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PAUL RICHARD LEPAGE
GOVERNOR

STATE OF MAINE
DEPARTMENT OF CONSERVATION
22 STATE HOUSE STATION
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04333-0022

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WILLARD R. HARRIS, JR.
ACTING COMMISSIONER

January 19, 2011

Co-Chairs, Committee on Agriculture, Conservation and Forestry
Senator Roger Sherman and Representative Peter Edgecomb

Co-Chairs, Committee on Taxation
Senator David Trahan and Representative Gary Knight

100 State House Station
Augusta, ME 04333-0100

Dear Co-Chairs Sherman, Edgecomb, Trahan and Knight:

Please see the attached annual report to the Joint Standing Committees on Agriculture, Forestry and Conservation and Taxation. This is the third annual report required based on Title 12§685-G. The report is required to identify all General Fund and other appropriations to LURC.

In addition to the General Fund, the attached report shows the various funding sources that are received for LURC services. It should be noted, however, that these amounts do not stay with LURC but instead go directly to the General Fund.

The other funding sources include:

- The amount assessed and collected from the Unorganized Territories through the Municipal Cost Component.
- The Service Fees assessed for LURC services from each of the 39 Towns and Plantations that choose to have LURC provide their land use control, and
- The application fees collected from applicants, fines, and sales of maps and publications.

This report also shows the history of how the laws and rules have changed regarding LURC funding and revenue collected since the beginning of LURC and also recommendations for adjusting any fees as asked for beginning with last years report.

We are pleased to submit this report to the committees for their consideration. We would be pleased to discuss the recommendations and any other information included this report with either committee at their convenience.

Sincerely,


Catherine M. Carroll
Director, Land Use Regulation Commission

cc: Committee Members
Willard R. Harris, Jr, Acting Commissioner Dept. of Conservation
Enc

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LURC

**2011 Annual Report
of Funding for the
Land Use Regulation Commission
to the
Joint Standing Committees on
Agriculture, Conservation and Forestry
and Taxation
of the
125th Maine Legislature,
First Regular Session**



**Submitted by
Maine Department of Conservation
Land Use Regulation Commission
22 State House Station
Augusta, Maine 04333-0022
207-287-2631**



This report has been prepared for the Committees as required by Public Law, Chapter 541, H.P. 670 - L.D. 885, PART B, *“An Act to Implement the Recommendations of the Commission to Study the Costs of Providing Certain Services in the Unorganized Territories.”*

The law was brought about based upon recommendations from the report of the *“Commission to Study the Cost of Providing Certain Services in the Unorganized Territories.”*

The specific areas of the law affecting LURC relate to changes on how the funding for LURC Services would be assessed and allocated starting in Fiscal Year 2009-2010. The law specifically made changes to the amounts collected from both the Municipal Cost Component of the Unorganized Territory Education and Services Fund which is collected from the Taxpayers of the Unorganized Territory Tax District; and also from the Service Fees collected from the Towns and Plantations within LURC’s jurisdiction.

A subsequent change as specified in Public Law, Chapter 213, H.P. 274 – L.D. 353, Part HHHH, *“An Act Making Unified Appropriations and Allocations for the Expenditures of State Government, General Fund and Other Funds, and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 2009, June 30, 2010 and June 30, 2011”*, made additional adjustments to the funding for LURC Services from both the Unorganized Territories and the Service Fees from Towns and Plantations for Fiscal Year 2009-2010. It also required an accounting of the permitting fees and penalties collected from the unorganized territories and from the towns and plantations served by LURC. The actual text of that specific area of the law is as follows showing the changes since the original requirements of the report:

Title 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.”

The first table, *Law/Rule Language for Amounts Assessed and Collected for LURC Services*, shows the history of changes to both the Statute and LURC’s rules regarding funding assessed and collected from areas other than the General Fund. Those different areas are from the Unorganized Territories Education and Services Fund from the Unorganized Territory Tax District; Towns and Plantations provided services by LURC; and permit application fees, penalties, and sales of maps and publications. All revenue from these areas go to or are reimbursed to the General Fund and do not go directly to LURC.

The second table, *Revenue Amounts Assessed and Collected for LURC Services*, shows the specific areas and actual amounts including the new information requested by the most recent law change.

