
COMMENTS RECEIVED FOR PROPOSED RULE REVISIONS:
ACTIVITIES IN FLOOD PRONE AREAS,
PROPOSED REVISION OF CHAPTER 2 AND CHAPTER 10

The following pages compile all written comments about the Chapter 2 and Chapter 10 Activities in Flood Prone Areas rulemaking submitted from October 30, 2024 to December 5, 2024.

Rebuttal Comments: The deadline for submissions in rebuttal to these comments is **December 16, 2024.**



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

AMANDA E. BEAL
COMMISSIONER

STACIE R. BEYER
EXECUTIVE DIRECTOR

JANET T. MILLS
GOVERNOR

Memorandum

To: LUPC Commissioners
CC: Stacie R. Beyer, Executive Director
From: Tim Carr, Senior Planner, Augusta Office
Date: December 5, 2024
Re: Activities in Flood Prone Areas - Proposed Chapter 2 and Chapter 10 Rulemaking

On behalf of the Maine Land Use Planning Commission staff, I submit the following comments addressing potential clarifications in the draft rule revisions related to:

- The elevation requirements for utilities in unnumbered A Zones and Commission-mapped P-FPs; and
- The definition of agricultural structure.

Each clarification is described below, including a description of the issue, analysis, and proposed rule language.

Clarify the Elevation Requirements for Utilities in Unnumbered A Zones and Commission-mapped P-FPs

The rule changes propose a new section on Utilities (10.25,T,2,f) requiring utilities to be elevated 1 ft above BFE in unnumbered A Zones (and therefore in Commission-mapped P-FPs). The Utilities section does not address the new option available for residential structures, nonresidential structures, and manufactured homes that in unnumbered A zones a property owner may choose to elevate 2 ft above the highest adjacent grade.

In addition, the rule changes proposed for the sections on residential structures, nonresidential structures, manufactured homes, and accessory structures are silent on how the 2 ft above highest adjacent grade standard would apply to utilities. However, the rule changes proposed for nonresidential structures clearly apply the 2 ft above highest adjacent grade standard as an option when floodproofing (rather than elevating) associated utilities in unnumbered A Zones.

Analysis: One goal of the rules is to protect property from flood damage. Protecting building utilities from flood damage minimizes the cost of flood damage and ensures safety, health, and welfare. It is reasonable

that an applicant choosing to elevate a structure 2 ft above highest adjacent grade must also elevate utilities 2 ft above the highest adjacent grade. The Maine Floodplain Management Program confirmed that the intent of the model floodplain ordinance is to require elevation of utilities 2 ft above highest adjacent grade when an applicant is choosing that option.

Summary of Proposed Rule Changes:

- Add the option to elevate 2 ft above highest adjacent grade in A Zones to the new section on utilities.
- Add elevating the utility service disconnect 2 ft above highest adjacent grade as an option for accessory structures.
- Add utilities to the elevation requirements for residential structures, nonresidential structures, and manufactured homes.

Proposed Rule Changes to 10.25,T,2 (shown below as if current rulemaking redline accepted):

- f. **Utilities.** New construction or substantial improvement of any structure (including manufactured homes) ~~located within~~must:
- (1) ~~Zones A and AE must have~~Have the bottom of all electrical, heating, plumbing, ventilation and air conditioning equipment, permanent fixtures and components, HVAC ductwork and duct systems, and any other utility service equipment, facilities, machinery, or connections servicing a structure, elevated:
- (a) ~~to~~To at least one foot above the base flood elevation; ~~or~~
- ~~(b) In the absence of all data described in Sections 10.25,T,1,b, and c to at least two feet above the highest adjacent grade to the structure; and~~
- (2) When located within Zone VE, ~~must~~ meet the requirements of Section 10.25,T,2,r,(2),(c).
- h. **Residential Structures.** New construction or substantial improvement of any residential structure must:
- (1) Have the lowest floor (including basement) and utilities elevated:
- (a) To at least one foot above the base flood elevation; or
- (b) In the absence of all data described in Sections 10.25,T,1,b, and c to at least two feet above the highest adjacent grade to the structure; and
- (2) When located within Zone VE, meet the requirements for coastal floodplains in Section 10.25,T,2,r.
- i. **Nonresidential Structures.** Notwithstanding Section 10.25,T,2,f, new construction or substantial improvement of any nonresidential structure must:
- (1) Have the lowest floor (including basement) elevated to at least one foot above the base flood elevation and comply with Section 10.25,T,2,f, or

- (2) Together with attendant utility and sanitary facilities:
 - (a) Be floodproofed to at least one foot above the base flood elevation so that below that elevation the structure is watertight with walls substantially impermeable to the passage of water;
 - (b) Have structural components designed to resist hydrostatic and hydrodynamic loads and the effects of buoyancy; and
 - (c) Be certified by a registered professional engineer or architect that the floodproofing design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of Section 10.25,T. Such certification must include a record of the elevation above mean sea level to which the structure is floodproofed.
- (3) When located within Zone A and in the absence of all data described in Sections 10.25,T,1,b, and c:
 - (a) Have the lowest floor **and utilities** elevated to at least two feet above the highest adjacent grade to the structure; or
 - (b) Together with attendant utility and sanitary facilities, be floodproofed to at least two feet above the highest adjacent grade to the structure and meet the floodproofing standards of Sections 10.25,T,2,i,(2),(b) and (c).
- (4) When located within Zone VE, meet the requirements for coastal floodplains in Section 10.25,T,2,r.

