



STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
17 STATE HOUSE STATION AUGUSTA, MAINE 04333-0017

DEPARTMENT ORDER

IN THE MATTER OF

TOWN OF ATHENS	) MANDATORY SHORELAND ZONING ACT
SOMERSET COUNTY	)
SHORELAND ZONING ORDINANCE	)
ORDER #48-2025	) CONDITIONAL APPROVAL

Pursuant to the provisions of 38 M.R.S. §§ 435-448, the *Mandatory Shoreland Zoning Act* (“Act”), and the Maine Department of Environmental Protection’s *Guidelines for Municipal Shoreland Zoning Ordinances*, 06-096 C.M.R. ch. 1000 (amended January 26, 2015) (“Guidelines”), the Department of Environmental Protection has considered the request for approval of the Town of Athens Shoreland Zoning Ordinance (Ordinance), as amended on July 15, 2025, and FINDS THE FOLLOWING FACTS:

1. The Act requires municipalities to establish zoning controls in areas within 250 feet of the normal high-water line of great ponds and rivers; within 250 feet of the upland edge of freshwater and coastal wetlands; and within 75 feet of the normal high-water line of streams. Such zoning standards must be consistent with or no less restrictive than those in the Guidelines. 38 M.R.S. §§435 & 438-A.
2. The Act specifies that before a locally adopted shoreland zoning ordinance, or amendment to that ordinance, is effective, it must be approved by the Commissioner of the Department of Environmental Protection (“Commissioner”). The Commissioner may approve, approve with conditions, or deny the ordinance or amendment. If denied, or approved with conditions, such action must be preceded by notice to the municipality. If the Commissioner fails to act within 45 days of receipt of the ordinance or amendment, then the ordinance or amendment is automatically approved. 38 M.R.S. § 438-A.
3. On August 12, 2025, the Town of Athens submitted the following amendments to its Ordinance as adopted on July 15, 2025 to the Department for review:
  - A. The Town of Athens has chosen to pursue Option 2 for timber harvesting,<sup>1</sup> joint administration and regulation of all forestry activities within the municipality between the Bureau of Forestry (also commonly referred to as the Maine Forest Service) and the municipality by adopting the Option 2 minimum requirements of the Chapter 1000 Guidelines.

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<sup>1</sup> Title 38, section 438-A provides that, notwithstanding other provisions in the Mandatory Shoreland Zoning Act, the regulation of timber harvesting and timber harvesting activities in shoreland areas must be in accordance with section 438-B and rules adopted by the Bureau of Forestry. Section 438-B establishes three options from which each municipality may choose. The options are further identified in a Note Relating to Timber Harvesting Standards, located in the Guidelines between Ch. 1000, § 15(N) and § 15(O-1).

- B. The amendments make extensive revisions throughout the Ordinance, including minor corrections and clarifications, as well as substantive changes in standards including, but not limited to, expansion of nonconforming structures and associated definitions.
4. The Department's review of the Ordinance has revealed the following significant deficiencies:
- A. Section 4 *Effective Date and Repeal of Formerly Adopted Ordinance*, fails to identify the effective date.
  - B. Section 9.A *Districts and Zoning Map*, fails to accurately represent applicable Shoreland Zoning districts identified on the Shoreland Zoning map.
  - C. Section 12.C *Non-conforming Structures*, omits language for expansion standards.
  - D. Section 12.C.3 *Contiguous Lots – Vacant or Partially Built*, fails to identify the applicable effective date.
  - E. Section 13.C *Establishment of Districts*, fails to accurately represent applicable Shoreland Zoning districts identified on the Shoreland Zoning map.
  - F. Section 14 *Table of Land Uses*, fails to accurately represent applicable Shoreland Zoning districts identified on the Shoreland Zoning map.
  - G. Section 15.B *Principal and Accessory Structures*, omits language on retaining walls.
  - H. Section 15. C *Piers, Docks, Wharves, Bridges, and Other Structures and uses Extending Over or Beyond the Normal High-Water Line of a Water Body or Within a Wetland*, omits the standard for pier, dock, or wharf quantity, permanent piers, and the standards for shoreline stabilizations.
  - I. Section 15.E *Individual Private Campsites*, omits applicable standards for individual private campsites.
  - J. Section 15.O *Timber Harvesting*, fails to accurately represent timber harvesting standards.
  - K. Section 15.P *Clearing of Vegetation for Development* fails to accurately represent vegetation removal standards.

