An Act to Streamline the Maine Land Use Regulation Commission

Be it enacted by the People of the State of Maine as follows:

Sec. 1.12 MRSA c. 206-A is amended to read:

Chapter 206-A: USE REGULATION

Subchapter 1: GENERAL PROVISIONS

12 §681. PURPOSE AND SCOPE

The Legislature finds that it is desirable to extend principles of sound planning, zoning and subdivision control to the unorganized and deorganized townships of the State: To preserve public health, safety and general welfare; ~~to prevent inappropriate residential, recreational, commercial and industrial uses detrimental to the proper use or value of these areas; to prevent the intermixing of incompatible industrial, commercial, residential and recreational activities;~~ to encourage and provide for appropriate residential, recreational, commercial and industrial uses; to prevent the development in these areas of substandard structures or structures located unduly proximate to waters or roads; to prevent the despoliation, pollution and inappropriate use of the water in these areas; and to ~~preserve~~ conserve, where appropriate, ecological and natural values.

The Legislature declares it to be ~~in the public interest, for the public benefit , for the good order of the people of this State and~~ for the benefit of the property owners and residents of the unorganized and deorganized townships of the State, to encourage the well-planned and well-managed multiple use of land and resources. The Legislature acknowledges the importance of these areas in the continued vitality of the State and to local economies by supporting and promoting forest management, forest products manufacturing, agricultural, industrial and commercial development, real estate subdivisions, windpower generation and groundwater extraction. To that end, the Commission shall designate not less than 30 percent of the land area of each township or plantation in the jurisdiction as Development districts. ~~Finally, the Legislature desires to encourage the appropriate use of these lands by the residents of Maine and visitors in pursuit of outdoor recreation activities, including, but not limited to, hunting, fishing, boating, hiking and camping.~~

12 §682. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms shall have the following meanings.

1. Unorganized and deorganized areas. "Unorganized and deorganized areas" does not include Indian reservations and coastal and offshore islands, but does includes all unorganized and deorganized townships~~,~~ and plantations that have not received commission approval under section 685-A, subsection 4 to implement their own land use controls, municipalities that have organized since 1971 but have not received commission approval under section 685-A,

subsection 4 to implement their own land use controls and all other areas of the State that are not part of an organized municipality ~~except Indian reservations. For the purposes of permitting a community-based offshore wind energy project and structures associated with resource analysis activities necessary for such an intended project, the area of submerged land to be occupied for such a project and resource analysis structures is considered to be in the unorganized or deorganized areas~~.

~~**2. Subdivision.**~~

2-A. Subdivision. Except as provided in section 682-B, "subdivision" means a division of an existing parcel of land into 3 or more parcels or lots within any 5-year period, whether this division is accomplished by platting of the land for immediate or future sale, by sale of the land or by leasing.

The term "subdivision" also includes the division, placement or construction of a structure or structures on a tract or parcel of land resulting in 3 or more dwelling units within a 5-year period.

3. Building. Building shall mean any structure having a roof, partial roof supported by columns or walls used or intended to be used for the shelter or enclosure of persons, animals or objects regardless of the materials of which it is constructed.

4. Structure. "Structure" means anything constructed or erected with a fixed location on or in the ground, or attached to something having a fixed location on or in the ground, including, but not limited to, buildings, mobile homes, retaining walls, billboards, signs, piers and floats. It does not include a wharf, fish weir or trap that may be licensed under Title 38, chapter 9.

5. Accessory use or accessory structure. Accessory use or accessory structure shall include a use or structure subordinate to a permitted or conditional use or structure and customarily incidental to the permitted or conditional use of the structure.

6. Person. Person shall mean an individual, firm, association, organization, partnership, trust, company, corporation, state agency or other legal entity.

7. Development. Development shall mean any land use activity or activities directed toward using, reusing or rehabilitating air space, land, water or other natural resources, excluding, however, such specific uses or classes and categories of uses as the commission may by regulation determine do not need regulating to achieve the purpose, intent and provisions of this chapter.

8. Land use district. Land use district shall mean the area located within the boundaries of air, land or water delineated vertically or horizontally by the commission for distinct categories of use.

~~**8-A. Moratorium.** "Moratorium" means a temporary land use regulation or ordinance approved by the commission or a municipal legislative body which prevents development or subdivision by withholding authorization or approval necessary for development.~~

9. Nonconforming structure. Nonconforming structure shall ~~mean a structure, lawfully~~

~~existing at the time of adoption of district regulations or subsequent amendment made thereto, that does not conform to the district regulations.~~ have the same meaning ascribed to it in 38 MRSA §§435-449 and the regulations adopted thereunder, to wit, Chapter 1000 as amended.

10. Nonconforming use. Nonconforming use shall ~~mean a use of air, land, water or natural resources or a parcel of land, lawfully existing at the time of adoption of district regulation or subsequent amendments made thereto, that does not conform to the district regulations.~~ have the same meaning ascribed to it in 38 MRSA §§435-449 and the regulations adopted thereunder, to wit, Chapter 1000 as amended.

11. Dwelling unit. "Dwelling unit" means any part of a structure which, through sale or lease, is intended for human habitation, including single-family and multifamily housing, condominiums, time-share units, and apartments.

12. Real estate. "Real estate" means land and structures attached to it.

~~**13. Spaghetti lot.** "Spaghetti lot" means a parcel of land with a lot depth to shore frontage ratio greater than 5 to 1. Shore frontage means land abutting a river, stream, brook, coastal wetland or great pond as these features are defined in Title 38, section 480-B.~~

14. Commercial sporting camp. "Commercial sporting camp" means a building or group of buildings devoted primarily to the offering of primitive lodging facilities for a fee to persons primarily in pursuit of ~~primitive~~ recreation ~~or snowmobiling~~.

15. Campsite. "Campsite" means a camping location containing tents, registered tent trailers, registered pickup campers, registered recreational vehicles, registered trailers or similar devices used for camping. "Campsite" does not include a camping location that has access to a pressurized water system or permanent structures other than outhouses, fireplaces, picnic tables, picnic tables with shelters or lean-tos. A campsite may be designed to contain a maximum of 4 camping sites for transient occupancy by 12 or fewer people per site, or numbers of sites and occupancy rates consistent with a landowner's recreational policy filed with the commission. ~~The commission may require a campsite permit if it determines that the recreational policy is inconsistent with the commission's comprehensive land use plan.~~

16. Setback. "Setback" means the minimum horizontal distance from a lot line, shoreline or road to the nearest part of a structure.

17. Shoreline. "Shoreline" means the normal high water mark of tidal waters, a coastal or inland wetland, a standing body of water or flowing water.

18. Transient occupancy. "Transient occupancy" means occupancy that does not exceed ~~120~~ 180 days in a calendar year.

~~**19. Community-based offshore wind energy project.** "Community-based offshore wind energy project" means a wind energy development, as defined by Title 35-A, section 3451, subsection 11, with an aggregate generating capacity of less than 3 megawatts that meets the following criteria: the generating facilities are wholly or partially located on or above the coastal submerged lands of the State; the generating facilities are located within one nautical mile of one~~

~~or more islands that are within the unorganized and deorganized areas of the State and the project will offset part or all of the electricity requirements of those island communities; and the development meets the definition of "community-based renewable energy project" as defined by Title 35-A, section 3602, subsection 1.~~

20. Driveway. A vehicular access-way, other than a land management road, less than 1000 feet in length, serving two or fewer lots of record, for purposes of this definition, units, condominium or otherwise, do not constitute lots.

12 §682-A. SPAGHETTI-LOTS PROHIBITED

~~A person may not divide a parcel of land in the jurisdiction of the Maine Land Use Regulation Commission in such a way as to create a spaghetti-lot. This prohibition does not apply to:~~

~~**1. Rights-of-way.** Utility or transportation rights-of-way;~~

~~**2. Government purchase.** A parcel of land that is purchased by the Federal Government, State Government or local government; and~~

~~**3. Public benefit.** A parcel of land that the Maine Land Use Regulation Commission finds provides a significant public benefit and that can not be configured in another way to provide that benefit.~~

~~This section applies to any division of land within the jurisdiction of the Maine Land Use Regulation Commission.~~

12 §682-B. EXEMPTION FROM SUBDIVISION DEFINITION

A division accomplished by the following does not create a subdivision lot or lots unless the intent of the transfer is to avoid the objectives of this chapter.

1. Gifts to relatives. A division of land accomplished by gift to a ~~spouse, parent, grandparent, child, grandchild or sibling~~ relative by blood, marriage or adoption of the donor or the relative by blood, marriage or adoption of the owner or owners of the corporation, limited liability company, partnership or other entity of the lot or parcel does not create a subdivision lot if the donor has owned the lot or parcel for a continuous period of 5 years immediately preceding the division by gift and the lot or parcel is not further divided or transferred within 5 years from the date of division.

