footage.

Submissions must be sufficient in detail to show the standards of Section 13.02,C,2 will be met. In addition, site plans must be submitted at a sufficient scale to allow for a meaningful review of existing site conditions and the proposed exploration site layout, typically at a scale of 1 inch to 100 feet or larger.

- (b) Within 60 days of the completion of the exploration activities, the person required to have submitted a work plan pursuant to Section 13.02,C,3,(a) above shall submit to the Commission a report, prepared and signed by a qualified professional, including:
- (1) Documentation that all of the requirements of the restoration plan were completed, and
 - (2) The following information for each drill hole:
 - (a) Location and identification of the drill hole;
 - (b) Dimensions of the drill hole;
 - (c) Identification of depth, static elevation, and estimated flow of any groundwater encountered, if known; and
 - (d) Methods of sealing the drill hole, demonstrating compliance with Section 13.02,C,2,(k).
- (c) Hand sampling activities (soil sampling with auger or shovel, stream sediment sampling and rock chip sampling) are exempt from the submission of an exploration work plan;

however, these activities may require approval under other laws and regulations administered by the Commission.

4. **Permit Conditions.** Where an exploration permit is required, such a permit shall be subject to the following.

Noncompliance and Occurrence Reporting. The permittee shall provide notice to the Commission of any noncompliance; and to the Department and the Commission of any unpermitted or otherwise unlawful release or discharge of pollutants, fire or explosion at the site. Notice shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances, and in writing within 5 working days. If the noncompliance, release or discharge of pollutants, or cause of fire or explosion has not been corrected, the anticipated time it is expected to continue shall be given, together with the steps taken or planned to reduce, eliminate and prevent recurrence. This notice requirement does not supercede or replace any other State or federal spill, release, or discharge reporting requirement.

13.03 **REQUESTS FOR CERTIFICATION OF ADVANCED EXPLORATION AND MINING**

A. Certification of Metallic Mineral Mining.

Pursuant to 12 M.R.S. § 685-B(1-A)(B-2) and 38 M.R.S. § 490-NN(2), the Commission certifies metallic mineral mining and advanced exploration permitted by the Department. For the purposes of this subchapter, the term mining permit shall be considered to include both permits to mine and permits for advanced exploration, unless expressly indicated otherwise. All Commission certification determinations will conform with the following:

1. The Commission will consider receipt, by the Commission, of a notice of intent to mine and develop and a map indicating the location of the proposed mining and development, required by 12 M.R.S. § 685-B(1-A)(B-2), as a request for certification. The notice and map may be provided by the person proposing mining and development directly to the Commission or to the Department for the Department to provide to the Commission.¹
2. A Commission certification determination will be issued solely to the Department for inclusion in the Department's mining permitting decision.
3. 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 mining permitting decision, the Commission retains, pursuant to 12 M.R.S. § 685-B(1-A)(B-2), 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.
4. 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 mining and 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 mining and development meets the land use standards established by the Commission that are not considered in the Department's review.
5. The Commission will not independently evaluate title, right, or interest and shall condition any certification on the Department finding, in its permit review, that the person requesting certification has the necessary title, right or interest.
6. A Commission determination to approve a request for certification, or to deny a request for certification when the request is associated with a proposal being reviewed by the Department as part of a mining permit application that is pending at the time of the determination, is not final agency action. Pursuant to 5 M.R.S. §§ 11001 et seq., a person aggrieved by a Department mining 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

¹ The Commission encourages persons requesting a certification to involve Commission staff in pre-application meetings either together with the Department or separately.

the Department's final agency action, including the Commission's certification determination that is incorporated into the Department's permitting decision.

7. A Commission determination to deny a request for certification, when the request is not associated with a proposal being reviewed by the Department as part of a mine 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 applicable state laws and court rules.
8. If a mine permittee submits a request to amend or revise its mining permit to the Department, the permittee shall provide the Commission a copy of the permit amendment or minor revision documentation provided to the Department. Within 15 days of receiving a copy of these materials, the Commission shall determine whether a certification amendment is required or request additional information needed to make this determination. Modifications proposed by the permittee that the Commission determines would alter any finding or the basis for any finding in the existing certification will trigger the need for an amended certification. The Commission will process a request for a certification amendment in the same manner as a request for certification.

