

DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY
MAINE LAND USE PLANNING COMMISSION

Proposed Rule Revisions: Chapter 4 Miscellaneous Revisions

March 8, 2023 – Proposed Revisions

The following amendments propose changes to Chapter 4, Rules of Practice. This document only includes relevant sections of each rule and indicates additions in underline, deletions with a ~~striketrough~~, and relocated text in double underline and double ~~striketrough~~. Most revisions are self-evident. Where necessary, further explanations of some changes have been included in [brackets]. These explanatory notes would not be included in the final rule.

[Revision Note: Section 4.04,B does not include a subsection 7. The citation issue likely resulted from the fact that in drafting the 2021 reorganization of Chapter 4, the rule was reorganized and adjusted several times before settling on the current organization.]

4.04 NOTICES

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B. NOTICE REQUIREMENTS

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6. Rulemaking.

Notice of rulemaking, with or without a hearing, must be provided in accordance with 5 M.R.S. §§ 8053(1), (2), (3-A), and (5), as may be modified or supplemented by 12 M.R.S. § 685-A(7-A)(B). Notwithstanding the prior statement, pursuant to 12 M.R.S. § 685-A(7-A)(B), notice requirements for applications for zone change are addressed in Sections 4.04(B)(3) through (5), ~~and (7)~~.

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4.07 FINAL ACTION

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[Revision Note: The following relates to a revision proposed for Section 4.08,B,2 below. Specifically, Title 12 establishes a timeline according to which zoning changes become effective. Consequently, requirements regarding the effective date of staff actions must be adjusted accordingly if staff are to be authorized to approve certain zoning petitions.]

B. STAFF DECISIONS

1. Unless otherwise indicated in statute (e.g. 12 M.R.S. § 685-A(7-A)(B)(5)) or as a condition of the permit or certification, a final action issued by the staff is effective on the date the decision document is signed by the staff.

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[Revision Note: The following revision would more accurately reflect current practice and requirements of statute.]

C. COMMISSION DECISIONS

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2. A decision of the Commission is considered final on the date rendered by the Commission, unless the Commission receives a request for a public hearing pursuant to Section 4.06(A) or 4.07(K) or as otherwise indicated in statute (e.g. 12 M.R.S. § 685-A(7-A)(B)(5)) or as a condition of the permit or certification. Where ~~such~~ a request for a public hearing is made, the decision of the Commission is considered final on the date the Commission denies the request for public hearing, or on the date of the Commission's decision after a public hearing has been held.

4.08 DELEGATION OF AUTHORITY TO STAFF

A. PURPOSE AND SCOPE

Pursuant to 12 M.R.S. §§ 685-B(1-B) and (8), the Commission finds that:

1. Many of the applications submitted to the Commission are similar and are therefore of a routine nature;
2. The handling of that type of application by the staff will eliminate a waiting period between completion of the staff work and the next Commission meeting; and
3. The nature of the applications is such that the decision may be made by the staff on the strict basis of the statutory criteria for approval contained in 12 M.R.S. § 685-B(4) and the policies, standards, and rules duly adopted by the Commission.

[Revision Note: Pursuant to Commission directive, the following proposed revisions delegate to staff the decision-making authority for two types of routine rezoning petitions.]

B. DELEGATION OF AUTHORITY

1. The Commission delegates to its staff, under the responsibility of the Director, the authority to
 - a. Approve, approve with conditions, disapprove, issue, or otherwise act on the following, provided they are routine in nature and do not raise significant policy issues:
 - (1) all applications, including those for special exceptions, submitted to the Commission.

These include situations where applicable Commission rules contain qualifying phrases, including but not limited to: the Commission may reduce, may consider, may allow for development by waiving, may waive, and must consider.

- b. Extend the time limits herein imposed for review of staff decisions and for Commission review and decision, upon written request by the applicant or with the written consent of the applicant, where circumstances necessitate a longer time or for other good cause.

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 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 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.

~~Notwithstanding the provisions of Sections 4.08(B)(1)(a) and (b), at the discretion of the Commission or the Director, any application, request, or matter may be forwarded to the Commission for discussion, decision, guidance to staff, or directive to staff.~~

3. Notwithstanding the provisions of Sections 4.08(B)(1)(a) and (b) and (2), at the discretion of the Commission or the Director, any application, request, or matter may be forwarded to the Commission for discussion, decision, guidance to staff, or directive to staff.

[Revision Note: The first of the following edits corresponds to the proposed delegation of authority to staff. The other two edits clarify two confusing provisions.]

C. EXCEPTIONS

- 1. ~~Notwithstanding any other provision, Except as provided above,~~ the Commission does not delegate to its staff authority to:
 - a. Approve or disapprove applications for zone changes, including adoption or amendment of any related development, concept, or resource plans;
 - b. Preside over a hearing regarding,~~Hear~~ or decide on, appeals of staff actions;
 - ...
 - e. ~~Decide or decide on~~Approve or disapprove requests for a hearing;
 - ...