2. Transfer to governmental entity. A lot or parcel transferred to a municipality or county of the State, the State or an agency of the State is not considered a subdivision lot if ~~the following conditions are met:~~

~~A. The lot or parcel is held by the governmental entity for the conservation and protection of natural resources, public outdoor recreation or other bona fide public purposes and is not further sold or divided for a period of 20 years following the date of transfer;~~

~~B. A~~at the time of transfer the transferee provides written notice to the commission of transfer of the lot or parcel, including certification that the lot or parcel qualifies for exemption under this subsection.

3. Transfer to conservation organization. A lot or parcel transferred to a nonprofit, tax-exempt nature conservation organization qualifying under the United States Internal Revenue Code, Section 501(c)(3) is not considered a subdivision lot if the following conditions are met:

A. For a period of at least 20 years following the transfer, the lot or parcel must be limited by deed restriction or conservation easement for the protection of wildlife habitat or ecologically sensitive areas or for public outdoor recreation; and

B. The lot or parcel is not further divided or transferred except to another qualifying nonprofit, tax-exempt nature conservation organization or governmental entity.

4. Transfer of lots for forest management, agricultural management or conservation of natural resources. A lot or parcel is not considered a subdivision lot if the following conditions are met:

A. The lot is transferred and managed solely for forest management, agricultural management or conservation of natural resources;

B. The lot is at least 40 acres in size;

C. If the lot is less than 1,000 acres in size, no portion of the lot is located within 1,320 feet of the normal high water line of any great pond or river or within 250 feet of the upland edge of a coastal or freshwater wetland as defined in Title 38, section 436-A;

D. The original parcel from which the lot was divided is divided into an aggregate of no more than 10 lots within any 5-year period; and

E. When 3 to 10 lots each containing at least 40 acres in size are created within any 5-year period, a plan is recorded in accordance with section 685-B, subsection 6-A. Any subsequent division of a lot created from the original parcel within 10 years of the recording of the plan in the registry of deeds or any structural development unrelated to forest management, agricultural management or conservation creates a subdivision and may not occur without prior commission approval.

5. Unauthorized subdivision lots in existence for at least ~~20~~ 10 years. A lot or parcel that when sold or leased created a subdivision requiring a permit under this chapter is not considered a subdivision lot and is exempt from the permit requirement if the permit has not been obtained and the subdivision has been in existence for ~~20~~ 10 or more years. A lot or parcel is considered a subdivision lot and is not exempt under this subsection if:

A. Approval of the subdivision under section 685-B was denied by the commission and record of the commission's decision was recorded in the appropriate registry of deeds;

B. A building permit for the lot or parcel was denied by the commission under section 685-B and record of the commission's decision was recorded in the appropriate registry of deeds;

C. The commission has filed a notice of violation of section 685-B with respect to the subdivision in the appropriate registry of deeds; or

D. The lot or parcel has been the subject of an enforcement action or order and record of that

action or order was recorded in the appropriate registry of deeds.

6. Permit not required. Nothing in this section requires a permit for, or restricts the use of property for, hunting, trapping, fishing or other forms of ~~primitive~~ recreation, use of motorized vehicles on roads and trails or boating and snowmobiling as otherwise permitted by law.

Subchapter 2: MAINE LAND USE REGULATION COMMISSION

12 §683. CREATION OF MAINE LAND USE REGULATION COMMISSION

The Maine Land Use Regulation Commission, as established by Title 5, section 12004-D, subsection 1 to carry out the purposes stated in section 681, is created within the Department of Conservation, and in this chapter called the "commission." The commission is charged with implementing this chapter in all of the unorganized and deorganized areas of the State. The commission consists of 7 public members, none of whom may be state employees, who must be appointed by the Governor, subject to ~~review~~ confirmation by the joint standing committee of the Legislature having jurisdiction over conservation matters and to confirmation by the Legislature, for staggered 4-year terms. Appointees to the commission must be familiar with the needs and issues affecting the commission's jurisdiction. All appointees must reside in the commission's jurisdiction; work in the commission's jurisdiction; be a former resident or be retired after working within the commission's jurisdiction for a minimum of 5 years; or have expertise in commerce and industry, fisheries and wildlife, forestry or conservation issues as they affect the commission's jurisdiction. In selecting appointees, the Governor shall actively seek and give consideration to persons residing in or near the unorganized areas of the State and to persons residing on unorganized coastal islands. At least 3 members must be residents within the commission's jurisdiction. A county commissioner, county employee, municipal official or municipal employee is not considered to hold an incompatible office for purposes of simultaneous service on the commission. If a county or municipality is a participant in an adjudicatory proceeding before the commission, a commissioner, official or employee from that county or municipality may not participate in that proceeding.

Any member who has not been renominated by the Governor prior to the expiration of that member's term may not continue to serve on the commission, unless the Governor notifies the Legislature in writing prior to the expiration of that member's term that extension of that member's term is required to ensure fair consideration of specific major applications pending before the commission. That member's term ends upon final commission decisions on the specific applications identified in the Governor's communication. Any member renominated by the Governor prior to the expiration of that member's term shall continue to serve on the commission until the nomination is acted upon by the Legislature. A vacancy during an unexpired term is filled as provided in this section, but only for the unexpired portion of the term.

12 §684. COMMISSION OFFICERS, MEETINGS AND RULES; HEARINGS

The commission shall elect annually, from its own membership, a chair and such other officers it considers necessary. Meetings are held at the call of the chair or at the call of more than 1/2 of the membership. The commission, acting in accordance with the procedures set forth

in Title 5, chapter 375, subchapter II, may adopt whatever rules it considers necessary for the conduct of its business. The commission shall keep minutes of all proceedings, which are a public record available and on file in the office of the commission. Members of the commission are compensated as provided in Title 5, chapter 379. A quorum of the commission for the transaction of business is 4 members. No action may be taken by the commission unless upon approval by a vote of 4 members.

Whenever the commission is required or empowered to conduct a hearing pursuant to any provision of law, the hearing may be held and conducted by the commission or by any member of the commission or by any qualified employee or representative of the commission as the commission chair may determine. If the hearing is conducted by a single commissioner or qualified employee or representative, the commissioner, employee or representative shall report the findings of fact and conclusions to the commission together with a transcript of the hearing and all exhibits. The findings of fact and conclusions become a part of the record. The commission is not bound by the findings or conclusions when acting upon the record, but shall take action, issue orders and make decisions as if it had held and conducted the hearing itself.

When the commission elects to hold multiple public hearings on any matter under this chapter, all hearings held within a 45-day period are considered one hearing for administrative purposes.

12 §685. COMMISSION BUDGET, FINANCING AND EXECUTIVE DIRECTOR

The Commissioner of Conservation shall prepare a biennial budget and shall submit to the Legislature requests for appropriations sufficient to carry out its assigned tasks. The commission may accept contributions of any type from any source to assist it in carrying out its assigned tasks, and make such requirements in respect to the administration of such funds, not inconsistent with this subchapter, as are required as conditions precedent to receiving such funds, federal or otherwise. The commission shall give public notice of all contributions, in the state paper, stating the source, the amount and the purpose of such contributions. The commission may contract with municipal, State and Federal Governments or their agencies to assist in the carrying out of any of its assigned tasks. ~~The Commissioner of Conservation, with the consent of a majority of the commission, shall appoint~~ The Governor shall appoint, subject to confirmation by the joint standing committee of the Legislature having jurisdiction over conservation matters, and to confirmation by the Legislature, a director who shall be the principal administrative, operational and executive employee of the commission. The director shall attend all meetings of the commission and be permitted to participate fully but shall not be a voting member of the commission.

The commission shall establish and maintain at least 2 field offices, one in Greenville and one in Ashland, designed principally to provide assistance to the public on permit applications and to carry out such other functions of the commission as appropriate. These field offices shall be established in locations chosen to provide the maximum benefit to the public while minimizing costs. Historic levels of permitting activity, the convenience of access and the availability and cost of office facilities shall be considered in choosing the field office locations. Each office shall be open on a part-time basis at least 2 days a month or as public demand for the services of such field offices warrant and as resources allow. Whenever practicable, the commission shall make use of existing personnel to staff these field offices.