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L. Section 16.C *Permit Application* omits contractor requirements for working in the shoreland zone.

M. Sections on Hazard Trees, Storm-Damaged Trees, and Dead Tree Removal, Exemptions to Clearing and Vegetation Removal Requirements, and Revegetation Requirements, are missing from the document.

5. On September 3, 2025, the Town of Athens was notified by the Department of the above deficiencies, and the proposed conditional approval of the Ordinance.

BASED on the above Findings of Fact, the Commissioner makes the following CONCLUSION:

1. The deficiencies noted in paragraph 4 above can be addressed by the Commissioner approving the Ordinance with conditions. This will result in the Ordinance being substantially consistent with the requirements of the Mandatory Shoreland Zoning Act, 38 M.R.S., Section 438-A, and the minimum Guidelines.

THEREFORE, the Commissioner APPROVES the Ordinance, as amended on July 15, 2025, SUBJECT TO THE ATTACHED CONDITIONS:

1. Section 4 *Effective Date and Repeal of Formerly Adopted Ordinance*, shall be amended in part to add the highlighted language:

This Ordinance, which was adopted by the municipal legislative body on July 15, 2025, shall not be effective unless approved by the Commissioner of the Department of Environmental Protection. A certified copy of the Ordinance, attested and signed by the Municipal Clerk, shall be forwarded to the Commissioner for approval. If the Commissioner fails to act on this Ordinance or Ordinance Amendment, within forty-five (45) days of his/her receipt of the Ordinance, or Ordinance Amendment, it shall be automatically approved.

2. Section 9.A *Districts and Zoning Map*, shall be amended in part to remove the ~~striketrough~~ language:

## **9. Districts and Zoning Map**

**A. Official Shoreland Zoning Map.** The areas to which this Ordinance is applicable are hereby divided into the following districts as shown on the Official Shoreland Zoning Map(s) which is (are) made a part of this Ordinance:

- (1) Resource Protection
- (2) Limited Residential

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- (3) Limited Commercial
- (4) ~~General Development~~
- (5) ~~Commercial Fisheries/Maritime Activities~~
- (6) Stream Protection

3. Section 12.C *Non-conforming Structures*, shall be amended in part to include the following language:

When it is necessary to remove vegetation within the water or wetland setback area in order to relocate a structure, the Planning Board shall require replanting of native vegetation to compensate for the destroyed vegetation in accordance with Section 15(S). In addition, the area from which the relocated structure was removed must be replanted with vegetation. Replanting shall be required as follows:

- (a) Trees removed in order to relocate a structure must be replanted with at least one native tree, three (3) feet in height, for every tree removed. If more than five trees are planted, no one species of tree shall make up more than 50% of the number of trees planted. Replaced trees must be planted no further from the water or wetland than the trees that were removed.

Other woody and herbaceous vegetation, and ground cover, that are removed or destroyed in order to relocate a structure must be re-established. An area at least the same size as the area where vegetation and/or ground cover was disturbed, damaged, or removed must be reestablished within the setback area. The vegetation and/or ground cover must consist of similar native vegetation and/or ground cover that was disturbed, destroyed or removed.

- (b) Where feasible, when a structure is relocated on a parcel the original location of the structure shall be replanted with vegetation which may consist of grasses, shrubs, trees, or a combination thereof.

If the reconstructed or replacement structure is less than the required setback it shall not be any larger than the original structure, except as allowed pursuant to Section 12(C)(1) above, as determined by the non-conforming footprint of the reconstructed or replaced structure at its new location. If the total footprint of the original structure can be relocated or reconstructed beyond the required setback area, no portion of the relocated or reconstructed structure shall be replaced or constructed at less than the setback requirement for a new structure. When it is necessary to remove vegetation in order to replace or reconstruct a structure, vegetation shall be replanted in accordance with Section 12(C)(3) above.

