

# Shoreland Zoning News

*A newsletter of the Maine Department of Environmental Protection*

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## Shoreland Zoning Legislation

This legislative session, the Department of Environmental Protection (DEP) is proposing a multi-part bill to amend the Mandatory Shoreland Zoning Act. Some of these amendments are in direct response to a stakeholder process that took place in 2011.

The most substantive change being proposed deals with the expansion of legally existing nonconforming structures. Currently, a municipality can only utilize one of two expansion provisions.

The DEP is recommending combining the two existing provisions, which would allow a landowner the ability to choose which provision would work best for their particular circumstances.

In addition, the current law measures expansions in terms of floor area and volume. This proposal aims to switch the use of floor area and volume to footprint.

While this change was supported by a majority of the stakeholder participants, concerns were raised that without a cap on volume, expansions could have significant visual impacts.

To balance these concerns with the desire to provide landowners with more flexibility, DEP is proposing that the height of all expanded nonconforming structures be limited, similar to existing standards. By limiting the height, structure volume is reasonably controlled.

Most of the other amendments aim to provide clarity for existing provisions, such as updates to definitions, and specifically identifying which individuals are not subject to the contractor certification requirement (see page 2).

This bill provides clarity and flexibility, while continuing to protect resources. It has not yet been assigned an LD number. For more information, contact your regional staff person (see page 4).



## Changes from Last Year

Changes to the Mandatory Shoreland Zoning Act (Act) are now effective:

- The timber harvesting choices that were adopted into ordinances became effective on January 1, 2013. A municipality that did not repeal regulation or adopt statewide standards continues to administer the standards currently contained in the ordinance. It's still an option to repeal regulation or adopt standards.
- Required contractor certification for those working in the shoreland zone is now effective. Refer to page 2.

Other changes to the Act and Chapter 1000 Guidelines that are now available for voluntary adoption include:

- Rulemaking changes allow municipalities to repeal the habitat criterion for establishing Resource Protection Districts, if the comprehensive plan supports it.
- An ordinance may exempt a cupola or similar feature from the height of a structure. For more details, contact your regional shoreland zoning staff (see page 4).

If your municipality is planning on amending its ordinance, feel free to contact us for assistance.



Cupola in the Shoreland Zone

## Kudos: Required Contractor Certification

Many of you are updating your permit forms in order to address a new law requiring certified contractors.

In the Fall 2012 newsletter edition, we suggested that municipalities add a box to permit forms for the applicant to list the contractor's name and certification number.

Any excavation contractor that engages in an activity that causes the disturbance of more than one cubic yard of soil within the shoreland zone must ensure that a person certified in erosion and sedimentation control practices by the Department of Environmental Protection is on-site.

The certified contractor must visit the site each day earthmoving activities occur until the site is permanently stabilized.

An excavation contractor is defined as an individual or firm engaged in either: a business that causes the disturbance of soil, including grading, filling and removal; or, in a

business in which the disturbance of soil results from an

activity that the individual or firm is retained to perform. This neither applies to municipal employees working on municipal projects nor to homeowners doing the work themselves.

The full text of the law is contained in 38 M.R.S.A § 439-B of the Mandatory Shoreland Zoning Act.

This requirement aims to achieve compliance with existing standards. The DEP has found that work overseen by a certified contractor is much less likely to be in violation of the Erosion and Sedimentation Control Law and related shoreland zoning provisions.

Those updating forms came to us with a good question: How do we verify certification numbers? There is a database online at [www.maine.gov/dep](http://www.maine.gov/dep). If you don't have internet access, contact staff (see page 4) who can look up the information for you.

### **Sidebar: Contractor Certification Amendment**

Municipalities should amend shoreland zoning ordinances, to raise awareness about required contractor certification. Here is suggested language to add to the erosion and sedimentation control section of your ordinance:

"When an excavation contractor will perform the activities, compliance with the following shall be required:

(a) A person certified in erosion control practices by the Maine Department of Environmental Protection shall be responsible for management of erosion and sedimentation control practices at the site. This person shall be present at the site each day earthmoving activity occurs for a duration that is sufficient to ensure that proper erosion and sedimentation control practices are followed. This is required until erosion and sedimentation control measures have been installed, which will either stay in place permanently or stay in place until the area is sufficiently covered with vegetation necessary to prevent soil erosion.

(b) Include on the required plan or permit application, the name and certification number of the person who will oversee activities causing or resulting in soil disturbance."

Also add the definition that is in 38 M.R.S.A § 439-B.

## Court Rules Reasonable Return Exists

The City of Biddeford Codes Office forwarded us a recent court decision that piqued our interest. In the case, *Robert E. Logan, Jr. v. City of Biddeford, Me.* 2013 (Docket No. AP-12-037), Mr. Logan appealed a City zoning board of appeals variance denial.

The property is a small, undeveloped lot on the ocean and a setback variance was sought. Mr. Logan owns additional property nearby, and the City found that Mr. Logan failed to demonstrate undue hardship on the basis of reasonable return with regard to the other lots.

The Court agreed by stating:

"Mr. Logan is correct that without a variance he is unable to build a house or any other structure. If Mr. Logan did not own any nearby properties the Board's finding about yielding a reasonable return would be in error. However, Mr. Logan owns nearby developed and undeveloped properties either directly across the street from this lot or just a few houses away on the opposite non-ocean front side of the street."

The DEP had been advising municipalities to consider only the lot in question, but the implications of this decision should be considered by municipalities.

## Shoreland Zoning Questions Answered

**Q: How do the lot dimensional requirements (minimum lot area and shore frontage) apply when there are multiple uses in a single structure?**

**A:** This is a question that we are asked more frequently than you might imagine. Section 15(A)(5) of the Chapter 1000 Guidelines states:

“If more than one residential dwelling unit, principal governmental, institutional, commercial or industrial structure or use, or combination thereof, is constructed or established on a single parcel, all dimensional requirements shall be met for each additional dwelling unit, principal structure, or use.”