12 §685-A. LAND USE DISTRICTS AND STANDARDS

1. Classification and districting of lands. The commission, acting on principles of sound land use planning and development, shall determine the boundaries of areas within the unorganized and deorganized areas of the State that fall into land use districts and designate each area in one of the following major district classifications: protection, management and development. Except with prior Legislative approval, no less than 30% of a township or plantation shall be designated as a Development district. The commission, acting in accordance with the procedures set forth in Title 5, chapter 375, subchapter II, shall adopt regulations for determining the boundaries of each major type of district in accordance with the following standards:

A. Protection districts: Areas where development would jeopardize significant natural, recreational and historic resources, including, but not limited to, flood plains, precipitous slopes, wildlife habitat and other areas critical to the ecology of the region or State;

B. Management districts: Areas that are appropriate for commercial forest product or agricultural uses or for the extraction of nonmetallic minerals and for which plans for additional development are not presently formulated nor additional development anticipated; and

C.

D. Development districts: Areas discernible as having patterns of intensive residential, recreational, commercial or industrial use or commercial removal of metallic minerals and areas appropriate for designation as development districts ~~when measured against the purpose, intent and provisions of this chapter~~.

In addition to delineating the major district classifications listed, the commission may delineate such subclassifications as may be necessary and desirable to carry out the intent of this chapter.

2. Interpretation of district boundaries. Where uncertainty exists as to the boundaries of districts as shown on the official land use maps the following shall apply:

A. Boundaries indicated as approximately following center lines of public or private roads shall be construed to follow such center lines.

B. Boundaries indicated as following railroad lines shall be construed to be midway between the 2 outermost rails.

C. Boundaries indicated as approximately following property lines, township or county lines shall be construed as following such lines.

D. Boundaries indicated as following shorelines shall be construed to follow such shorelines, and in event of natural change in the shorelines, shall be construed as moving with the normal high water mark; boundaries indicated as following the center lines of streams, rivers, canals, lakes or other bodies of water shall be construed to follow such natural center lines.

E. Boundaries indicated as approximately following ridge lines or specific contour lines shall be construed to follow such lines.

F. Boundaries indicated as parallel to or as extensions of features indicated in paragraphs A

to E shall be so construed.

G. Where physical or cultural features existing on the ground are at variance with those shown on the official land use maps or in other circumstances not covered by paragraphs A to F, the commission shall interpret the district boundaries.

3. Land use standards. The commission, acting on principles of sound land use planning and development, shall prepare land use standards prescribing standards for the use of air, lands and waters. Except as provided in this chapter, these standards shall be adopted by the commission in accordance with the procedures set forth in Title 5, chapter 375, subchapter II.

In addition to the purposes set forth in section 681, the land use standards shall:

~~A. Encourage the most desirable and appropriate use of air, land and water resources consistent with the comprehensive land use plan;~~

B. Protect public health by ~~reduction of~~ avoiding, minimizing or compensating for noise, air pollution, water pollution and other environmental intrusions;

C. Protect ~~and preserve~~ significant natural, scenic and historic features where appropriate~~,~~ and beneficial ~~and consistent with the comprehensive land use plan~~;

D. Advise and assist the Department of Transportation and other concerned agencies in transportation planning and operation;

D-1. Provide for safe and appropriate loading, parking and circulation of land, air and water traffic;

~~E. Encourage minimal adverse impact of one use upon the use of surrounding areas by setting standards of performance describing desirable and acceptable levels of operation in connection with any use and its relation to surrounding areas, including provisions for the eventual amelioration of existing adverse impact;~~

F. Reflect a consideration of the availability and capability of the natural resources base, including soils, topography or sufficient healthful water supplies; and

G. Regulate, as necessary, motor vehicles as defined in Title 29-A, section 101, subsection 42, on icebound inland lakes that are completely encompassed by unorganized territories during the hours from sunset to sunrise of the following day.

4. Land use standards considered as minimum requirements. Land use standards shall be interpreted and applied by the commission as minimum requirements, adopted to reasonably and effectively promote health, safety and general welfare and insure compliance with state plans and policies, including but not limited to promoting economic development and utilization of natural resources.

Whenever the requirements of the adopted land use standards are at variance with the requirements of any other lawfully adopted rules, regulations, standards, ordinances, deed restrictions or covenants, the more protective of existing natural, recreation and historic resources shall govern.

~~Any portion of a land use district which subsequently becomes an organized municipality or part of an organized municipality or any plantation which adopts planning, zoning and subdivision control as provided in Title 30-A, section 7059, shall continue to be regulated by the Maine Land~~

~~Use Regulation Commission pursuant to this chapter until such time as the municipality or plantation of which the regulated district is then a part shall adopt land use plans and regulations not less protective of the existing natural, recreational or historic resources than those adopted by the commission.~~

~~A. Any municipality organized after September 23, 1971, or any plantation which adopts planning, zoning and subdivision control as provided in Title 30-A, section 7059, may submit to the commission and receive the approval of the commission of the following:~~

~~(1) A comprehensive land use plan for that plantation or proposed city or town;~~

~~(2) Standards for determining land use district boundaries and uses permitted within the districts in that plantation or proposed city or town;~~

~~(3) A land use district boundary map for that plantation or proposed city or town; and~~

~~(4) Such other proposed regulations or standards as the commission deems to be necessary to achieve the purpose, intent and provisions of this chapter.~~

~~Upon request of the municipality or plantation, the commission shall prepare such plans, maps, regulations and standards as it may deem necessary to meet minimum planning and zoning standards for its approval of those standards.~~

~~Upon obtaining approval, the plantation, city or town shall thereafter adopt, administer and enforce the approved plans, maps, regulations and standards.~~

~~B. From time to time, the commission may review the administration and enforcement of local land use plans and regulations by plantations and municipalities which have adopted land use plans, maps, regulations and standards approved by the commission. If, following the review, the commission finds that any of the following have occurred, the commission may reestablish its jurisdiction over that plantation or municipality:~~

~~(1) A plantation or municipality has repealed the land use plan, maps, standards or regulations necessary to satisfy the requirements of this subsection or has substantially modified the land use plan, maps, standards or regulations so that the resources of the plantation or municipality are not reasonably protected;~~

~~(2) A plantation or municipality has abolished or does not have functioning the administrative bodies and officers necessary to implement the land use program as approved by the commission, normally a planning board, board of appeals and code enforcement officer are included, but this may vary depending on the local program; or~~

~~(3) A plantation or municipality has not administered or enforced its land use plan, maps, standards or regulations in a manner which reasonably protects the resources in the plantation or municipality involved.~~

~~The action by the commission shall conform with the provisions for rulemaking of the Maine Administrative Procedure Act, Title 5, chapter 375.~~

~~Action taken by the commission to reestablish its jurisdiction over a plantation or municipality shall be effective immediately, but shall be submitted to the current or next regular session of the Legislature for approval. If the Legislature fails to act, the action shall continue in effect.~~

5. Considerations, application and exemptions. A land use standard may not deprive an owner or lessee or subsequent owner or lessee of any interest in real estate of the use to which it

is lawfully devoted at the time of adoption of that standard. Year-round and seasonal single residences, industrial forest product facilities, commercial timberland and operating farms in existence and use as of September 23, 1971, while so used, and new accessory buildings or structures or renovations of the buildings or structures that are or may be necessary to the satisfactory and comfortable continuation of these residential, commercial, industrial and farm uses, except for those located in areas of special flood hazard as defined in the commission's rules, are exempt from the requirements of section 685-B, subsection 1.

Land use standards adopted pursuant to this chapter for management districts may not limit the right, method or manner of cutting or removing timber or crops, the construction and maintenance of hauling roads, the operation of machinery or the erection of buildings, including buildings to store equipment and materials for maintaining roads, and other structures used primarily for agricultural or commercial forest product purposes, including tree farms and forest product manufacturing facilities. The commission may not require a permit for such activities in a management district. Notwithstanding this subsection, a permit from the commission is required for roads covering a ground area of 3 acres or more constructed in management districts, unless those roads are constructed and maintained in accordance with the guidelines of the commission's Land Use Handbook, Section 6, "Erosion Control on Logging Jobs," or as revised. The commission may require a person constructing a road to notify the commission of the location of the road within 21 days.

Land use standards adopted pursuant to this chapter must establish a minimum setback of 100 feet for all structures within a commercial sporting camp complex that are constructed solely for the housing of guests, including structures within a main sporting camp complex and an outpost camp. The standards must establish a minimum setback of 150 feet for all other structures within a sporting camp complex, including, but not limited to, a main lodge, a dining area, a workshop and a parking area.

In adopting district boundaries and land use standards, the commission shall give consideration to public and private planning reports and other data available to it, and shall give weight to existing uses of land and to any reasonable plan of its owner as to its future use.

A permit from the commission is not required for the repair or maintenance of ~~county-owned~~ any roads, bridges or culverts as long as the repair or maintenance is conducted in accordance with commission standards that pertain to these activities.

