
COMMENTS RECEIVED FOR PROPOSED RULE REVISIONS:

**PROPOSED REVISION OF
CHAPTER 4 - RULES OF PRACTICE**

The following pages compile all written comments about the Chapter 4 rulemaking submitted between March 22, 2023 and May 1, 2023.

Rebuttal Comments: The deadline for submissions in rebuttal to those comments is **May 8, 2023**.



JANET T. MILLS
GOVERNOR

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

Memorandum

To: Maine Land Use Planning Commission
From: Ben Godsoe, Planning Division Manager
Date: April 28, 2023
Re: Proposed 2023 Chapter 4 Rule Revisions

On behalf of the Maine Land Use Planning Commission staff, I submit the following comments on the draft rule revisions.

The Commission's purpose in initiating rulemaking changes to Chapter 4 is, in-part, to designate as 'routine in nature' certain zoning petitions, and therefore delegate to staff the ability to act on such applications. Specifically, to enable staff to:

- act on applications to adjust zoning on a parcel based on on-site wetland delineations; and
- incorporate into the Commission's regulations and indicate as such on its land use guidance maps officially published FEMA¹ maps that delineate flood prone areas.

However, after further review, staff are concerned that the following information or interpretations may not be particularly clear to the public.

Wetlands

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.'

¹ the Federal Emergency Management Agency

Interaction of and relationship between subdistricts

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.² 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.

FEMA and Flood Prone Protection (P-FP) 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.

Recommended Edits

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); and
 - 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.

² 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).