The 2006 revisions were intended to make this provision clearer: Additional land area and shore frontage is required when multiple principal structures and/or uses are on a parcel of land. It also applies when multiple principal uses are located within the same single structure.

For example, consider a proposed apartment building with four apartments; each is a separate residential dwelling unit. In this example, the parcel of land must be four times the minimum lot area and shore frontage in order to meet the lot dimensional requirements.

More commonly, we receive inquiries regarding a single principal structure that is proposed for multiple commercial uses. Picture a sign shop, a fly-fishing store and an insurance office all located within the same structure. The minimum lot area and shore frontage requirements would need to be met for each separate principal use, in this case, three times the minimum is required.

Multiple units and uses will generate more sewage waste than a single use. Multiple uses typically require more parking and other non-vegetated surfaces than a single use. These are reasons for applying the minimum lot dimensional requirements to each separate structure or use in order to achieve the shoreland zoning purposes.

This provision is not intended to stifle development but instead to recognize that the intensity of each principal use is not diminished simply because the uses share the same structure or parcel. In intensely developed areas, municipalities may consider less stringent dimensional requirements by demonstrating the special local conditions to regional shoreland zoning staff for the DEP Commissioner's approval.



Well-Distributed Stand of Trees and Vegetation

## Story Series: Buffers, Water Quality and Economic Benefits

Surprising to many are the links between erosion, water quality, the economy and healthy, diverse buffers. This Story Series will highlight these connections over two to three newsletter editions.

Healthy, diverse buffers make a significant contribution to maintaining good water quality in watersheds by reducing soil erosion. They are effective in preventing erosion as roots, low growth and the duff layer trap the sediment in the surface water. The canopies of this vegetation cushion the impact of raindrops, reducing the ability of the rain water to dislodge soil particles and transport more sediment to the natural resources.

Reduction of these buffers leads to increased flow of surface water that transports sediment to natural resources. This affects water quality in the entire watershed down stream of the erosion.

When sediment enters into the lakes and streams of the State, it can cover bottom cobble areas needed for fish spawning activities. This reduces the success of natural reproduction. Habitats for aquatic insects that provide a food source for many fish could also be destroyed by sedimentation. Suspended sediment particles in the water column leads to a decrease in light availability and water clarity. All three of these situations can lead to an economic loss for landowners and the communities associated with these resources.

Healthy, diverse buffers protect against soil erosion, keeping resources healthy and clear. The resulting economic benefits to landowners and the community will be examined in the next newsletter edition.

## Upcoming Training

### Annual CEO Shoreland Zoning Training

This free training, from 9 a.m. to 4:00 p.m. provides a better understanding of shoreland zoning standards. It's helpful in preparing for the CEO certification exam. New information is included for those attending for continuing education credits. Lunch is on your own. Dress for the weather, as the field portion this year will be interactive.

Tuesday April 30, at Raymond Public Safety Building

Monday May 6, at Cherryfield Town Office

Wednesday May 8, at NMDC in Caribou

Thursday May 9, at Florian Hall in Augusta

Thursday May 9, at Weston Town Office

Friday May 10, at Greenville Town Office

### Code Enforcement Officer Exams

Tuesday April 23, in Saco

Thursday April 25, in Bangor

Friday April 26, in Augusta

Get registration form from Brianne Hasty: (207)624-7507

### Maine Coastal Erosion Workshop

Tuesday April 23, at Hutchinson Center in Belfast

Registration: shannon.bragg@ejprescott.com

### Municipal Technology Conference

Tuesday April 30, at Augusta Civic Center

[www.megug.org](http://www.megug.org)

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## Shoreland Zoning Notes

A noteworthy conversation came up recently. Though it comes up rarely, it is worth the reminder.

A shoreland zoning ordinance is required, and the Mandatory Shoreland Zoning Act (Act) also requires municipal administration and enforcement.

A municipal-wide zoning ordinance is not required in order to have a shoreland zoning ordinance. Shoreland zoning provisions may be incorporated into a municipal-wide ordinance instead of having a stand-alone ordinance.

A comprehensive plan is not required in order to have a shoreland zoning ordinance. If a comprehensive plan is up to date, the shoreland zoning ordinance should be made consistent, as long as it remains consistent with the Chapter 1000 Guidelines pursuant to the Act.

Consistency with a comprehensive plan is not required for a shoreland zoning ordinance to be effective. While the Growth Management Act makes ineffective ordinances that are inconsistent with the comprehensive plan, this does not apply to shoreland zoning ordinances.

DEP approval is required for a shoreland zoning ordinance, or shoreland zoning provisions in a larger ordinance, to be effective. Please remember that all amendments adopted, which are applicable to the shoreland zone, must be attested by the municipal clerk and submitted to the DEP for approval. Amendments to the map, which are adopted in text form, must be incorporated onto the official zoning map within 30 days of the DEP approval to remain effective.

Refer to: 30-A M.R.S.A § 4314(2); 38 M.R.S.A § 435, 438-A, and 441; and 06-096 C.M.R. ch. 1000.

### ***About the Shoreland Zoning News***

Since 1987, the Shoreland Zoning News has been helping municipal officials better administer and enforce shoreland zoning ordinances. Newsletters can be obtained by emailing a request to [stephenie.maclagan@maine.gov](mailto:stephenie.maclagan@maine.gov), or from [www.maine.gov/dep/land/newsletter](http://www.maine.gov/dep/land/newsletter).

Your feedback is welcome! Submit comments and topics for articles to [stephenie.maclagan@maine.gov](mailto:stephenie.maclagan@maine.gov).

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