6. Interim district boundaries and land use standards.

7. Hearings and procedures.

7-A. Procedure for adoption or amendment of land use district standards, district boundaries and land use maps. This subsection governs procedures for the establishment and amendment of land use district standards and boundaries and the amendment of the commission's land use maps.

A. The commission or its staff may initiate and any state or federal agency, any county or municipal governing body or any property owner or lessee may petition for adoption or amendment of land use district standards, district boundaries or land use maps.

B. Adoption and amendment of land use district standards, district boundaries and land use maps are rule-making procedures subject to the requirements of Title 5, chapter 375,

subchapter II, except that the requirements of Title 5, section 8052, subsections 5, 5-A and 7; section 8053-A; section 8056, subsections 1, 3 and 4; section 8056-A; section 8057, subsection 2; section 8057-A; section 8060; section 8062; and section 8064 do not apply. The requirements of Title 5, chapter 375, subchapter II are further modified by the following provisions.

~~(1) Public notice of proposals to adopt or amend land use district standards, district boundaries or land use maps must state the time and the place where copies of the proposal may be inspected prior to the hearing.~~

~~(2) The commission shall give notice of hearings to amend district boundaries, by mail, to appropriate state and federal agencies and the owners of directly affected and abutting properties, according to their names and addresses as shown on the records of Maine Revenue Services or plantation or town tax assessors. If the number of owners of directly affected and abutting properties is more than 50, notice may instead be by publication conforming to the requirements for newspaper publication of hearings under Title 5, chapter 375, subchapter IV.~~

~~(3) At any time prior to the date of adoption of proposed land use district standards, land use boundaries or land use maps, the commission may elect to reopen the public hearing record and extend the time period for public comment to such date as it may designate.~~

~~(4) The commission must act to adopt or not to adopt proposed land use district standards, land use boundaries or land use maps within 90 days after the date of final closure of the public hearing.~~

~~(5)~~ (1) Land use district boundaries and land use maps become effective 15 days after adoption or amendment by the commission, as long as the boundaries and maps are available in the appropriate registry of deeds for each county. Notice of adoption or amendment of land use district boundaries and land use maps must be given by publication one time in a newspaper of general circulation published in the area affected.

~~(6)~~ (2) Permanent land use standards adopted by the commission are effective immediately, but must be submitted to the next regular or special session of the Legislature for approval or modification. If the Legislature fails to act, those standards continue in full force and effect.

8. Amendments to district boundaries and standards.

8-A. Criteria for adoption or amendment of land use district boundaries. A land use district boundary may ~~not~~ be adopted or amended upon request by the landowner. ~~unless there is substantial evidence that:~~

~~A. The proposed land use district is consistent with the standards for district boundaries in effect at the time, the comprehensive land use plan and the purpose, intent and provisions of this chapter; and~~

~~B. The proposed land use district satisfies a demonstrated need in the community or area and has no undue adverse impact on existing uses or resources or a new district designation is more appropriate for the protection and management of existing uses and resources within the affected area.~~

8-B. Criteria for amendment of land use standards. Adoption or amendment of land use standards may not be approved unless there is ~~substantial~~ evidence that the proposed land use standards would serve the purpose, intent and provisions of this chapter ~~and would be consistent with the comprehensive land use plan.~~

9. Periodic review of district boundaries and land use standards. At the end of each 5 years following initial adoption of permanent land use standards and districts, the commission shall make a comprehensive review of the classification and delineation of districts of the land use standards. The assistance of appropriate state agencies must be secured in making this review and public hearings must be held in accordance with the requirements set forth in subsection 7-A.

B. The access and use needs of a person with a physical disability as described in Title 5, section 4553-A, subsection 1, paragraphs C and D who resides in or regularly uses a structure; or

10. Special exceptions and variances. The commission may approve the issuance of a special exception permit in strict compliance with this chapter and the rules and standards adopted pursuant to this chapter. The commission may grant a variance when the commission finds that the proposed development is in keeping with the general spirit and intent of this chapter, that the public interest is otherwise protected and that strict compliance with the rules and standards adopted by this commission would cause unusual hardship or extraordinary difficulties because of the following:

A. Exceptional or unique conditions of topography, access, location, shape, size or other physical features of the site;

C. Unusual circumstances that were not anticipated by the commission at the time the rules and standards were adopted.

11. Public utility exemptions. Real estate used or to be used by a public utility, as defined in Title 35-A, section 102, subsection 13, may be wholly or partially exempted from regulation to the extent that the commission may not prohibit such use but may impose terms and conditions for use consistent with the purpose of this chapter, when, upon timely petition to the Public Utilities Commission and after a hearing, the Public Utilities Commission determines that such exemption is necessary or desirable for the public welfare or convenience.

11. Exemptions. Real estate used or to be used by a public utility, as defined in Title 35-A, section 102, subsection 13, or a person who is issued a certificate by the Public Utilities Commission under Title 35-A, section 122 may be wholly or partially exempted from regulation to the extent that the commission may not prohibit such use but may impose terms and conditions for use consistent with the purpose of this chapter, when, upon timely petition , notice and public hearing, the Public Utilities Commission determines that such exemption is necessary or desirable for the public welfare or convenience. The Public Utilities Commission shall adopt by rule procedures to implement this subsection. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

12. Timber harvesting activities in areas adjacent to rivers, streams, ponds, wetlands and tidal waters. Rules adopted by the Commissioner of Conservation pursuant to section

8867-B for the purpose of regulating timber harvesting and timber harvesting activities in areas adjacent to rivers, streams, ponds, wetlands and tidal waters become effective for the unorganized and deorganized areas on the date established under Title 38, section 438-B, subsection 5.

The Director of the Bureau of Forestry within the Department of Conservation shall administer and enforce the regulation of timber harvesting and timber harvesting activities in these areas. For the purposes of this subsection, "timber harvesting" and "timber harvesting activities" have the same meanings as in section 8868, subsections 4 and 5.

13. Additions to expedited permitting area for wind energy development. The commission may add areas in the State's unorganized and deorganized areas to the expedited permitting area for wind energy development in accordance with Title 35-A, section 3453.

12 §685-B. DEVELOPMENT REVIEW AND APPROVAL

1. Review and approval required. Except as provided in this section or by commission rule:

A. A structure or part of a structure may not be erected, changed, converted or wholly or partly altered or enlarged in its use or structural form without a permit issued by the commission. Normal maintenance or repair may be made to a structure or part of a structure without a permit issued by the commission in locations other than areas of special flood hazard as defined in the commission's rules;

B. A person may not commence development of or construction on any lot, parcel or dwelling unit within any subdivision or sell or offer for sale any interest in any lot, parcel or dwelling unit within any subdivision without a permit issued by the commission; or

C. A person may not commence any construction or operation of any development without a permit issued by the commission.

1-A. Exceptions. Except as provided in this section or by commission rule:

A. A permit is not required for the repair and maintenance of an existing road culvert or for the replacement of an existing road culvert, as long as the replacement culvert is:

(1) No more than one standard culvert size wider in diameter than the culvert being replaced;

(2) No more than 25% longer than the culvert being replaced; and

(3) No longer than 75 feet.

Ancillary culverting activities, including excavation and filling, are included in this exemption. A person repairing, replacing or maintaining an existing culvert under this paragraph shall ensure that erosion control measures are taken to prevent sedimentation of the water and that the crossing does not block fish passage in the water course;

B. A permit is not required for those aspects of a project approved by the Department of Environmental Protection under Title 38 if the commission determines that the project is an allowed use within the subdistrict or subdistricts for which it is proposed. Notice of the intent

to develop and a map indicating the location of the proposed development must be filed with the commission prior to or concurrently with submission of a development application to the Department of Environmental Protection;

C. A permit is not required for a campsite in any ~~management~~ district;

~~D. A permit is not required for an offshore wind energy demonstration project approved by the Department of Environmental Protection pursuant to Title 38, section 480-HH. Notice of the intent to develop and a map indicating the location of the proposed development must be filed with the commission prior to or concurrently with submission of an application to the Department of Environmental Protection pursuant to Title 38, section 480-HH; and~~

E. A permit or other approval by the commission is not required for a hydropower project that uses tidal or wave action as a source of electrical or mechanical power or is located partly within an organized municipality and partly within an unorganized territory.

F. A permit or other approval by the commission is not required for a wind energy project that uses wind action as a source of electrical or mechanical power or is located partly with an organized municipality and partly within an unorganized territory.