j. Manufactured Homes. New manufactured homes or substantial improvements of any manufactured home must:

- (1) Be elevated such that the lowest floor (including basement) **and utilities** of the manufactured home **isare**:
 - (a) At least one foot above the base flood elevation; or
 - (b) When located within Zone A and in the absence of all data described in Sections 10.25,T,1,b, and c, at least two feet above the highest adjacent grade to the structure.
- (2) Be on a permanent foundation, which may be poured masonry slab or foundation walls, with hydraulic openings, or may be reinforced piers or block supports, any of which support the manufactured home so that no weight is supported by its wheels and axles; and
- (3) Be securely anchored to an adequately anchored foundation system to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to:
 - (a) Over-the-top ties anchored to the ground at the four corners of the manufactured home, plus two additional ties per side at intermediate points (manufactured homes less than 50 feet long require one additional tie per side); or
 - (b) Frame ties at each corner of the home, plus five additional ties along each side at intermediate points (manufactured homes less than 50 feet long require four additional ties per side).

All components of the anchoring system described in subsections (a) and (b) above must be designed to carry a force of 4,800 pounds.

- (4) When located within Zone VE, meet the requirements for coastal floodplains in Section 10.25,T,2,r.

I. Accessory Structures. Accessory structures, as defined, and agricultural structures meeting the definition of accessory structure are exempt from the required elevation criteria if all other requirements of Sections 10.25,T and 10.25,T,2,l,(1) through (7) are met. Exempt accessory and agricultural structures must:

- (1) Be limited in size:
 - (a) Within Zones A and AE, to a one-story building with a floor area of no more than 600 square feet; and
 - (b) Within Zone VE, to a one-story building with a floor area of no more than 100 square feet;
- (2) Have unfinished interiors and not be used for human habitation;
- (3) Have hydraulic openings, as specified in Section 10.25,T,2,n,(2), in at least two different walls of the accessory structure;
- (4) Be located outside the floodway, as determined by the provisions of Section 10.25,T,2,m;
- (5) When possible be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters and be placed further from the source of flooding than is the primary structure;
- (6) Have only ground fault interrupt electrical outlets; and
- (7) Have the electric service disconnect located:
 - (a) At least one foot above the base flood elevation; or
 - (b) In the absence of all data described in Sections 10.25,T,1,b, and c to at least two feet above the highest adjacent grade; and; or
 - (c) when ~~When~~ possible outside the Area of Special Flood Hazard.

Clarify the Definition of Agricultural Structures

The rule changes propose variance standards for “new construction and substantial improvement of agricultural structures being used for the conduct of agricultural uses” in flood prone areas. A definition of Agricultural Structure is also proposed. A definition of Agricultural Use is not proposed, nor does one exist in LUPC rules. The proposed definition of Agricultural Structure describes the agricultural uses allowed.

Current LUPC rules include definitions of Agricultural Processing Facilities and Agricultural Management Activities. Clarification is needed on whether Agricultural Processing Facilities qualify as Agricultural Structures and whether Agricultural Management Activities qualify as Agricultural Uses.

Analysis: FEMA offers guidance on determining Agricultural Structures and Uses, including that:

- Such structures must be walled and roofed;
- Structures used for aquaculture qualify as long as they are used for the production, harvesting, storage, raising, or drying of aquaculture commodities;
- Structures used for human habitation do not qualify;
- Structures used by the public do not qualify; and
- Mixed use structures do not qualify if any single use does not involve only the production, harvesting, storage, raising, or drying of commodities or livestock.

While there is some overlap between the uses considered Agricultural Management Activities and the uses listed in the proposed definition of Agricultural Structure, there are also distinctions. Agricultural Management Activities primarily refer to activities taking place outside on the land. The agricultural uses in Agricultural Structures are primarily taking place within the structure.

LUPC's Agricultural Processing Facilities exceed the limits FEMA places on Agricultural Structures. Agricultural Processing Facilities may be used for human habitation and may be used for processing and production of agricultural commodities outside of harvesting, storage, raising, or drying.

Summary of Proposed Rule Changes:

- Modify the proposed definition of Agricultural Structure to provide further clarity on the uses such structures may and may not house.

Proposed Rule Changes to Chapter 2 (shown below as if current rulemaking redline accepted):

#. **Agricultural Structure:**

For purposes of regulating development in flood prone areas, walled and roofed structures that are used exclusively for ~~agricultural purposes or in connection with~~ the production, harvesting, storage, raising, or drying of agricultural commodities and livestock, including aquaculture. Structures that house tools or equipment used in connection with these purposes or uses are also considered to be agricultural structures. Processing and production of agricultural commodities outside of harvesting, storage, raising, or drying are not considered agricultural purposes or uses. Structures used for human habitation or used by the public are not considered agricultural structures.