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**Annual Report of Funding
Land Use Planning Commission
to the
Joint Standing Committee on
Agriculture, Conservation and Forestry
and the
Joint Standing Committee on Taxation
of the
128th Maine Legislature,
Second Regular Session**

January 12, 2018

**Submitted by
the
Land Use Planning Commission
Maine Department of Agriculture, Conservation & Forestry
22 State House Station
Augusta, Maine 04333-0022
207-287-2631**



STATE OF MAINE
DEPARTMENT OF AGRICULTURE, CONSERVATION & FORESTRY
LAND USE PLANNING COMMISSION
22 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0022

PAUL R. LEPAGE
GOVERNOR

WALTER E. WHITCOMB
COMMISSIONER

NICHOLAS D. LIVESAY
EXECUTIVE DIRECTOR

January 12, 2018

Co-Chairs, Committee on Agriculture, Conservation and Forestry
Senator Paul Davis and Representative Michelle Dunphy

Co-Chairs, Committee on Taxation
Senator Dana Dow and Representative Ryan Tipping

100 State House Station
Augusta, ME 04333-0100

RE: Land Use Planning Commission – Annual Report on Funding

Dear Co-Chairs Davis, Dunphy, Dow, and Tipping:

Attached please find the Annual Report on Funding to the Joint Standing Committee on Agriculture, Conservation and Forestry and the Joint Standing Committee on Taxation. This annual report is prepared by the Land Use Planning Commission pursuant to 12 M.R.S. § 685-G. The report is required to identify all General Fund and other appropriations to Commission.

In addition to the General Fund, the attached report shows the various revenue amounts assessed and collected for Commission services. It should be noted that these revenue amounts do not stay with the Commission, but instead go directly to the General Fund.

The revenue amounts collected include:

- The amount assessed and collected from the Unorganized Territories through the Municipal Cost Component;
- The Service Fees assessed for Commission services from each of the 38 Towns and Plantations that choose to have the Commission provide their land use services; and
- The fees collected from applicants, fines, and sales of maps and publications.

The report also shows the history of how the laws and rules have changed regarding Commission funding and revenue and, as required in Section 685-G, contains any recommendations for adjusting the fees discussed in the report. The Commission is not recommending any fee adjustments at this time.

We are pleased to submit this report to the committees. We would be happy to discuss the information included in this report with either or both committee(s) at your convenience.

Sincerely,

Nicholas D. Livesay, Director
Land Use Planning Commission

cc: Walter Whitcomb, Commissioner, Dept. of Agriculture, Conservation and Forestry
Enclosure



This report has been prepared for the Committees as required by 12 M.R.S. § 685-G.

Section 685-G originally was enacted by Public Law 2007, chapter 541, § B-4 (L.D. 885), which, in turn, was based upon recommendations from the report of the “*Commission to Study the Cost of Providing Certain Services in the Unorganized Territories.*” The sections of the 2007 Public Law affecting the Land Use Planning Commission (the “LUPC”) (previously the Land Use Regulation Commission or LURC) specified how the funding for LUPC services would be assessed and allocated starting in Fiscal Year 2009-2010. The 2007 Public 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 the LUPC’s jurisdiction.

Title 12, section 685-G was amended by Public Law 2009, ch. 213, § HHHH-1 (L.D. 353) and has not been changed since. This amendment made adjustments to the funding for LUPC services both from the Unorganized Territories and from the Towns and Plantations. The 2009 Public Law also required an accounting of the permitting fees and penalties collected from the unorganized territories, and from the towns and plantations, served by the LUPC. The current statutory provision governing funding of the LUPC and requiring this report states:

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 below, *Law/Rule Language for Amounts Assessed and Collected for LUPC Services*, shows the history of changes to both the statutory provisions and the LUPC rules regarding funding from sources other than the General Fund. These other sources are the Unorganized Territories Education and Services Fund from the Unorganized Territory Tax District; Towns and Plantations provided services by the LUPC; and permit application fees, penalties, and sales of maps and publications. All revenue from these sources go to or are reimbursed to the General Fund and do not go directly to the LUPC.

The second table below, *Revenue Amounts Assessed and Collected for LUPC Services*, shows the funding by source and the amount of funding from each source, as well as apportions the LUPC application fees, penalties, and sales between the Unorganized Territories and the Towns and Plantations, as required by Section 685-G.