1-B. Delegation to staff. Building Permits and Subdivision Permits shall be delegated to staff. The commission ~~may~~ must establish standards by which authority may be delegated to its staff, to approve with reasonable conditions or deny applications submitted. Such standards shall be deemed major substantive rulemaking. Any person aggrieved by a decision of the staff has the right to a review of that decision by the commission. A request for such a review must be made within 30 days of the staff decision.

2. Application for approval. The application forms for approval, as provided by the commission, must be completed and signed by the applicant and must be accompanied by the following:

A. A plan of the proposed structure, subdivision or development showing the intended use of the real estate, the proposed change, the details of the project and such other information as may be required by the commission to determine conformance with applicable land use standards;

B. The fee prescribed by the commission rules, that fee to be a minimum of $50 but no greater than 1/4 of 1% of the total development costs. The fees apply to all amendments except for minor changes to building permits. In addition to the fee paid in accordance with this paragraph, the director of the Maine Land Use Regulation Commission may assess a processing fee on applications for extraordinary projects in accordance with section 685-F. The fee shall be returned to the applicant in the event of a denial, within 30 days of the denial;

C.

D. Evidence of sufficient right, title or interest in all of the property that is proposed for development or use. For purposes of this subsection, the written permission of the record owner or owners of flowed land is deemed sufficient right, title or interest to confer standing for submission of a permit application, provided that the letter of permission specifically identifies the activities being performed and the area that may be used for that purpose. The commission may not refuse to accept, under this paragraph, a permit application for any

prohibited activity if the owner or lessee of land adjoining a great pond has made a diligent effort to locate the record owner or owners of the flowed land in question and has been unable to do so; and

~~E. For a new or expanded development requiring an annual supply of wood or wood-derived materials in excess of 150,000 tons green weight, a wood supply plan for informational purposes to the Maine Forest Service at the time of application. The wood supply plan must include, but is not limited to, the following information:~~

~~(1) The expected operational life of the development;~~

~~(2) The projected annual wood consumption of wood mill residue, wood fiber and recycled materials from forest products during the entire operational life of the development;~~

~~(3) The expected market area for wood supply necessary to supply the development; and~~

~~(4) Other relevant wood supply information.~~

2-A. Priority for processing. Applications to replace destroyed seasonal or permanent structures shall be given top priority for processing when hardship can be demonstrated by the applicant provided that:

A. The dimensions of the new structure are not greater than the preexisting structure; and

B. The new structure will not adversely affect surrounding uses and resources.

2-B. Determination deadline. The ~~commission~~ staff shall render its determination on an application for subdivision approval within 60 days after the ~~commission~~ staff determines that the application is complete and the proposal is a permitted use within the affected district or subdistrict. The staff shall determine an application is complete or not complete 21 days after submitted by the applicant.

2-C. Wind energy development; ~~community-based offshore wind energy projects~~; determination deadline. The following provisions govern wind energy development.

A. The commission shall consider any wind energy development in the expedited permitting area under Title 35-A, chapter 34-A with a generating capacity of 100 kilowatts ~~or greater or a community-based offshore wind energy project~~ a use requiring a permit, but not a special exception, within the affected districts or subdistricts~~. For an offshore wind energy project that is proposed within one nautical mile of an island within the unorganized or deorganized areas, the commission shall review the proposed project to determine whether the project qualifies as a community-based offshore wind energy project and therefore is within the jurisdiction of the commission.~~ The commission may require an applicant to provide a timely notice of filing prior to filing an application for, and may require the applicant to attend a public meeting during the review of, a wind energy development ~~or a community-based offshore wind energy project~~. The commission shall render its determination on an application for such a development or project within 185 days after the commission determines that the application is complete, except that the commission shall render such a decision within 270 days if it holds a hearing on the application. The chair of the Public Utilities Commission or the chair's designee shall serve as a nonvoting member of the commission and may participate fully but is not required to attend hearings when the

commission considers an application for an expedited wind energy development ~~or a community-based offshore wind energy project~~. The chair's participation on the commission pursuant to this subsection does not affect the ability of the Public Utilities Commission to submit information into the record of the commission's proceedings. For purposes of this subsection, "expedited permitting area," "expedited wind energy development" and "wind energy development" have the same meanings as in Title 35-A, section 3451.

B. At the request of an applicant, the commission may stop the processing time for a period of time agreeable to the commission and the applicant. The expedited review period specified in paragraph A does not apply to the associated facilities, as defined in Title 35-A, section 3451, subsection 1, of the wind energy development ~~or community-based offshore wind energy project~~ if the commission determines that an expedited review time is unreasonable due to the size, location, potential impacts, multiple agency jurisdiction or complexity of that portion of the development or project.

3. Hearings and procedures.

3-A. Hearings and procedures. Hearings and procedures in connection with the review and approval of a permit application are subject to this subsection.

A. The commission may determine on its own motion to hold a hearing on the application.

B. If the commission determines to act upon a permit application without a hearing, the commission, within ~~90~~ 60 days after receiving the complete application, shall make findings of fact and issue an order either granting approval, subject to reasonable terms and conditions that the commission determines appropriate in order to fulfill the requirements and intent of this chapter, the comprehensive land use plan and the commission's standards, or denying approval of the application as proposed.

C. Any person aggrieved by a decision of the commission or its staff concerning any permit application upon which no hearing was held may, within 30 days of that decision, petition the commission for a hearing. The commission is not required to hold a hearing, but shall respond within ~~45~~ 30 days of receipt of the petition by notifying the petitioner in writing of the date, time and place set for the requested hearing or of the denial of the request.

D. Within ~~60~~ 30 days after the commission adjourns any hearing held under this subsection, it shall make findings of fact and issue an order either granting approval, subject to reasonable terms and conditions that the commission determines appropriate in order to fulfill the requirements and intent of this chapter, the comprehensive land use plan and the commission's standards, or denying approval of the application as proposed.

4. Criteria for approval. ~~In approving applications submitted to it pursuant to this section, the commission may impose such reasonable terms and conditions as the commission may consider appropriate. In making a decision under this subsection regarding an application for a community-based offshore wind energy project, the commission may not consider whether the project meets the specific criteria designated in section 1862, subsection 2, paragraph A, subparagraph (6), divisions (a) to (d). This limitation is not intended to restrict the commission's review of related potential impacts of the project as determined by the commission.~~

The commission may not approve an application, unless:

A. Adequate technical and financial provision has been made for complying with the requirements of the State's air and water pollution control and other environmental laws, and those standards and regulations adopted with respect thereto, including without limitation the minimum lot size laws, sections 4807 to 4807-G, the site location of development laws, Title 38, sections 481 to 490, and the natural resource protection laws, Title 38, sections 480-A to 480-Z, and adequate provision has been made for solid waste and sewage disposal, for controlling of offensive odors and for the securing and maintenance of sufficient healthful water supplies;

B. Adequate provision has been made for loading, parking and circulation of land, air and water traffic, in, on and from the site, and for assurance that the proposal will not cause unreasonable congestion or unsafe conditions with respect to existing or proposed transportation arteries or methods;

~~C. Adequate provision has been made for fitting the proposal harmoniously into the existing natural environment in order to ensure there will be no undue adverse effect on existing uses, scenic character and natural and historic resources in the area likely to be affected by the proposal. In making a determination under this paragraph regarding development to facilitate withdrawal of groundwater, the commission shall consider the effects of the proposed withdrawal on waters of the State, as defined by Title 38, section 361-A, subsection 7; water-related natural resources; and existing uses, including, but not limited to, public or private wells, within the anticipated zone of contribution to the withdrawal. In making findings under this paragraph, the commission shall consider both the direct effects of the proposed withdrawal and its effects in combination with existing water withdrawals.~~

~~In making a determination under this paragraph regarding an expedited wind energy development, as defined in Title 35-A, section 3451, subsection 4, or a community-based offshore wind energy project, the commission shall consider the development's or project's effects on scenic character and existing uses related to scenic character in accordance with Title 35-A, section 3452.~~

~~In making a determination under this paragraph regarding a wind energy development, as defined in Title 35-A, section 3451, subsection 11, that is not a grid-scale wind energy development, that has a generating capacity of 100 kilowatts or greater and that is proposed for location within the expedited permitting area, the commission shall consider the development's or project's effects on scenic character and existing uses relating to scenic character in the manner provided for in Title 35-A, section 3452;~~

D. The proposal will not cause unreasonable soil erosion or reduction in the capacity of the land to absorb and hold water and suitable soils are available for a sewage disposal system if sewage is to be disposed on-site;

E. The proposal is otherwise in conformance with this chapter and the regulations, ~~standards and plans~~ adopted pursuant thereto; and

F. In the case of an application for a structure upon any lot in a subdivision, that the subdivision has received the approval of the commission.