4. Section 12.C.3 *Contiguous Lots – Vacant of Partially Built*, shall be amended in part to remove the ~~strickthrough~~ language and add the **highlighted** language:

**Contiguous Lots – Vacant or Partially Built:** If two or more contiguous lots or parcels are in single or joint ownership of record at the time of this Ordinance, if any of these lots do not individually meet the dimensional requirements of this Ordinance or subsequent amendments, and if one or more of the lots are vacant or contain no principal structure the lots shall be combined to the extent necessary to meet the dimensional requirements.

This provision shall not apply to 2 or more contiguous lots, at least one of which is non-conforming, owned by the same person or persons on **July 28, 1993** ~~the effective date of this Ordinance~~ and recorded in the registry of deeds if the lot is served by a public sewer or can accommodate a subsurface sewage disposal system in conformance with the State of Maine Subsurface Wastewater Disposal Rules; and

- (a) Each lot contains at least 100 feet of shore frontage and at least 20,000 square feet of lot area; or
- (b) Any lots that do not meet the frontage and lot size requirements of Section 12(E)(3)(a) are reconfigured or combined so that each new lot contains at least 100 feet of shore frontage and 20,000 square feet of lot area.

- 5. Section 13.C *Establishment of Districts*, shall be amended to remove the General Development District.
- 6. Section 14 *Table of Land Uses*, shall be amended to remove the General Development District and Commercial Fisheries/Maritime Activities District.
- 7. Section 15.B *Principal and Accessory Structures*, shall be amended in part to include the following language:

Retaining walls that are not necessary for erosion control shall meet the structure setback requirement, except for low retaining walls and associated fill provided all of the following conditions are met:

- (a) The site has been previously altered and an effective vegetated buffer does not exist;
- (b) The wall(s) is(are) at least 25 feet, horizontal distance, from the normal high-water line of a water body, tributary stream, or upland edge of a wetland;
- (c) The site where the retaining wall will be constructed is legally existing lawn or is a site eroding from lack of naturally occurring vegetation, and which cannot be stabilized with vegetative plantings;

- (d) The total height of the wall(s), in the aggregate, are no more than 24 inches;
  - (e) Retaining walls are located outside of the 100-year floodplain on rivers, streams, coastal wetlands, and tributary streams, as designated on the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps or Flood Hazard Boundary Maps, or the flood of record, or in the absence of these, by soil types identified as recent flood plain soils.
  - (f) The area behind the wall is revegetated with grass, shrubs, trees, or a combination thereof, and no further structural development will occur within the setback area, including patios and decks; and
  - (g) A vegetated buffer area is established within 25 feet, horizontal distance, of the normal high-water line of a water body, tributary stream, or upland edge of a wetland when a natural buffer area does not exist. The buffer area must meet the following characteristics:
    - (i) The buffer must include shrubs and other woody and herbaceous vegetation. Where natural ground cover is lacking the area must be supplemented with leaf or bark mulch;
    - (ii) Vegetation plantings must be in quantities sufficient to retard erosion and provide for effective infiltration of stormwater runoff;
    - (iii) Only native species may be used to establish the buffer area;
    - (iv) A minimum buffer width of 15 feet, horizontal distance, is required, measured perpendicularly to the normal high-water line or upland edge of a wetland;
    - (v) A footpath not to exceed the standards in Section 15(P)(2)(a), may traverse the buffer;
8. Section 15.C *Piers, Docks, Wharves, Bridges, and Other Structures and uses Extending Over or Beyond the Normal High-Water Line of a Water Body or Within a Wetland*, shall be amended in part to include the following language:
- No more than one pier, dock, wharf or similar structure extending or located below the normal high-water line of a water body or within a wetland is allowed on a single lot; except that when a single lot contains at least twice the minimum shore frontage as specified in Section 15(A), a second structure may be allowed and may remain as long as the lot is not further divided.

New permanent piers and docks on non-tidal waters shall not be permitted unless it is clearly demonstrated to the Planning Board that a temporary pier or dock is not feasible, and a permit has been obtained from the Department of Environmental Protection, pursuant to the *Natural Resources Protection Act*.

Vegetation may be removed in excess of the standards in Section 15(P) of this ordinance in order to conduct shoreline stabilization of an eroding shoreline, provided that a permit is obtained from the Planning Board. Construction equipment must access the shoreline by barge when feasible as determined by the Planning Board.