B. Acceptance of Requests for Certification.

1. **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 the request:
 - (a) contains a notice of an intent to develop and a map indicating the location of the proposed development;
 - (b) is accompanied by the proper fee; and
 - (c) contains sufficient information for the Commission to begin its review.

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.

2. **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 13.03,B,1 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.

C. Request for Certification Content.

A person requesting certification shall use the appropriate forms, as coordinated with the Department, but need not complete any portions of a form determined by the Commission to be unnecessary for a specific request for certification.

D. Notice of Intent to File a Request for Certification.

At least 30 days prior to filing a request for certification either directly with the Commission, or with the Department for the Department to provide to the Commission, a person requesting certification must provide public notice of the intent to file such a request. The public notice must be provided in

the same manner as the Department requires for a mining permit application. The content of the notice shall be same as required by the Department, except that the Commission must be substituted for the Department and the public notice must state the manner in which a person may request that the Commission hold a public hearing. Provided the requirements of Section 13.03,D are satisfied, with Department approval, a person's notice of intent to file a request for certification may be incorporated into its public notice associated with its Department mining permit application.

Separate from the notice provided by the person requesting certification, the Commission may, at its expense, provide additional notice in any other manner it deems appropriate.

E. 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.

F. When to Hold a Public Hearing.

1. 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.
2. 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. 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.
3. The Commission shall not amend or modify any certification unless it has afforded the person who requested certification, or its successor with regard to the certification, an opportunity for a hearing.

G. Notice of Hearings on Requests for Certification.

Notice of all public hearings in regard to requests for certification must be given by the Commission or, at the discretion of the Commission, by the person requesting certification, as follows:

1. 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:
 - (a) The person requesting certification;
 - (b) All persons owning or leasing land within 1,000 feet of the proposed project according to the records of Maine Revenue Services or the applicable plantation or municipality;
 - (c) The municipality or plantation where the project is proposed;
 - (d) The county, if the proposed project site is in an unorganized township;
 - (e) The legislators whose districts encompass the project;
 - (f) Maine's Native American Tribes;
 - (g) Intervenors;
 - (h) Persons who have made a timely request to be notified of a specific hearing;
 - (i) Persons who have filed a written request, within the calendar year, to be notified of hearings;
 - (j) Appropriate State and federal agencies, as determined by the Commission; and

- (k) In any proceeding involving a proposed modification or amendment of a certification that was the subject of an earlier hearing, all persons admitted to formal party status at the earlier hearing.
2. By publication twice in a newspaper of general circulation in the area affected by the certification request as determined by the Commission.
 - (a) Notice must be published in the legal notices section of the newspaper.
 - (b) 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.
 3. In any other manner the Commission deems appropriate.

H. Contents of Notice of Hearings.

Notice of all public hearings must contain the following:

1. The name and address of the person requesting certification;
2. The legal authority and jurisdiction under which the proceeding is being conducted;
3. A reference to statutory and rule provisions involved;
4. In a short and plain statement, the nature and purpose of the proceeding;
5. The location and nature of the proposed development and mine;
6. The location where further information, including a copy of the certification request, may be inspected;
7. The manner and time period within which evidence and argument may be submitted to the Commission for consideration;
8. The time and place of the public hearing;
9. The manner and time within which petitions for intervention under the Commission's Chapter 5 rules may be filed; and
10. Such other information as the Commission deems appropriate.

I. 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 13.03,G,1 above. 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 may continue a hearing to a later date and place as is announced at the hearing.

J. 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. The Commission, at its discretion, may modify or waive this time period in cases involving emergencies or requests for certifications that are routine in nature. In

exercising its discretion and evaluating whether a request for certification is routine in nature, the Commission may consider the request, in whole or in the two parts allowed for in Section 13.03,A,4, and elect to retain, waive, or modify the 20-day period for either of the two parts individually or for the request for certification as a whole. The Commission may delegate this discretionary authority to the Director.

K. Procedures and Time Limits for Issuing a Certification.

1. 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.
2. Notice of the certification determination shall be sent to the person requesting certification and to any other person having requested such information.
3. 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.
4. 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.
5. 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.

L. Appeals.

1. 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 13.03,A,4 above, the request for review must be made within 30 days of the part of the determination of which review is sought.
2. A Commission determination to approve a request for certification, or to deny a request for certification when the request is associated with a proposal being reviewed by the Department as part of a mining 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 permit decision. In the event a person aggrieved appeals a Department permit decision that includes a certification determination to the Board of Environmental Protection or 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 proposal being reviewed by the Department as part of a mining 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.