The burden is upon the applicant to demonstrate by substantial evidence that the criteria for approval are satisfied, and that the public's health, safety and general welfare will be adequately protected. Except as otherwise provided in Title 35-A, section 3454, the commission shall permit the applicant and other parties to provide evidence on the economic benefits of the proposal as

well as the impact of the proposal on energy resources.

4-A. Subdivision of land subject to liquidation harvesting. The commission may not approve an application for a subdivision if the commission determines that timber on the parcel proposed for subdivision has been harvested in violation of rules adopted pursuant to section 8869, subsection 14. If a violation of rules adopted by the Maine Forest Service to substantially eliminate liquidation harvesting has occurred, the commission must determine prior to granting approval for the subdivision that 5 years have elapsed from the date the landowner under whose ownership the harvest occurred acquired the parcel. The commission may request technical assistance from the Maine Forest Service to determine if a rule violation has occurred.

For the purposes of this subsection, "liquidation harvesting" has the same meaning as in section 8868, subsection 6 and "parcel" means a contiguous area within one municipality, township or plantation owned by one person or a group of persons in common or joint ownership. This subsection takes effect on the effective date of rules adopted pursuant to section 8869, subsection 14.

4-B. Special provisions; wind energy development or project. In the case of a wind energy development, as defined in Title 35-A, section 3451, subsection 11, with a generating capacity greater than 100 kilowatts, ~~or a community-based offshore wind energy project~~, the developer must demonstrate, in addition to requirements under subsection 4, that the proposed generating facilities, as defined in Title 35-A, section 3451, subsection 5:

A. Will meet the requirements of the Board of Environmental Protection's noise control rules adopted pursuant to Title 38, chapter 3, subchapter 1, article 6;

B. Will be designed and sited to avoid undue adverse shadow flicker effects;

C. Will be constructed with setbacks adequate to protect public safety, as provided in Title 35-A, section 3455. In making findings pursuant to this paragraph, the commission shall consider the recommendation of a professional, licensed civil engineer as well as any applicable setback recommended by a manufacturer of the generating facilities; and

D. Will provide significant tangible benefits, as defined in Title 35-A, section 3451, subsection 10, within the State, as provided in Title 35-A, section 3454, if the development is an expedited wind energy development, as defined in Title 35-A, section 3451, subsection 4.

5. Limitation, expiration, transfer and revocation of approval. Commission authorization pursuant to this section shall permit only the arrangement and construction set forth in the approval as issued. Change in use, arrangement or construction shall be considered a violation of this chapter and punishable as provided in this chapter.

A violation of any condition attached to a commission approval or permit, or any change in use, arrangement or construction from that approved, shall be deemed a violation of this chapter and, in addition to any other penalties or remedies prescribed herein or otherwise provided by law, shall constitute grounds for the revocation or suspension of this approval. The commission may, acting in accordance with Title 5, section 10003, amend, modify or refuse to renew any commission approval or permit where the commission determines that the criteria for approval set forth in subsection 4, paragraphs A to F, have not been, are not being, or will not be satisfied.

6. Recording of approved proposals. A copy of each application, marked approved or disapproved, shall be retained in the commission files and shall be available to the public during normal business hours.

In the event the commission approves an application for subdivision approval, a copy of an approved plat or plan and a copy of the conditions required by the commission to be set forth in any instrument conveying an interest within the subdivision attested to by an authorized commission signature shall be filed with the appropriate registry of deeds in the county in which the real estate lies.

A registrar of deeds shall not record a copy of conditions or any plat or plan purporting to subdivide real estate located within the unorganized and deorganized lands of the State, unless the commission's approval is evidenced thereon.

The grantee of any conveyance of unrecorded subdivided real estate or subdivided real estate recorded in violation of this section may recover the purchase price, at interest, together with damages and costs in addition to any other remedy provided by law.

6-A. Recording of land division plan required. ~~A copy of each land division plan must be recorded in the registry of deeds of the county in which the land is located.~~

~~A. When 3 to 10 lots each containing at least 40 acres are created within a 5-year period and are located more than 1,320 feet from the normal high water line of any great pond or river and more than 250 feet from the upland edge of a coastal or freshwater wetland as defined in Title 38, section 436-A, a plan showing the division of the original parcel must be filed by the person creating the 3rd lot with the commission within 60 days of the creation of that lot. The plan must state that the lots may be used only for forest management, agricultural management or conservation of natural resources.~~

~~B. A register of deeds may not record any plan depicting these lots within the unorganized and deorganized lands of the State unless the commission's certification that the division qualifies under section 682-B is evidenced on the plan. The commission must determine whether the plan qualifies under section 682-B within 15 business days of receipt of the plan.~~

~~C. A copy of the certified plan must be filed within 30 days of certification with the State Tax Assessor and the appropriate registry of deeds in the county in which the land is located.~~

~~D. Failure to file the plan required by this subsection is a violation of this chapter subject to the penalties provided in section 685-C, subsection 8.~~

6-B. Notification of land division required.

7. Nonconforming uses and nonconforming structures. ~~To achieve the purposes set forth in this chapter after the adoption of permanent district standards and permanent districts, the commission may regulate and prohibit expansion and undue perpetuation of nonconforming uses. Specifically the commission may regulate and prohibit:~~

~~A. Changes in nonconforming uses to another nonconforming use;~~

~~B. Extension or enlargement of nonconforming uses or nonconforming structures;~~

~~C. Resumption of nonconforming uses, by prohibiting such resumption if such use is discontinued for 2 years or abandoned; and~~

~~D. Movement or enlargement of a nonconforming structure or of a structure containing a nonconforming use.~~

~~The commission may also provide for the termination of commercial or industrial nonconforming uses by specifying in land use standards the period or periods in which nonconforming uses shall be terminated and by adjusting such compulsory terminations so as to allow reasonable time for the conversion of such nonconforming uses and reasonable schedules for the amortization of investment.~~

~~Any use for which a special exception has been granted by the commission, as provided for in section 685-A, subsection 10, shall not be deemed a nonconforming use, but shall be deemed a conforming use in such district.~~

~~For applications to reconstruct a damaged or destroyed nonconforming structure, the commission shall require the new structure to comply with provisions of this chapter to the maximum extent possible.~~

7-A. Reconstruction of ~~commercial sporting~~ camps. The commission may approve a permit for the reconstruction of a damaged or destroyed nonconforming ~~commercial sporting~~ camp that was a permissible use under commission standards at the time of the damage or destruction. The commission may, consistent with public health, safety and welfare, and to the minimum extent necessary, waive standards that made the original structure nonconforming. The reconstructed structure must replicate the original structure and use to the maximum extent possible and it must be on the same location and within the same footprint as the original structure. Reconstruction must occur within 2 years of the damage or destruction.

8. Certificates of compliance. It shall be unlawful to use or occupy or permit the use or occupancy of any land, structure, or part thereof, created, erected, changed, converted, or wholly or partly altered or enlarged in its use or structural form, requiring subsequent review and approval pursuant to this subchapter, until a certificate of compliance has been issued therefor by ~~the~~ commission staff stating that the requirements and conditions of approval have been met.

A certificate of compliance may contain such terms and conditions as will protect the health, safety and general welfare of the occupants, users and the public.

~~The commission may establish standards within which authority shall be delegated to its staff, to issue or deny certificates of compliance.~~ Any person aggrieved by a decision of the staff shall have the right to a review of such decision by the commission members within 30 days of such decision.

9. Periodic review of district boundaries and land use standards.

10. Moratorium. ~~The commission may adopt a moratorium on the processing or issuance of development permits on a township-by-township basis, on portions of a township or on portions of the territory under its jurisdiction. Any moratorium adopted by the commission must meet the following requirements.~~

~~A. The moratorium must be necessary:~~

~~(1) To prevent the shortage or overburdening of public facilities which would otherwise occur during the effective period of the moratorium or which is reasonably foreseeable~~

~~as a result of any proposed or anticipated development; or~~

~~(2) Because the application of existing comprehensive plans, land use or zoning regulations or other applicable laws, if any, is inadequate to prevent serious public harm from residential, commercial or industrial development in the affected geographic area.~~

~~B. The moratorium must be of a definite term not to exceed 180 days except that the moratorium may be extended for additional 180-day periods provided that the commission:~~

~~(1) Finds that the problem creating the need for a moratorium still exists; and~~

~~(2) Finds that reasonable progress is being made to alleviate the problem creating the need for a moratorium.~~

~~C. Any organized town or plantation which has petitioned the commission to remove that town or plantation from the jurisdiction of the Maine Land Use Regulation Commission in compliance with section 685-A, subsection 4, may, through a town meeting, vote to adopt a moratorium to provide a period of time for the town or plantation to adopt a local comprehensive plan and zoning ordinance and to establish a municipal reviewing authority. The moratorium must be in compliance with paragraphs A and B. The municipal officers, acting in place of the commission, may extend the moratorium pursuant to paragraph B after notice and hearing.~~

12 §685-C. MISCELLANEOUS PROVISIONS

1. Comprehensive land use plan. The commission shall adopt an official comprehensive land use plan for the unorganized and deorganized townships of the State. Adopting the plan shall be major substantive rulemaking as described in Maine Revised Statutes, Title 5, Chapter 375, Sub-Chapter 2-A.