(a) When necessary, the removal of trees and other vegetation to allow for construction equipment access to the stabilization site via land must be limited to no more than 12 feet in width. When the stabilization project is complete the construction equipment accessway must be restored.

(b) Revegetation must occur in accordance with revegetation standards.

9. Section 15.E *Individual Private Campsites*, shall be amended in part to include the following language:

When an individual private campsite is proposed on a lot that contains another principal use and/or structure, the lot must contain the minimum lot dimensional requirements for the principal structure and/or use, and the individual private campsite separately.

Only one recreational vehicle shall be allowed on a campsite.

10. Section 15.O *Timber Harvesting*, will be amended to replace the current standards with the updated Chapter 21 - Statewide Standards. Section 15.O *Timber Harvesting* will be amended to add the highlighted language:

Timber Harvesting – Statewide Standards Option 2 – please see Appendix A for regulatory information.

11. Section 15.P *Clearing of Vegetation for Development* shall be amended in part to remove the ~~striketrough~~ language and add the highlighted language:

(a) There shall be no cleared opening greater than 250 square feet in the forest canopy (or other existing woody vegetation if a forested canopy is not present) as measured from the outer limits of the tree or shrub crown. However, a single footpath not to exceed ten (10) six (6) feet in width as measured between tree trunks and/or shrub stems is permitted provided that a cleared line of sight through the buffer strip is not created. ~~Adjacent to a great pond classified GPA,~~

~~or river flowing to a great pond classified GOA, the width of the foot path shall be limited to six (6) feet.~~

12. Section 16.C *Permit Application* shall be amended in part to include the following language:

When an excavation contractor will perform an activity that requires or results in more than one (1) cubic yard of soil disturbance, the person responsible for management of erosion and sedimentation control practices at the site must be certified in erosion control practices by the Maine Department of Environmental Protection. This person must 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. The name and certification number of the person who will oversee the activity causing or resulting in soil disturbance shall be included on the permit application. This requirement does not apply to a person or firm engaged in agriculture or timber harvesting if best management practices for erosion and sedimentation control are used; and municipal, state and federal employees engaged in projects associated with that employment.

13. Section 17 *Definitions* shall be amended in part to remove the ~~striketrough~~ language and add the highlighted language:

**Expansion of a structure** - an increase in the floor area or volume footprint or height of a structure, including all extensions such as, but not limited to attached: decks, garages, porches and greenhouses.

14. Section 17 *Definitions* shall be amended in part to include the following language:

**Increase in nonconformity of a structure** - any change in a structure or property which causes further deviation from the dimensional standard(s) creating the nonconformity such as, but not limited to, reduction in water body, tributary stream or wetland setback distance, increase in lot coverage, or increase in height of a structure. Property changes or structure expansions which either meet the dimensional standard or which cause no further increase in the linear extent of nonconformance of the existing structure shall not be considered to increase nonconformity. For example, there is no increase in nonconformity with the setback requirement for water bodies, wetlands, or tributary streams if the expansion extends no further into the required setback area than does any portion of the existing nonconforming structure. Hence, a structure may be expanded laterally provided that the expansion extends no closer to the water body, tributary



stream, or wetland than the closest portion of the existing structure from that water body, tributary stream, or wetland. Included in this allowance are expansions which in-fill irregularly shaped structures.

**Stream** - a free-flowing body of water from the outlet of a great pond or the confluence of two (2) perennial streams as depicted on the most recent , highest resolution version of the national hydrography dataset available from the United States Geological Survey on the website of the United States Geological Survey or the national map to the point where the stream becomes a river or where the stream meets the shoreland zone of another water body or wetland. When a stream meets the shoreland zone of a water body or wetland and a channel forms downstream of the water body or wetland as an outlet, that channel is also a stream.

