

Maine Land Use Planning Commission
Department of Agriculture, Conservation and Forestry



BASIS STATEMENT AND SUMMARY OF COMMENTS

FOR AMENDMENTS TO

CHAPTER 4: RULES OF PRACTICE - 2023 MISCELLANEOUS REVISIONS

Adopted July 12, 2023

STATUTORY AUTHORITY: 12 M.R.S. §§ 684, 685-A(3), and 685-C(5); and
5 M.R.S. § 8051

EFFECTIVE DATE OF THE RULE AMENDMENT:

FACTUAL AND POLICY BASIS FOR THE RULE AMENDMENT:

The primary objective of this rulemaking is to identify two specific types of zoning applications as being 'routine' and therefore authorize staff to act on those applications. All other revisions represent typical clerical edits.

PUBLIC NOTICE OF RULEMAKING

At a meeting held on March 8, 2023, staff presented to the Commission the draft rule revisions and requested to post the revisions to public comment. The Commission voted to post the revisions to public comment with a 30-day public comment period.

Notice of the rulemaking was provided in the Secretary of State's consolidated rulemaking notice on March 29, 2023. In addition to the legal notice, the Commission posted notice by email through the State's GovDelivery system to all individuals wishing to be contacted regarding any proposed rule changes, and to the Maine Floodplain Management Program coordinator. Notice of the proposed revisions was also posted on the agency's rulemaking webpage.

The record remained open until May 1, 2023 to allow interested persons to file written statements with the Commission, and for an additional 7 days until May 8, 2023 to allow interested persons to file written rebuttal comments.

COMMENTS AND RESPONSES:

While one letter of comment was submitted, no rebuttal comments were received.

1. **Topic: Interaction and relationship between subdistricts**

The Commission's Wetland Protection (P-WL) Subdistricts are primarily based on the National Wetland Inventory. While it may not be apparent, on-site wetland delineations often provide information that can lead the Commission to determine:

- the presence/absence of wetlands (i.e., addition, removal, or reconfiguration of P-WL zoning is warranted); or
- a zoned wetland should be reclassified as a different P-WL subdistrict (i.e., P-WL1, P-WL2, or P-WL3).

Wetland delineations are a means for site-specific assessment of existing conditions and resources present. Associated zone changes are often referred to as 'amending wetland protection subdistrict boundaries.'

Each of the Commission's subdistricts may be designated in isolation (not overlapping any other subdistrict); however, only protection subdistricts can be designated as overlapping other subdistrict designations.¹ Further, pursuant to Chapter 10, Section 10.23,L, Shoreland Protection (P-SL2) Subdistricts automatically apply to areas adjacent to P-WL subdistricts (i.e., within 250 feet of certain P-WL subdistricts and within 75 feet of all other P-WL subdistricts). Any delegation of authority for staff to act on P-WL zone changes will also involve the following situations:

- a. The addition, removal, or adjustment of the boundaries of the P-WL subdistrict will also automatically implicate changes to the associated P-SL2 subdistrict; and either
- b. The addition or removal of a P-WL subdistrict that overlaps another protection subdistrict; or
- c. The addition or removal of a P-WL subdistrict that would require a change to or from the M-GN subdistrict

While these situations were contemplated by the Commission as it set out to delegate authority to staff, the posted proposed rule revisions could benefit from clarification that multiple subdistricts may actually be rezoned based on the outcome of a wetland delineation.

Commenter(s): Maine Land Use Planning Commission staff

¹ The P-RP, M-GN, and all development subdistricts are exclusive and do not overlap any other subdistrict. Note that flood prone areas delineated by FEMA are not zoned as, but are regulated as, P-FP subdistrict (and therefore could overlay a M-GN subdistrict).

2. Topic: FEMA and Flood Prone Protection Subdistricts

Pursuant to Chapter 10, Section 10.23, the Commission designates Flood Prone Area Protection (P-FP) subdistricts around certain flood prone areas based on soils data and a historic information about flooding. FEMA designated areas of special flood hazard are also incorporated into the Commission's regulations and cited on official zoning maps through typical map amendment procedures. However, while FEMA delineated flood prone areas are not zoned as P-FP subdistricts, they are regulated as P-FP subdistricts.

Staff suggest that the phrasing of Section 4.08,B,2,b be adjusted to reflect that adoption of FEMA maps by the Commission or staff are achieved by a note on official land use guidance maps and do not necessarily result in a modification of P-FP subdistrict boundaries.

Commenter(s): Maine Land Use Planning Commission staff

Response: The Commission concurs with the comment, in that the rule should be as clear as possible and should meet the intended purposes.

Action(s): Revise Section 4.08,B,2 according to the following (*illustrated as a redline of the posted revisions*):

- “2. For the purposes of this section, applications for zone changes considered to be routine in nature are limited to:
- a. Requests to amend ~~the boundaries of existing Wetland Protection Subdistricts supported by a site specific subdistrict boundaries on a parcel based on a site-specific~~ wetland delineation completed by a qualified professional in accordance with the "Corps of Engineers Wetlands Delineation Manual," U.S. Army Corps of Engineers (1987) and the "Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Northcentral and Northeast Region," U.S. Army Corps of Engineers (Version 2.0, January 2012);”
 - b. Proposals ~~for to adopt~~ new or amended ~~Flood Prone Area Protection Subdistricts based on effective~~ Flood Insurance Rate Maps, Flood Boundary and Floodway Maps, or Flood Hazard Boundary Maps prepared by the Federal Emergency Management Agency, which the Commission is required to adopt as a participating community in the National Flood Insurance Program.”