Law/Rule Language for Amounts Assessed and Collected For LURC Services			
Fiscal Year	Unorganized Territory Education and Services Fund	Towns & Plantations Service Fees	LURC Application Fees, Penalties, and Sales
1971 (Beginning of LURC)	<i>"The Commission shall prepare a biennial budget and after approval of the budget by the Commissioner of the Department of Conservation, it shall submit to the Legislature requests for appropriations sufficient to carry out its assigned tasks." (The funding account was unspecified; it is assumed it was from the General Fund.)</i>		(Fees were based upon a sliding scale depending upon the activity and on the total cost of construction for the proposal.)
FY 1983-84	<i>"Services and activities of the commission which benefit the unorganized and deorganized areas of the State, other than plantations, shall be charged to the unorganized territory and collected through the Unorganized Territory Educational and Services Tax established in Title 36, chapter 115."</i>	<i>"Beginning in FY 1983-84, services and activities of the commission which benefit plantations, towns, and cities shall be paid from the General Fund which shall be reimbursed by charges made by the commission directly to the plantation, town or city receiving the benefit; charges for fiscal years 1983-84 and 1984-85 shall be delayed until July 1, 1985. Services and activities of the commission which are available on a statewide level shall be paid from the General Fund." (There was also a reporting requirement. As seen below, this provision was removed and never occurred.)</i>	(Minor changes to the minimum fee and sliding scale were made until 2003.)
FY 1985-86	<i>"Beginning with fiscal year 1985-86, funding for the services and activities of the commission shall come from the General Fund and not be allocated to the unorganized territory under Title 36, chapter 115. It is also the intent of the Legislature that no charges may be made to plantations, towns, or cities for fiscal years 1983-84 or 1984-85."</i>		(See above)
FY 1991-92	<i>"Notwithstanding section 685-D, beginning with fiscal year 1991-92, funding for planning services and activities of the commission must be assessed and allocated to the unorganized territory in an amount not to exceed 10% of the total General Fund appropriation to the commission."</i>	(No Change)	(See above)
FY 2003-04	No Change	<i>"Beginning with fiscal year 2003-04, a town or 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 .01% 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 ... these fees must be deposited to the General Fund." (This was the first time a fee was required of the Towns and Plantations.)</i>	(Changes to fees based on the type of activity conducted, regardless of size. Examples are Building Permit \$75, Development Permit (Commercial) \$325.)
FY 2005-06	Percentage changed to 18% of total GF.	(No Change)	(No Change)
FY 2007-08	(No Change)	(No Change)	(Changes to a base permit fee for activities and additional amount based on size (square footage, linear distance, height) of the development. This also added after-the-fact fees.)
FY 2009-10	Changed to .014% of valuation.	Changed to .018% of valuation.	(No change)

Revenue Amounts Assessed and Collected for LURC Services

Fiscal Year	A	B	C			D	E	F
	Unorganized Territory Education and Services Fund ¹	Towns & Plantations Service Fees ²	LURC Application Fees, Penalties and Sales ³			Amount returned by LURC to the General Fund ⁴ (A+B+C3)	LURC's Budget ⁵ (All from the General Fund)	LURC's Need from General Fund (E-D)
			C1	C2	C3			
			Unorganized Territory Applicants (67% of C3)	Towns & Plantation Applicants (33% of C3)	Total Deposits			
2004-2005	\$187,364	\$79,025	\$91,700	\$45,165	\$136,865	\$403,254	\$1,872,639	\$1,469,385
2005-2006	\$350,332	\$87,867	\$173,144	\$85,280	\$258,424	\$696,623	\$1,972,729	\$1,276,106
2006-2007	\$352,962	\$96,660	\$132,822	\$65,420	\$198,242	\$647,864	\$1,940,821	\$1,292,957
2007-2008	\$364,286	\$112,805	\$178,757	\$88,045	\$266,802	\$743,893	\$2,120,604	\$1,376,711
2008-2009	\$404,589	\$127,960	\$229,065	\$112,823	\$341,888	\$874,437	\$2,023,891	\$1,149,454
2009-2010	\$487,977	\$257,004	\$198,968	\$98,000	\$296,968	\$1,044,981	\$1,928,670	\$883,689
2010 -2011	\$525,931 <i>(Actual)</i>	\$255,200 <i>(Estimate)</i>	\$166,043 <i>(Estimate)</i>	\$81,783 <i>(Estimate)</i>	\$247,826 <i>(Estimate)</i>	\$1,028,957 <i>(Estimate)</i>	\$1,790,136 <i>(Estimate)</i>	\$761,179 <i>(Estimate)</i>

¹ The Townships in the Unorganized Territory have no local municipal government. Local Land Use controls are provided to the Unorganized Territories by LURC. The Municipal Cost Component (MCC), the cost of funding services in the Unorganized Territory that would not be borne by the State if the Unorganized Territory Tax District were a municipality, for LURC's services is reimbursed directly to the General Fund. The Unorganized Territories, approximately 420 townships, account for approximately 67% of all LURC applications and workload. The bill for the MCC is prepared in March for the next fiscal year starting July 1st.