Law/Rule Language for Amounts Assessed and Collected For LUPC Services

Fiscal Year	Unorganized Territory Education and Services Fund	Towns & Plantations Service Fees	LUPC Application Fees, Penalties & Sales
1971 (Beginning of LURC/LUPC)	<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.”</i> (The funding account was unspecified; it is assumed it was from the General Fund.)		(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.”</i> (There was also a reporting requirement. As seen below, this provision was removed and never occurred.)	(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.”</i> (This was the first time a fee was required of the Towns and Plantations.)	(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 FY 2010-11 to FY 2016-17	Changed to .014% of valuation. (No Change)	Changed to .018% of valuation. (No Change)	(No change) (No change)

Revenue Amounts Assessed and Collected for LUPC Services

Fiscal Year	A	B	C			D	E	F
	Unorganized Territory Education and Services Fund ¹	Towns & Plantations Service Fees ²	LUPC Application Fees, Penalties and Sales ³			Total Undedicated General Fund Revenue (A+B+C3)	LUPC's Budget ⁴	Difference E-D
			C1 Unorganized Territory	C2 Towns & Plantations	C3 Total Deposits			
FY 2009-10	\$487,977	\$257,004	\$198,968	\$98,000	\$296,968	\$1,044,981	\$1,928,670	\$883,689
FY 2010 -11	\$525,931	\$255,213	\$148,825	\$73,302	\$222,127	\$1,003,271	\$1,790,136	\$786,478
FY 2011-12	\$534,156	\$257,787	\$122,664	\$60,417	\$183,081	\$975,024	\$1,830,488	\$855,464
FY 2012-13	\$531,811	\$258,327	\$138,620	\$68,275	\$206,895	\$997,033	\$1,629,513	\$632,480
FY 2013-14	\$528,612	\$258,840	\$138,794	\$48,765	\$187,559	\$975,011	\$1,739,487	\$764,476
FY 2014-15	\$523,019	\$257,220	\$129,161	\$55,355	\$184,516	\$964,755	\$1,747,406	\$782, 651
FY 2015-16	\$529,025	\$262,521	\$166,754	\$71,466	\$238,220	\$1,029,766	\$1,870,452	\$840,686
FY 2016-17	\$544,194	\$272,547	\$91,911	\$39,390	\$131,301	\$948,042	\$1,875,974	\$927,932
FY 2017-18	\$549,577 (Actual)	\$277,182 (Actual)	\$150,274 (Estimate)	\$61,379 (Estimate)	\$211,653 (Estimate)	\$1,038,412 (Estimate)	\$1,867,125 (Actual)	\$828,713 (Estimate)

¹ The approximately 420 townships in the Unorganized Territory (UT) have no local municipal government. Local land use controls are provided to the UT by the LUPC. The Municipal Cost Component (MCC), the cost of funding services in the UT that would not be borne by the State if the UT Tax District were a municipality, for the LUPC's services is reimbursed directly to the General Fund. The bill for the MCC is prepared in March for the next fiscal year starting July 1st.

² LUPC-served 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 by the LUPC. 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 The LUPC 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 of violations at that property. The amount in Column C3 for FY 2017-18 is estimated by doubling the actual amounts deposited for the first six months from July 1 to December 31, 2017, except the fee associated with a concept plan rezoning (a unique proposal) was not doubled. The total revenue in column C3 is apportioned between the (1) UT and (2) the Towns and Plantations based on the percentage of applications received from these two areas. For fiscal year 2017-18, 71% of revenue is apportioned to the UT and 29% to Towns and Plantations, based on a 5-year average of the number of applications received in each area. Other Special Revenues from Extraordinary Projects (12 M.R.S. § 685-F) are not included due to the fluctuating nature and complexity of these projects and the required independent accounting system.

⁴ General Fund amounts budgeted for Fiscal Years from FY 2009-10 to FY 2016-17 are the amounts included in previous annual funding reports. FY 2017-18 is based on the current proposed budget as of January 5, 2018.

Recommendations

Title 12, section 685-G states: *“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 relative portion of total permitting fees and administrative penalties attributed to unorganized territories and to towns and plantations fluctuates from fiscal year to fiscal year. This fluctuation is within a consistent, narrow range. Overall, no trend has emerged to date that would prompt the Land Use Planning Commission to recommend modification of the current funding provisions in 12 M.R.S. § 685-G.