15. The following sections shall be added as follows (added language in *Italics*):

***Hazard Trees, Storm-Damaged Trees, and Dead Tree Removal***

- (1) *Hazard trees in the shoreland zone may be removed without a permit after consultation with the Code Enforcement Officer if the following requirements are met:*
- (a) *Within the shoreline buffer, if the removal of a hazard tree results in a cleared opening in the tree canopy greater than two hundred and fifty (250) square feet, replacement with native tree species is required, unless there is new tree growth already present. New tree growth must be as near as practicable to where the hazard tree was removed and be at least two (2) inches in diameter, measured at four and one half (4.5) feet above the ground level. If new growth is not present, then replacement trees shall consist of native species and be at least four (4) feet in height and be no less than two (2) inches in diameter. Stumps may not be removed.*
  - (b) *Outside of the shoreline buffer, when the removal of hazard trees exceeds forty (40) percent of the volume of trees four (4) inches or more in diameter, measured at four and one half (4.5) feet above ground level in any ten (10) year period, and/or results in cleared openings exceeding twenty-five (25) percent of the lot area within the shoreland zone, or ten thousand (10,000) square feet, whichever is greater, replacement with native tree species is required, unless there is new tree growth already present. New tree growth must be as near as practicable to where the hazard tree was removed and be at least two (2) inches in diameter, measured at four and one half (4.5) feet above the ground level. If new growth is not present, then replacement trees shall consist of native species and be at least two (2) inches in diameter, measured at four and one half (4.5) feet above the ground level.*

- (c) The removal of standing dead trees, resulting from natural causes, is permissible without the need for replanting or a permit, as long as the removal does not result in the creation of new lawn areas, or other permanently cleared areas, and stumps are not removed. For the purposes of this provision dead trees are those trees that contain no foliage during the growing season.*
- (d) The Code Enforcement Officer may require the property owner to submit an evaluation from a licensed forester or arborist before any hazard tree can be removed within the shoreland zone.*
- (e) The Code Enforcement Officer may require more than a one-for-one replacement for hazard trees removed that exceed eight (8) inches in diameter measured at four and one half (4.5) feet above the ground level.*
- (2) Storm-damaged trees in the shoreland zone may be removed without a permit after consultation with the Code Enforcement Officer if the following requirements are met:*
  - (a) Within the shoreline buffer, when the removal of storm-damaged trees results in a cleared opening in the tree canopy greater than two hundred and fifty (250) square feet, replanting is not required, but the area shall be required to naturally revegetate, and the following requirements must be met:*
    - (i) The area from which a storm-damaged tree is removed does not result in new lawn areas, or other permanently cleared areas;*
    - (ii) Stumps from the storm-damaged trees may not be removed;*
    - (iii) Limbs damaged from a storm event may be pruned even if they extend beyond the bottom one-third (1/3) of the tree; and*
    - (iv) If after one growing season, no natural regeneration or regrowth is present, replanting of native tree seedlings or saplings is required at a density of one seedling per every eighty (80) square feet of lost canopy.*
  - (b) Outside of the shoreline buffer, if the removal of storm damaged trees exceeds 40% of the volume of trees four (4) inches or more in diameter, measured at four and one half (4.5) feet above the ground level in any ten (10) year period, or results, in the aggregate, in cleared openings exceeding 25% of the lot area within the shoreland zone or ten thousand (10,000) square feet, whichever is greater, and no natural regeneration occurs within one growing season, then native tree seedlings or saplings shall be replanted on a one-for-one basis.*

***Q. Exemptions to Clearing and Vegetation Removal Requirements***

*The following activities are exempt from the clearing and vegetation removal standards set forth in Section 15(P), provided that all other applicable requirements of this chapter are complied with, and the removal of vegetation is limited to that which is necessary:*

- (1) The removal of vegetation that occurs at least once every two (2) years for the maintenance of legally existing areas that do not comply with the vegetation standards in this chapter, such as but not limited to cleared openings in the canopy or fields. Such areas shall not be enlarged, except as allowed by this section. If any of these areas, due to lack of removal of vegetation every two (2) years, reverts back to primarily woody vegetation, the requirements of Section 15(P) apply;*
- (2) The removal of vegetation from the location of allowed structures or allowed uses, when the shoreline setback requirements of section 15(B) are not applicable;*
- (3) The removal of vegetation from the location of public swimming areas associated with an allowed public recreational facility;*
- (4) The removal of vegetation associated with allowed agricultural uses, provided best management practices are utilized, and provided all requirements of section 15(N) are complied with.*
- (5) The removal of vegetation associated with brownfields or voluntary response action program (VRAP) projects provided that the removal of vegetation is necessary for remediation activities to clean-up contamination on a site in a general development district, commercial fisheries and maritime activities district or other equivalent zoning district approved by the Commissioner that is part of a state or federal brownfields program or a voluntary response action program pursuant 38 M.R.S.A section 343-E, and that is located along:
  - (a) A coastal wetland; or*
  - (b) A river that does not flow to a great pond classified as GPA pursuant to 38 M.R.S.A section 465-A.**
- (6) The removal of non-native invasive vegetation species, provided the following minimum requirements are met:
  - (a) If removal of vegetation occurs via wheeled or tracked motorized equipment, the wheeled or tracked motorized equipment is operated and stored at least twenty-five (25) feet, horizontal distance, from the shoreline, except that wheeled or tracked equipment may be operated or stored on existing structural surfaces, such as pavement or gravel.**