M. Effective Date of Certification Determination.

1. **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 13.03,L,1, above. The staff decision is effective on the date it is rendered, unless a request for Commission review is made.

2. **Commission Decisions.** A certification determination of the Commission is effective beginning on the date the determination is rendered by the Commission.

N. Criteria for Approval of Mining Permit Certifications.

Pursuant to 12 M.R.S. §685-B(1-A)(B-2) and 38 M.R.S. §490-NN(2), the Commission must review whether the proposed mining and development meets any land use standard established by the Commission and applicable to the project that is not considered in the Department's review. A person requesting certification must demonstrate to the Commission that the proposed project satisfies the following land use standards.

1. Section 10.11, A-E, Nonconforming Uses and Structures;
2. Section 10.24,E regarding conformance with statute, regulations, standards and plans;
3. Section 10.25,A,7 as it regards apportionment of development rights through the Commission's subdistrict regulations;
4. Sections 10.25,B,1, and 3 regarding dimensional standards and building layout in prospectively zoned areas;
5. Sections 10.24,B and 10.25,D regarding transportation loading, parking, circulation, congestion or unsafe conditions, except that the Commission will not apply Section 10.25,D,3,b because stormwater runoff will be reviewed by the Department;
6. Section 10.25,F,2 Lighting;
7. Section 10.25,Q Subdivision and Lot Creation;
8. Section 10.25,T Activities in Flood Prone Areas to the degree necessary to comply with the Commission's land use standards adopted in accordance with the National Flood Insurance Program;
9. Sections 10.26,A-G Dimensional Requirements, with the dimensional requirement in Section 10.26,G,5, notwithstanding any language in the Commission's rules to the contrary, applying to setback requirements for structures from the shoreline, upland edge of a wetland designated as a P-WL1 subdistrict, road, and/or property line;
10. Section 10.27,B Vegetation Clearing except in areas that are regulated as jurisdictional resources under the Natural Resources Protection Act or are within the limits of excavation permitted by the Department;
11. Section 10.27,E Timber Harvesting; and
12. Section 10.27,J Signs.

EFFECTIVE DATE: August 26, 1991

EFFECTIVE DATE (ELECTRONIC CONVERSION): May 4, 1996

NON-SUBSTANTIVE CHANGES: September 2, 1997 - minor spelling, formatting and layout.

EFFECTIVE DATE: [To be entered when effective]

CHAPTER 10 LAND USE DISTRICTS AND STANDARDS

Section 10.02 - Definitions Sections 10.21,G – Planned Development Subdistricts Section 10.27,C – Mineral Exploration and Extraction

10.02 DEFINITIONS

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101. Level B Mineral Exploration Activities:

Mineral exploration activities involving the bulk sampling of mineral deposits, or any mineral exploration activities which exceed those defined as Level A mineral exploration activities and which ~~are not defined as Level C metallic mineral exploration activities~~ involve disturbance of a site, by excavation, of less than two acres of surface area and removal of 10,000 tons or less of soil, overburden, rock, ore, tailings or other earthen materials from the site of exploration.

...

~~**102. Level C Mineral Exploration Activities:**~~

~~Metallic mineral exploration activities involving the disturbance of a site, by excavation, of more than 2 acres of surface area or the excavation or removal of more than 10,000 cubic yards of soil, overburden, ore or other earthen materials from the site of exploration.~~

[NOTE: In response to the deleted definition, all subsequent terms will be renumbered from this point forward.]

...

123. Metallic Mineral Mining Activity:

"Metallic mineral mining activity" means any activity or process that is for the purpose of extraction or removal of metallic minerals, and includes processes used in the separation or extraction of metallic minerals from other material including, but not limited to: crushing, grinding, beneficiation by concentration (gravity, flotation, amalgamation, electrostatic, or magnetic); cyanidation; leaching; crystallization; or precipitation; mine waste handling and disposal; and processes substantially equivalent, necessary, or incidental to any of the foregoing.

Metallic mineral mining or metallic mineral mining activity does not include Level A, or B ~~or C~~ exploration activities, or thermal or electric smelting.