The commission must use the plan as a guide in developing specific land use standards and delineating district boundaries and guiding development and generally fulfilling the purposes of this chapter.

The plan may consist of maps, data and statements of present and prospective resource uses that generally delineate the proper use of resources, and recommendations for its implementation.

The commission shall hold public hearings to collect information from residents, property owners and those who work and recreate in the jurisdiction, to be used in establishing the land use ~~guidance~~ plan. The public hearings must be conducted according to commission rules adopted in accordance with procedures for the establishment of rules pursuant to Title 5, chapter 375, subchapter 2.

~~The commission may, on its own motion or petition of any state agency or regional planning commission, hold such other hearings as the commission considers necessary from time to time for the purpose of obtaining information helpful in the determination of its policies, the carrying out of its duties or the formulation of its land use standards or rules.~~

The commission may not adopt a plan or portion of a plan unless:

A. The ~~tentative~~ proposed plan has been submitted to each regional planning commission and other appropriate agencies, which shall forward their comments and recommendations, if any, to the commission within 30 days;

B. The ~~tentative~~ proposed plan has been submitted to the State Planning Office, pursuant to Title 5, section 3305, subsection 1, paragraph G, which shall forward its comments and recommendations, if any, to the commission within 30 days;

C. The commission has considered all comments submitted under paragraphs A and B; and

D. ~~The commission has submitted the tentative plan to the joint standing committee of the Legislature having jurisdiction over conservation matters and the committee has reviewed the plan at a public meeting. The commission shall brief the committee on any anticipated changes to land use districts and subdistricts based on revisions in the comprehensive land use plan and a projected timetable for rulemaking to adopt these changes. The tentative plan must be submitted to the committee a minimum of 30 days prior to the commission's final vote.~~

~~Upon adoption of the official land use plan by the commission, the commission shall submit the plan to the Governor for approval. The Governor shall approve or disapprove the plan, plans or any portion of a plan within 30 days of receipt. If the Governor fails to act, the plan is deemed approved. This subsection also applies to any alteration in the comprehensive plan.~~ The commission has submitted the plan to the joint standing committee of the Legislature having jurisdiction over conservation matters for the committee's approval. If the committee approves the plan, it must submit the plan to the Legislature for approval. If the Legislature approves the plan, it must submit the plan to the Governor for approval.

The Governor shall approve or disapprove the plan, plans or any portion of a plan within 30 days of receipt. If the Governor fails to act, the plan is deemed disapproved. This subsection also applies to any alteration to the comprehensive plan.

1-A. Revision to plan; notification requirements. Prior to initiating the process of updating or revisions to the comprehensive land use plan adopted pursuant to subsection 1, the commission shall notify each individual property owner within the commission's jurisdiction:

A. That the commission is initiating the process of updating the comprehensive land use plan; and

B. Of the availability of information regarding the comprehensive land use plan, the proposed revisions to the comprehensive land use plan and the process input and comment by the public and the means of accessing that information.

2. Land use guidance and planning manual. The commission shall prepare, maintain and distribute from time to time a land use guidance and planning manual setting forth:

A. A copy of this chapter, together with all amendments thereof and other applicable legislation;

B. Examples of land use planning policies, standards, maps and documents prepared in conformance with the purposes of this chapter;

C. An explanation and illustrative examples of the land use standards and procedures authorized in this chapter;

D. Other explanatory material and data which will aid landowners in the preparation of their

plans in conformance with the procedures, rules and standards authorized in this chapter.

The commission shall, from time to time, confer with interested parties with a view toward insuring the maintenance of such manual in the form most useful to those making use of it.

Sections of this manual may be cited in any plan or standard in the same manner as citations of this chapter, and may be incorporated by reference in any plan, standard, rule or regulation.

3. Schedule of fees. The commission shall adopt rules in accordance with Title 5, chapter 375, subchapter 2 to establish a schedule of reasonable fees for the administration of this chapter. Amendments to those rules adopted after October 1, 2005 are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

No approval, certificate, special exception or variance may be issued unless or until such fees established by the commission have been paid in full, nor may any action be taken on proceedings before the commission unless or until preliminary fees have been paid in full.

4. Conservation easements.

5. Additional powers and duties. In order to implement this chapter, the commission may, in addition to its powers and duties previously authorized in this chapter:

A. Adopt rules to interpret and carry out this chapter in accordance with Title 5, chapter 375, subchapter II, unless otherwise provided by this chapter;

B. Have the power to compel attendance of witnesses, and require production of evidence;

C. Designate or establish such regional offices as it deems necessary;

D. Designate or request other appropriate agencies to receive application, provide assistance, investigations and make recommendations;

E. By rule allow joint hearings to be conducted with other appropriate agencies;

F. Execute contracts and other agreements to carry out its purposes.

6. Adjustments of assessing practices. Upon adoption of district boundaries and land use standards, a certified copy of each official land use guidance map, delineating district boundaries, and associated land use standards shall be filed with the State Tax Assessor.

7. Time periods. In computing the period of time to perform any act under these rules, the first day on which an act may be performed shall not be included but the last day of the period shall be included unless it is a Saturday, Sunday or holiday in which event the period shall be extended until the next business day.

A holiday is any day appointed as such by the President or Congress of the United States, or the Governor or Legislature of the State of Maine.

8. Enforcement, inspection and penalties for violations. Standards, rules and orders issued by the commission pursuant to this chapter have the force and effect of law. No development may be undertaken, except in conformance with this chapter, the standards, rules and orders enacted or issued pursuant to this chapter, and any real estate or personal property existing in violation of such is a nuisance. For the purposes of inspection and to ensure compliance with standards, orders and permits issued or adopted by the commission, authorized

commission staff, forest rangers and the state supervisor or consultant personnel may conduct investigations, examinations, tests and site evaluations necessary to verify information presented to it and may obtain access to any lands and structures regulated pursuant to this chapter.

Any person who violates any provision of this chapter, or the terms or conditions of any standards, rules, permits or orders adopted or issued pursuant to this chapter, is subject to a civil penalty, payable to the State, of not more than $10,000 for each day of the violation.

In addition to the other penalties provided, the commission may, in the name of the State of Maine, institute any appropriate action, injunction or other proceeding to prevent, restrain, correct or abate any violation hereof or of the orders or standards or rules promulgated hereunder. This action may include, but is not limited to, proceedings to revoke or suspend any commission permit or approval, taken either before the commission itself in accordance with Title 5, section 10004, before the District Court in accordance with Title 4, chapter 5 or, notwithstanding the provisions of Title 4, section 152, subsection 9 or Title 5, section 10051, before the Superior Court as part of an enforcement action brought by the commission.

In addition to any such penalties or remedies provided in this subsection, the court may order restoration of any area affected by any action or inaction found to be in violation of any of the provisions of this chapter or of any order, standard, rule or permit of the commission, or any decree of the court, to the condition of such area prior to the violation. When such restoration is not practicable, the court may order other actions to be taken by the person charged with the violation which are in mitigation of the damage caused by the violation.

A person who willfully or knowingly falsifies any statement contained in a permit application or other information required to be submitted to the commission is in violation of this chapter and subject to the penalties of this chapter.

9. Representation in court. The commission may authorize certified employees of the commission to serve civil process and represent the commission in District Court in the prosecution of violations of those laws enforced by the commission and set forth in Title 4, section 152, subsection 6-A. Certification of these employees must be as provided under Title 30-A, section 4453.