- (b) Removal of vegetation within twenty-five (25) feet, horizontal distance, from the shoreline occurs via hand tools; and*
- (c) If applicable clearing and vegetation removal standards are exceeded due to the removal of non-native invasive species vegetation, the area shall be revegetated with native species to achieve compliance.*
- (7) The removal of vegetation associated with emergency response activities conducted by the Department, the U.S. Environmental Protection Agency, the U.S. Coast Guard, and their agents.*

#### **R. Revegetation Requirements**

*When revegetation is required in response to violations of the vegetation standards set forth in Section 15(P), to address the removal of non- native invasive species of vegetation, or as a mechanism to allow for development that may otherwise not be permissible due to the vegetation standards, including removal of vegetation in conjunction with a shoreline stabilization project, the revegetation must comply with the following requirements.*

- (1) The property owner must submit a revegetation plan, prepared with and signed by a qualified professional, that describes revegetation activities and maintenance. The plan must include a scaled site plan, depicting where vegetation was, or is to be removed, where existing vegetation is to remain, and where vegetation is to be planted, including a list of all vegetation to be planted.*
- (2) Revegetation must occur along the same segment of shoreline and in the same area where vegetation was removed and at a density comparable to the pre-existing vegetation, except where a shoreline stabilization activity does not allow revegetation to occur in the same area and at a density comparable to the pre-existing vegetation, in which case revegetation must occur along the same segment of shoreline and as close as possible to the area where vegetation was removed:*
- (3) If part of a permitted activity, revegetation shall occur before the expiration of the permit. If the activity or revegetation is not completed before the expiration of the permit, a new revegetation plan shall be submitted with any renewal or new permit application.*
- (4) Revegetation activities must meet the following requirements for trees and saplings:*
  - (a) All trees and saplings removed must be replaced with native noninvasive species;*
  - (b) Replacement vegetation must at a minimum consist of saplings;*

- (c) If more than three (3) trees or saplings are planted, then at least three (3) different species shall be used;*
- (d) No one species shall make up 50% or more of the number of trees and saplings planted;*
- (e) If revegetation is required for a shoreline stabilization project, and it is not possible to plant trees and saplings in the same area where trees or saplings were removed, then trees or sapling must be planted in a location that effectively reestablishes the screening between the shoreline and structures; and*
- (f) A survival rate of at least eighty (80) percent of planted trees or saplings is required for a minimum five (5) years period.*
- (5) Revegetation activities must meet the following requirements for woody vegetation and other vegetation under three (3) feet in height:*
  - (a) All woody vegetation and vegetation under three (3) feet in height must be replaced with native noninvasive species of woody vegetation and vegetation under three (3) feet in height as applicable;*
  - (b) Woody vegetation and vegetation under three (3) feet in height shall be planted in quantities and variety sufficient to prevent erosion and provide for effective infiltration of stormwater;*
  - (c) If more than three (3) woody vegetation plants are to be planted, then at least three (3) different species shall be planted;*
  - (d) No one species shall make up 50% or more of the number of planted woody vegetation plants; and*
  - (e) Survival of planted woody vegetation and vegetation under three feet in height must be sufficient to remain in compliance with the standards contained within this chapter for minimum of five (5) years*
- (6) Revegetation activities must meet the following requirements for ground vegetation and ground cover:*
  - (a) All ground vegetation and ground cover removed must be replaced with native herbaceous vegetation, in quantities and variety sufficient to prevent erosion and provide for effective infiltration of stormwater;*
  - (b) Where necessary due to a lack of sufficient ground cover, an area must be covered with mulch to prevent erosion and provide for effective infiltration of stormwater; and*

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*(c) Survival and functionality of ground vegetation and ground cover must be sufficient to remain in compliance with the standards contained within this chapter for minimum of five (5) years.*

DONE AND DATED AT AUGUSTA, MAINE, THIS 12<sup>TH</sup> DAY OF SEPTEMBER, 2025.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY:   
For: Melanie Loyzim, Commissioner

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES.