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125. Mineral Extraction:

Any extraction of a mineral deposit, other than peat extraction, metallic mineral mining activities, or Level A, or B, or C, exploration activities.

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10.21 DEVELOPMENT SUBDISTRICTS

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G. PLANNED DEVELOPMENT SUBDISTRICT (D-PD)

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2. Description

Areas separated from existing development patterns, proposed for residential, recreational, commercial or industrial use or some combination of those uses, for which a comprehensive development plan (which treats the entire parcel as an entity) has been submitted to, and reviewed and approved by the Commission.

- a. A D-PD subdistrict proposed for predominantly residential and/or recreational land uses shall contain a minimum of 30,000 square feet of building floor area and shall include at least 150 contiguous acres. (A predominance of uses shall exist when the majority of the gross building floor area is devoted to such uses.)
- b. A D-PD subdistrict proposed for predominantly commercial and/or industrial land uses shall include at least 50 contiguous acres and, except wind energy generation facilities, shall contain a minimum of 30,000 square feet of gross building floor area.
- c. A D-PD subdistrict proposed for metallic mineral mining activities ~~or Level C mineral exploration activities and~~ shall include at least 50 contiguous acres.

In any of the above cases, no development, other than access roads and utility lines shall be less than 400 feet from any property line. (This dimension may be increased or decreased, at the Commission's discretion, provided good cause can be shown.) Furthermore, the project shall be reasonably self-contained and self-sufficient and to the extent practicable provide for its own water and sewage services, road maintenance, fire protection, solid waste disposal and police security.

6. Procedure

- a. ~~The procedures set forth below and those set forth~~ in Section 10.21,G,6,7 and 8 apply to all developments except:
 - a. ~~Those related to metallic mineral mining and Level C mineral exploration~~ activities which are governed by the procedures set forth in Chapters 12 and 13 of the Commission's rules.
 - b. The procedures set forth in Section 10.21,G,9 apply only to:

- (1) ~~Those~~ D-PD subdistricts approved or accepted for processing by the Commission prior to September 1, 2012; ~~and~~
- (2) Activities not requiring Maine Department of Environmental Protection review under the Site Location of Development Law within D-PD subdistricts accepted for processing after September 1, 2012; ~~and not requiring review under Site Law, which in addition to those sections set forth above shall also be governed by the procedures set forth in 10.21,G,9.~~
- (3) Exploration, as defined in the Maine Metallic Mineral Mining Act, requiring a permit within D-PD subdistricts.

c. The Planned Development review procedure shall consist of three stages:

- (1) Preapplication Conference;
- (2) Submission of Preliminary Development Plan / Zoning Petition; and
- (3) Submission of a Final Development Plan or amendment to a Final Development Plan for those projects described in section 6,(b).

The Preapplication Conference serves to inform the prospective applicant, prior to formal application, of the proposed plan's filing requirements. Formal application is made by submitting a Preliminary Development Plan / Zoning Petition that meets the requirements specified herein. No decision thereon can be made until a Public Hearing is held. Thereafter, the Commission may approve or deny the petition. An approval will amend the subdistrict(s) to a D-PD subdistrict and will include a preliminary development approval that specifies under what conditions, if any, the Commission will accept the Preliminary Development Plan / Zoning Petition proposal as the standard against which future certification requests, amendments to existing Final Development Plans, or new Final Development Plans are judged. No development will be allowed except for activities necessary to gather site data for the permit and/or certification applications until such an application is submitted and approved. Necessary site data gathering activities must be consistent with the proposed description as submitted in the Preliminary Development Plan / Zoning Petition and are allowed without a permit.

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9. Final Development Plan

The procedures set forth in Section 10.21,G,9 apply to: ~~all~~ D-PD subdistricts approved or accepted for processing by the Commission prior to September 1, 2012; ~~activities not requiring Maine Department of Environmental Protection review under the Site Location of Development Law and development~~ within D-PD subdistricts accepted for processing after September 1, 2012; that does not require review under Site Law and exploration, as defined in the Maine Metallic Mineral Mining Act, requiring a permit within D-PD subdistricts.

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10.27 ACTIVITY-SPECIFIC STANDARDS

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C. MINERAL EXPLORATION AND EXTRACTION

Mineral exploration and extraction activities for non-metallic minerals that are not in conformance with the standards of Section 10.27,C may be allowed upon issuance of a permit from the Commission provided that such types of activities are allowed in the subdistrict involved. An applicant for such permit shall show by a preponderance of the evidence that the proposed activity, which is not in conformance with the standards of Section 10.27,C, shall be conducted in a manner which produces no undue adverse impact upon the resources and uses in the area.