² LURC regulated Towns and Plantations have some form of local government and have the choice to assume local land use control or to have that service provided for by LURC. The 39 LURC regulated Towns and Plantations account for approximately 33% of all LURC applications. The Service Fees paid by the Towns and Plantations are deposited to the General Fund. The warrants are sent to the Towns and Plantations in March and payments are due by June 30 for that fiscal year ending on that date.

³ LURC permit application fees, penalties for enforcement cases, and sales of maps/publications are deposited directly to the General Fund. Application fees are paid for by the applicant and are required before an application can be processed. Penalties are fees collected after a Settlement Agreement is reached with a landowner as part of the resolution for violations at that property. Columns C1 and C2 show an estimate of what permit fees, fines, and sales are attributed to applicants in the Unorganized Territories and the total of the towns and Plantations based on the attributing 67% of all deposits (Column C3) to the Unorganized territories and 33% to the Towns and Plantations. FY 2010-11 is estimated based on amounts received through December 31, 2010.

⁴ This represents the amount of all revenue collected by LURC that is reimbursed back to the General Fund. FY 2010-11 is partially estimated based on amounts received through December 31, 2010.

⁵ General Fund amounts budgeted for Fiscal Years from FY 2003-04 to FY 2009-10 are actual approved budgets. FY 2010-11 is estimated based on the current proposed budget as of January 11, 2011.

Recommendations

As stated in the most recent language, “*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.*”

Determine a fair and equitable way to assess and charge for the costs conducted by LURC for the four major entities that receive LURC Services:

- **Residents of the Unorganized Territory (Municipal Cost Component);**
 - **LURC Towns and Plantations (Service Fees);**
 - **Direct Customers (Permit Application Fees/Penalty Violations); and**
 - **State General Fund (Work conducted of a statewide benefit).**
1. **Utilize the best method available for fairly determining the actual work conducted by LURC and the amount of work provided to each of the entities.**
 2. **Utilize existing mechanisms for charging the entities.**
 3. **Charge for the costs similar to how they are charged in organized areas.**

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1. **Utilize the best method available for fairly determining the actual work conducted by LURC and the amount of work provided to each of the entities.**
 - a. **Payroll Timesheets.** Create and use new coding for employee payroll timesheets to accurately track the time and amount of work conducted for the Unorganized Territories, LURC Towns and Plantations, and that work that is of a Statewide Benefit. Tracking actual time spent on a project is more accurate than using permit fees and penalty fees to assess work since some applications and/or enforcement cases require a great deal more time than others that may have similar fees.
 - i. Work conducted directly for a project in the Unorganized Territory or in a Town or Plantation, such as permit review, compliance inspections, enforcement, etc. in a specific location (Unorganized Territory or LURC Town or Plantation) would be attributed to that location.
 - ii. Work conducted for wetland review (work conducted by the Maine Department of Environmental Protection in organized areas of the State) would be attributed to be of a statewide benefit. This is currently estimated to be approximately 6%.
 - iii. General Permitting & Compliance work (not attributed to a specific project) would be split between the Unorganized Territories and all of the LURC Towns and Plantations based on the most recent specific workload distribution to the Unorganized Territories and LURC Towns and Plantations. Based on the information above in this report that percentage is approximately 2/3's or 67% to the Unorganized Territories and approximately 1/3 or 33% to the total of the Towns and Plantations.
 - iv. General Planning work (not attributed to a Specific project) would be split with ½ to be of a statewide benefit with the remainder to be equally attributed to the Unorganized Territories and Towns and Plantations. This would equate to 50% to

the General Fund, 35% to the Unorganized Territories, and 15% to the total of the Towns and Plantations.