# DEP INFORMATION SHEET

## Appealing a Commissioner's Decision on a Shoreland Zoning Ordinance

**Date:** April 2025      **Contact:** [Clerk.BEP@maine.gov](mailto:Clerk.BEP@maine.gov) or (207) 314-1458

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### **SUMMARY**

This document provides information regarding a municipality's rights and obligations in filing an administrative or judicial appeal of a shoreland zoning ordinance decision made by the Commissioner of the Department of Environmental Protection ("DEP").

There are two methods available to a municipality seeking to appeal a shoreland zoning ordinance decision made by the DEP Commissioner: (1) an administrative process before the Board of Environmental Protection ("Board"), or (2) a judicial appeal before Maine's Superior Court.

### **I. ADMINISTRATIVE APPEALS TO THE BOARD**

#### **LEGAL REFERENCES**

A municipality filing an appeal with the Board should review the applicable rules and statutes, including the DEP's Chapter 2 rule, [Processing of Applications and Other Administrative Matters \(06-096 C.M.R. ch. 2\)](#); Organization and Powers, [38 M.R.S. §§ 341-D\(4\)](#) and [346](#); and the the Mandatory Shoreland Zoning laws [38 M.R.S. § 438-A\(3\)](#).

#### **DEADLINE TO SUBMIT AN APPEAL TO THE BOARD**

Within 30 calendar days of the date of a final license decision of the Commissioner; a municipality may appeal to the Board for review of that decision. "Aggrieved person" means any person whom the Board determines may suffer a particularized injury as a result of a Commissioner's license decision. A complete appeal must be received by the Board no later than 5:00 p.m. on the 30<sup>th</sup> calendar day of the decision being appealed. With limited exception, untimely appeals will be dismissed.

#### **HOW TO SUBMIT AN APPEAL TO THE BOARD**

An appeal to the Board may be submitted via postal mail or via electronic mail (e-mail) and must contain all signatures and the required appeal contents. An electronic filing must contain the scanned original signature of the appellant(s). The appeal documents must be sent to the following address.

Chair, Board of Environmental Protection  
c/o Board Clerk  
17 State House Station  
Augusta, ME 04333-0017  
[ruth.a.burke@maine.gov](mailto:ruth.a.burke@maine.gov)

The DEP may also request the submittal of the original signed paper appeal documents when the appeal is filed electronically. The risk of material not being received in a timely manner is on the sender, regardless of the method used.

At the time an appeal is filed with the Board, the appellant must send a copy of the appeal to the Commissioner of the DEP (Maine Department of Environmental Protection, 17 State House Station, Augusta, Maine 04333-0017). **Please contact the Board Clerk at [clerk.bep@maine.gov](mailto:clerk.bep@maine.gov) or DEP staff at 207-287-7688 with questions or for contact information regarding a specific license.**

#### **REQUIRED APPEAL CONTENTS**

A written appeal must contain the information specified in Chapter 2, section 23(B) or section 24(B), as applicable, at the time the appeal is submitted. **Please carefully review these sections of Chapter 2**, which is available online at <https://www.maine.gov/sos/cec/rules/06/chaps06.htm>, or contact the Board Clerk to obtain a copy of the rule. Failure to comply with the content of appeal requirements may result in the appeal being dismissed pursuant to Chapter 2, section 23(C) or section 24(C).