Mineral exploration and extraction activities for metallic minerals are not subject to the following subsections. Metallic mineral exploration and extraction are subject to Chapter 13, Metallic Mineral Exploration and Mining Certifications, including but not limited to the standards for metallic mineral exploration in that chapter.

The following requirements-standards for mineral exploration and extraction activities for non-metallic minerals shall apply in all subdistricts except as otherwise hereinafter provided:

1. **Mineral Exploration.** The following requirements-standards shall apply to mineral exploration activities for non-metallic minerals:
 - a. All excavations, including test pits and holes, shall be promptly capped, refilled or secured by other equally effective measures so as to reasonably restore disturbed areas and to protect the public health and safety.
 - b. Mineral exploration activities or associated access ways where the operation of machinery used in such activities results in the exposure of mineral soil, shall be located such that an unscarified filter strip of at least the width indicated below is retained between the exposed mineral soil and the normal high water mark of a flowing water, body of standing water, coastal wetland, or wetland identified as a P-WL1 subdistrict:

Average Slope of Land Between Exposed Mineral Soil and Normal High Water Mark (Percent)	Width of Strip Between Exposed Mineral Soil and Normal High Water Mark (Feet Along Surface of the Ground)
0	25
10	45
20	65
30	85
40	105
50	125
60	145
70	165
0-29	75
30-39	85

40-49	105
50-59	125
60-69	145
70 or more	165

Table 10.27,C-1. Unscarified filter strip width requirements for exposed mineral soil created by mineral exploration activities or associated access ways.

The provisions of Section 10.27,C,1,b apply only on a face sloping toward the water, provided, however, no portion of such exposed mineral soil on a back face shall be closer than ~~25~~75 feet; the provisions of Section 10.27,C,1,b do not apply where access ways cross such waters.

- c. Except when surface waters are frozen, access ways for mineral exploration activities shall not utilize flowing waters bordered by P-SL2 subdistricts except to cross the same by the shortest possible route; unless culverts or bridges are installed in accordance with Section 10.27,D,2 and 5, such crossings shall only use channel beds which are composed of gravel, rock or similar hard surface which would not be eroded or otherwise damaged.
- d. Access way approaches to flowing waters shall be located and designed so as to divert water runoff from the way in order to prevent such runoff from directly entering the stream.
- e. In addition to the foregoing minimum requirements, when conducting mineral exploration activities and creating and maintaining associated access ways, provision shall be made to effectively stabilize all area of disturbed soil so as to reasonably avoid soil erosion and sedimentation of surface waters. These measures shall include seeding and mulching if necessary to insure effective stabilization.

2. Mineral Extraction. The following ~~requirements standards~~ shall apply to mineral extraction activities for non-metallic minerals in all subdistricts:

- a. A vegetative buffer strip shall be retained between the ground area disturbed by the extraction activity and:
 - (1) 75 feet of the normal high water mark of any body of standing water less than 10 acres in size, any flowing water draining less than 50 square miles, coastal wetland, or wetland identified as a P-WL1 subdistrict; and
 - (2) 100 feet of the normal high water mark of any body of standing water 10 acres or greater in size or flowing water draining 50 square miles or more.
- b. No portion of any ground area disturbed by the extraction activity shall be closer than 250 feet from any public roadway, or 250 feet from any property line in the absence of the prior written agreement of the owner of such property.
- c. Within 250 feet of any water body the extraction area shall be protected from soil erosion by ditches, sedimentation basins, dikes, dams, or such other control devices which are effective in preventing sediments from being eroded or deposited into such water body.

Any such control device shall be deemed part of the extraction area for the purposes of Section 10.27,C,2,a, above;
- d. A natural vegetative screen of not less than 50 feet in width shall be retained from any facility intended primarily for public use, excluding privately owned roads; and
- e. If any mineral extraction operation located within 250 feet of any property line or public roadway or facility intended primarily for public use, excluding privately owned roads, is to be

terminated or suspended for a period of one year or more, the site shall be rehabilitated by grading the soil to a slope of 2 horizontal to 1 vertical, or flatter.