10. Operating a personal watercraft. Operating a personal watercraft is prohibited on the following categories of great ponds:

A. Great ponds located entirely or partly within the jurisdiction of the commission that are identified in an official comprehensive land use plan adopted by the commission pursuant to subsection 1 as being not accessible within 1/4 mile by 2-wheel drive vehicles, with less than one development unit per mile, and at least one outstanding resource value;

B. Great ponds located entirely or partly within the jurisdiction of the commission that are identified in an official comprehensive land use plan adopted by the commission as being accessible within 1/4 mile by 2-wheel drive vehicles, with less than one development unit per mile, with 2 or more outstanding resource values in fisheries, wildlife, scenic or shore character;

C. Great ponds and smaller ponds located entirely or partly within the jurisdiction of the commission that are identified in an official comprehensive land use plan adopted by the commission as being not accessible within 1/2 mile by 2-wheel drive vehicles, with no more

than one noncommercial remote camp and with a cold water game fishery; and

D. Great ponds with less than all but more than 2/3 of their surface area in or partly in the jurisdiction of the commission that are identified as being of statewide significance in the "Maine Wildlands Lake Assessment" dated June 1, 1987 prepared by the commission, with 2 or more outstanding resource values in fisheries, wildlife, scenic or shore character and with more than 1/2 of their shoreline in public and private conservation ownership with guaranteed public access for low-impact public recreation.

The commission shall implement this subsection by rule adopted in accordance with section 685-A. Rules adopted to implement this subsection are routine technical rules pursuant to Title 5, chapter 375, subchapter II-A.

This section does not apply to any waters subject to regulation by the Maine Indian Tribal-State Commission under Title 30, section 6207, subsection 3-A.

11. Landowner liability for actions of others. An owner, lessee, manager, easement holder or occupant of premises is not subject to criminal sanctions or civil penalties or forfeitures for a violation of laws or rules enforced by the commission if that person provides substantial credible evidence that the violation was committed by another person other than a contractor, employee or agent of the owner, lessee, manager, easement holder or occupant. This subsection does not prevent the commission or a court from requiring an owner, lessee, manager, easement holder or occupant of premises to remediate or abate environmental hazards or damage or to reimburse the commission for the cost of remediation or abatement. An owner, lessee, manager, easement holder or occupant of premises is subject to criminal sanctions or civil penalties or forfeitures for failure to comply with a lawful administrative order or court order to remediate or abate environmental hazards or damage.

A. The commission shall investigate substantiated allegations by an owner, lessee, manager, easement holder or occupant that the violation was caused by another person.

B. If an owner, lessee, manager, easement holder or occupant is subjected to criminal sanctions or civil penalties or forfeitures, or if such a person is required to remediate or abate environmental hazards or damage as a result of violations by another person, the owner, lessee, manager, easement holder or occupant has a cause of action against the actual violator to recover all damages and costs, including attorney's fees, incurred in connection with the environmental damage, and all costs, including attorney's fees, incurred in bringing the action to recover.

12 §685-D. FUNDING

(REPEALED)

12 §685-E. EXCEPTION

(REPEALED)

12 §685-F. EXTRAORDINARY PROJECTS

~~**1. Designation as extraordinary project.** The director of the Maine Land Use Regulation Commission, referred to in this section as "the director," may designate a proposed project requiring review and approval under this chapter as an extraordinary project when the director determines that the project is a wind energy development, as defined in Title 35-A, section 3451, subsection 11 or, because of the project's size, uniqueness or complexity, review of the project application is likely to:~~

~~A. Significantly impair the capacity of the commission's staff and cooperating state agencies to review other applications in a timely manner; or~~

~~B. Require the commission to incur costs that exceed the funding provided in accordance with section 685-G.~~

~~A project is considered to significantly impair the capacity of the commission's staff if review of that project is likely to occupy the equivalent of at least one person working full-time on that project for a minimum of 4 months. Designation as an extraordinary project must be made at or prior to the time the application is accepted as complete. The director shall notify the applicant in writing upon making the designation.~~

~~**2. Processing fee.** The processing fee for a project designated as extraordinary is the sum of the actual costs associated with review of that project application. These costs include, but are not limited to, costs of personnel, supplies, administration, travel, specialized computer software, services needed for review of that project, including review provided by other state agencies, and contracting for legal and consulting services. The director shall provide the applicant with an estimate of the processing fee for a project with a breakdown of anticipated costs. The applicant must pay 1/2 of the estimated processing fee prior to the beginning of the project review. The applicant must be billed quarterly for the remainder of the fee. The director shall deposit all processing fees in a dedicated account from which expenses attributable to the application review are paid. The commission shall withhold a decision on the project until the entire processing fee is paid. The director shall return all unspent funds to the applicant within 120 days of the commission's decision on the application.~~

~~**3. Accounting system.** The director shall require that all staff involved in any aspect of an application review for a project designated as an extraordinary project keep accurate and regular daily time records. These records must describe the matters worked on, services performed and amount of time devoted to those matters and services as well as amounts of money expended in performing those functions. The director shall keep records of all expenses incurred in reviewing a project, including staff time records, billing statements for contracted services and billing statements from other state agencies for the actual cost of review.~~

~~**4. Review by commission.** In accordance with section 685-B, subsection 1-B, an applicant has the right to review by the commission of a decision to designate a project as an extraordinary project or of a processing fee established under subsection 2.~~

12 §685-G. FUNDING

1. Unorganized territories. Beginning with fiscal year 2009-10, funding for services and activities of the commission for planning, permitting and ensuring compliance in the

unorganized territories must be assessed and allocated to the unorganized territories through a fee equal to .014% of the most recent equalized state valuation established by the State Tax Assessor. This fee must be collected through the municipal cost component under Title 36, chapter 115.

2. Towns and plantations. Beginning with fiscal year 2009-10, a town or a plantation in the commission's jurisdiction that elects not to administer land use controls at the local level but receives commission services or a town or plantation with a portion of its land under the commission's jurisdiction and receiving commission services, including planning, permitting and ensuring compliance, must be assessed a fee equal to .018% of the most recent equalized state valuation established by the State Tax Assessor for that town or plantation or that portion of a town or plantation under the commission's jurisdiction. The State Tax Assessor shall issue a warrant to each such town or plantation no later than March 1st of each year. The warrant is payable on demand. Interest charges on unpaid fees begin on June 30th of each year and are compounded monthly at the interest rate for unpaid property tax as established by the State Tax Assessor for the unorganized territory. For any assessment that remains unpaid as of September 1st of the year in which it is due, state revenue sharing to that town or plantation must be reduced by an amount equal to any unpaid warrant amount plus any accrued interest, until the amount is paid. These fees must be deposited to the General Fund.

3. Report. By January 15, 2009 and annually thereafter, the commission shall report to the joint standing committees of the Legislature having jurisdiction over conservation matters and taxation matters regarding commission funding and other financial matters. The report must cover the 5 previous fiscal years and must identify General Fund appropriations and other resources, amounts assessed and collected from the assessments required under this section and former section 685-E and amounts assessed and collected from other fees and penalties assessed under this chapter. Beginning in January 2010, the report must include an accounting of the permitting fees and administrative penalties collected that segregates the amounts collected from the unorganized territories from the amounts collected from the towns and plantations and must include recommendations to adjust the fees for the unorganized territories and for towns and plantations based on the amounts collected for permitting fees and administrative penalties from each of these entities. The joint standing committees of the Legislature having jurisdiction over conservation matters and taxation matters shall jointly review the distribution of funding and other assessments among the General Fund, unorganized territories and towns and plantations under the commission's jurisdiction and may submit legislation considered necessary as a result of the commission's report to the First Regular Session of the 124th Legislature.

Subchapter 3: COMMISSION POWERS AND DUTIES

12 §686. ZONING POWERS AND DUTIES

(REPEALED)

12 §687. SUBDIVISION CONTROL, POWERS AND DUTIES

(REPEALED)

12 §688. MINIMUM LOT SIZE

(REPEALED)

Subchapter 4: APPEALS

12 §689. APPEAL

Persons aggrieved by final actions of the commission, including without limitation any final decision of the commission with respect to any application for approval or the adoption by the commission of any district boundary or amendment thereto, may appeal therefrom in accordance with Title 5, chapter 375, subchapter 7. Appeals of final actions of the commission regarding an application for an expedited wind energy development, as defined in Title 35- A, section 3451, subsection 4, must be taken to the Supreme Judicial Court sitting as the Law Court in accordance with Title 5, chapter 375, subchapter 7 and the Maine Rules of Civil Procedure, Rule 80C. The Law Court has exclusive jurisdiction over requests for judicial review of final actions of the commission regarding expedited wind energy developments. This right of appeal, with respect to any commission action to which this right may apply, shall be in lieu of the rights provided under Title 5, section 8058, subsection 1.

Sec. 2. Land Use Regulation Commission to adopt rules. Resolved: That the Land Use Regulation Commission shall adopt the nonconforming use, structure and lot definitions and regulations drafted by Department of Environmental Protection pursuant to 38 MRSA §§ 435-499 and Chapter 1000, as amended.

SUMMARY

This bill proposes to enact measures designed to improve the laws governing land use regulation in the unorganized territories and streamline the regulatory processes of the Maine Land Use Regulation Commission.