#### **OTHER CONSIDERATIONS IN APPEALING A DECISION TO THE BOARD**

1. *Be familiar with the administrative record.* Generally, the record on which the Board decides an appeal is limited to the record prepared by the agency in its review of the application, any supplemental evidence admitted to the record by the Board Chair and, if a hearing is held on the appeal, additional evidence admitted during the hearing. A municipality that seeks to appeal a decision to the Board is encouraged to contact the DEP to inspect the record before filing an appeal.
2. *Be familiar with the applicable rules and laws.* An appellant is required to identify the licensing criterion or standard the appellant believes was not satisfied in issuing the decision, the bases of the objections or challenges, and the remedy sought. Prior to filing an appeal, review the decision being appealed to identify the rules and laws that are applicable to the decision. An appellant may contact the DEP or Board staff with any questions regarding the applicable rules and laws or the appeal procedure generally.
3. *The filing of an appeal does not operate as a stay to any decision.* If a license has been granted and it has been appealed, the license normally remains in effect pending the processing of the appeal. Unless a separate stay of the decision is requested and granted (*see* Chapter 2, section 23(M)), the licensee may proceed with an approved project pending the outcome of the appeal. Any activity initiated in accordance with the approved license during the pendency of the appeal comes with the risk of not knowing the outcome of the appeal, including the possibility that the decision may be reversed or modified by the Board.
4. *Alternative dispute resolution.* If the municipality agree to use mediation or another form of alternative dispute resolution (“ADR”) to resolve the appeal and so notify the Board, the Board will not hear the matter until the conclusion of that effort, provided the participants engaged in the alternative dispute resolution demonstrate satisfactory progress toward resolving the issues. *See* Chapter 2, section 23(H) or contact the Board Executive Analyst (contact information below) for more information on the ADR provision.

#### **WHAT TO EXPECT ONCE YOU FILE A TIMELY APPEAL WITH THE BOARD**

The Board will acknowledge receipt of each appeal and develop a service list of appeal participants and any interested persons for use in the appeal proceeding. Electronic mail (e-mail) is the preferred method of communication during an appeal proceeding; however, the Board reserves the right to require paper copies of all filings. Once the Board Chair rules on the admissibility of all proposed supplemental evidence, the licensee (if the licensee is not the appellant) may respond to the merits of the appeal. Instructions specific to each appeal will be provided in correspondence from the Board Executive Analyst or Board Chair. Generally, once all filings in an appeal proceeding are complete, the DEP staff will assemble a packet of materials for the Board (Board packet), including a staff recommendation in the form of a proposed Board Order. Once available, appeal participants will receive a copy of the Board packet and an agenda with the meeting location and start time. Once finalized, the meeting agenda will be posted on the Board's webpage



<https://www.maine.gov/dep/bep/index.html>. Appeals will be considered based on the administrative record on appeal and oral argument at a regular meeting of the Board. *See* Chapter 2, Section 23(I). The Board may affirm all or part of the decision under appeal; affirm all or part of the decision under appeal with modifications, or new or additional conditions; order a hearing to be held as expeditiously as possible; reverse the decision under appeal; or remand the decision to the Commissioner or State Fire Marshal, as applicable, for further proceedings.

## **II. APPEALS TO MAINE SUPERIOR COURT**

The filing of an appeal with the Board is not a prerequisite for the filing of a judicial appeal. Maine law generally allows aggrieved persons to appeal final license decisions to Maine's Superior Court (*see* [38 M.R.S. § 346\(1\)](#); [Chapter 2](#); [5 M.R.S. § 11001](#); and [M.R. Civ. P. 80C](#)). A judicial appeal by a party to the underlying proceeding must be filed with the Superior Court within 30 days of receipt of notice of the Board's or the Commissioner's decision.

### **ADDITIONAL INFORMATION**

If you have questions or need additional information on the appeal process, for administrative appeals contact the Board Clerk at [clerk.bep@maine.gov](mailto:clerk.bep@maine.gov) or 207-287-2811 or the Board Executive Analyst at [bill.hinkel@maine.gov](mailto:bill.hinkel@maine.gov), or 207-314-1458 or for judicial appeals contact the court clerk's office in which the appeal will be filed.

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**Note:** This information sheet, in conjunction with a review of the statutory and rule provisions referred to herein, is provided to help a person to understand their rights and obligations in filing an administrative or judicial appeal, and to comply with the notice requirements of the Maine Administrative Procedure Act, 5 M.R.S. § 9061. This information sheet is not intended to supplant the parties' obligations to review and comply with all statutes and rules applicable to an appeal and insofar as there is any inconsistency between the information in this document and the applicable statutes and rules, the relevant statutes and rules apply.

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