

Maine Land Use Planning Commission

Department of Agriculture, Conservation and Forestry



BASIS STATEMENT AND SUMMARY OF COMMENTS FOR

Proposed Chapter 2, Definitions and Chapter 10, Land Use Districts and Standards – Rule Revisions Regarding: Activities in Flood Prone Areas

Adopted February 12, 2025

STATUTORY AUTHORITY: 12 M.R.S. §§ 685-A(3); 685-A(7-A); and 685-C(5)

FACTUAL AND POLICY BASIS FOR THE RULE AMENDMENTS

The Land Use Planning Commission has standards for development in flood prone areas ([Chapter 10](#), Section 10.25,T). These standards are necessary for the Commission’s ongoing participation in the National Flood Insurance Program (NFIP) and must be consistent with the Federal Emergency Management Agency’s (FEMA) NFIP rules and guidance. The proposed changes increase consistency with FEMA’s rules and guidance or clarify sections of rule. In developing the proposed revisions, staff relied upon FEMA rules and development standards for National Flood Insurance Program membership, FEMA guidance publications, and the 2024 Maine Model Floodplain Ordinance produced by the Maine Floodplain Management Program, among other sources of information.

Updates to increase consistency or clarify sections of rule include those related to:

- Accessory and agricultural structures;
- Utilities;
- Physical changes to the natural landscape;
- Wharves, piers, docks, and breakwaters;
- Engineering certifications;
- Residential structures and manufactured homes;

- Nonresidential structures;
- Development in coastal floodplains; and
- Substantial improvement and substantial damage, among others.

The changes also allow legally existing structures in flood prone areas to exceed limitations on height above grade when elevated to provide additional freeboard, increasing safety and minimizing structural damage during a flood event.

PUBLIC NOTICE OF RULEMAKING

At a meeting held on October 9, 2024, staff presented draft rule revisions to the Commission. The Commission voted to initiate rulemaking and post the revisions to public comment, with a 36-day public comment period and an additional 11-day rebuttal period.

Notice of the rulemaking was provided in the Secretary of State’s consolidated rulemaking notice on October 30, 2024. 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 (over 2,200 recipients). Notice of the proposed revisions was also posted on the agency’s rulemaking webpage.

The record remained open until December 5, 2024, to allow interested persons to file written statements with the Commission and until December 16, 2024, to allow interested persons to file written rebuttal comments.

COMMENTS AND RESPONSES

The Commission received written comments from the LUPC staff regarding two potential clarifications in the draft rule revisions. No rebuttal comments were received.

1. Topic: Elevation Requirements for Utilities in Unnumbered A Zones and Commission-mapped P-FP Subdistricts

Commission staff commented that the proposed rule revisions do not consistently specify whether building utilities may be elevated two feet above the highest adjacent grade in unnumbered A Zones and Commission-mapped P-FP subdistricts when no information on base flood elevation exists.

Commenter: Maine Land Use Planning Commission staff

Response: The Commission agrees that the “two feet above highest adjacent grade” standard should be clarified with regard to building utilities in the proposed rule revisions. 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 two feet above highest adjacent grade must also elevate the structure's utility systems two feet above the highest adjacent grade. When contacted by the LUPC staff, the Maine Floodplain Management Program confirmed that the intent of the current Maine Model Floodplain Ordinance is to require elevation of utilities two feet above highest adjacent grade when an applicant is choosing that option.

Action(s): The following revisions will be made to Section 10.25,T,2 of the proposed rules (shown below as if current rulemaking redline accepted):

“2. Development Standards.

...

- f. Utilities.** New construction or substantial improvement of any structure (including manufactured homes) located must:
- (1) 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 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 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 are:
 - (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.

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1. 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; or
- (c) When possible outside the Area of Special Flood Hazard.

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2. Topic: Clarifying the Definition of Agricultural Structure

Commission staff noted that the rule changes propose variance standards in flood prone areas for “new construction and substantial improvement of agricultural structures being used for the conduct of agricultural uses” and propose a definition of Agricultural Structure but do not propose a definition of Agricultural Use. In addition, current LUPC rules include definitions of Agricultural Processing Facility and Agricultural Management Activities. Staff stated that clarification is needed in rule on whether Agricultural Processing Facilities qualify as Agricultural Structures and whether Agricultural Management Activities qualify as Agricultural Uses.

Commenter: Maine Land Use Planning Commission staff

Response: The Commission agrees that further clarification of the uses allowed in Agricultural Structures is needed. 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. Additionally, LUPC’s Agricultural Processing Facilities, which are allowed by permit or special exception in the General Management (M-GN) subdistrict, exceed the limits FEMA places on Agricultural Structures in flood zones. 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.

Action: The following revisions have been made to the definition of Agricultural Structure in 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 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.

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