2. Utilize existing mechanisms for charging the entities.

a. Residents of the Unorganized Territories (Municipal Cost Component)

- i. Reimburse the General Fund for the work conducted by LURC that is attributed to the Unorganized Territories, using the same method as every other State Agency that provides services to the Unorganized Territories. Utilize the language that existed in FY 1983-84 as shown in the Table *Law/Rule Language for Amounts Assessed and Collected For LURC Services*.
- ii. Use payroll timesheets to determine the amount of work conducted for the Unorganized Territories by LURC and account for that amount in the yearly Municipal Cost Component.
- iii. Payroll timesheet tracking could potentially account for differences attributed to Unorganized Territories in different Counties in which taxpayers in Counties with more work provided by LURC would pay more of a share than those in Counties where less work is provided by LURC.

b. LURC Towns and Plantations (Service Fees)

- i. Reimburse the General Fund for the work conducted by LURC that is attributed to those LURC Towns and Plantations, through the existing Service Fees in which warrants are sent out by the Maine Revenue Services. Utilize the language that existed in FY 1983-84 as shown in the Table *Law/Rule Language for Amounts Assessed and Collected For LURC Services*.
- ii. Payroll timesheet tracking could even account for differences attributed to specific Towns and Plantations as opposed to charging them all based on the same percentage or valuation as it is currently assessed. If a LURC Town or Plantation receives little direct service such as permit review, compliance inspections, enforcement, etc. throughout a year it would receive less of a fee than an equally valued LURC Town or Plantation that required more direct services.
 1. Direct costs attributed to specific LURC Towns and Plantations would be attributed to those Towns and Plantations.
 2. General Permitting & Compliance and General Planning work would be shared between all Towns & Plantations.
- iii. Based upon the amount of work conducted LURC would inform the Maine Revenue Service prior to the warrants sent in March of the amounts to be charged to the individual Towns and Plantations.

c. Direct Customers (Permit Application Fees/Penalty Violations)

- i. Review and recommend any potential changes to Permit Fees. Review the application fees to determine if they are fair and equitable based on the work proposed.

- ii. Review and update the *Compliance & Enforcement Response Policy*. More specifically, look into adjusting the penalty matrix and how negotiated penalties are assessed. Charging higher penalty assessments may however reduce the number of negotiated agreements, which is the only way LURC can receive penalty fees. The collection of a penalty fee is only a portion of a Settlement Agreement to resolve violations at a property. Remedial actions and correcting the violations are the main components of an agreement. In most cases, the actual penalty fee does not account for the staff time spent negotiating the agreement.

d. State General Fund (Work conducted of a statewide benefit).

- i. Require the General Fund to fund (without being reimbursed) for the work that LURC provides that is determined to be of a statewide benefit and conducted on behalf of all residents of the State.
- ii. It is assumed that half of the General work conducted by LURC Planning Staff is for the benefit of all residents of the State.
- iii. The amount of work solely conducted for wetland review (which is done by the Maine Department of Environmental Protection in the organized areas of the State) should be charged to the General Fund. This is approximately 6% of permitting review work.

3. Charge for the costs similar to how they are charged in organized areas

- a. Account for permit application and penalty fees as one component of the area where revenue is collected. Use the permit/penalty fees as a starting point and charge the Unorganized Territories, Towns and Plantations, and State General Fund (work of a statewide benefit) for the remainder of LURC's budget based on the workload provided to them.
- b. Permit application and penalty fees are paid for by an applicant/owner and should not be used to determine or reduce charges to the Unorganized Territories or to LURC Towns or Plantations. Organized Towns are responsible solely for the budget of their Land Use controls specifically for paying for their Code Enforcement Officer and Planning Board and Appeals Board costs. In an organized Town a landowner that conducts an activity requiring a permit application fee or that conducts a violation and pays a penalty fee still is required to pay their same share of taxes that contribute to the Towns Land Use controls. They do not need to pay fewer taxes simply because they paid an application fee.

An Act Making Supplemental Appropriations and Allocations for the Expenditures of State Government, General Fund and Other Funds, and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 2010 and June 30, 2011

**PUBLIC LAW 2009 CHAPTER 571
H.P. 1183 - L.D. 1671**

PART DDD

Sec. DDD-1. Implementation of recommendations of natural resources agency task force. Beginning January 1, 2011, the Governor shall implement recommendations of the 2008 report of the natural resources agency task force appointed by the Governor to implement Public Law 2007, chapter 539, Part YY, section 2 to:

1. Move toward management of all state boat launch facilities by one of the natural resources agencies;
2. Move toward having natural resources agencies and staff collocated in various regional offices to increase communication and collaboration; and
3. Move toward rational alignment of districts for natural resources agencies to increase communication and collaboration among staff members and between agencies and local government and citizens of those regions.

Effective March 31, 2010