

**MANDATORY SHORELAND ZONING ACT**  
**(TITLE 38, M.R.S.A., SECTIONS 435-449)**

**38 \_ 435. Shoreland areas**

To aid in the fulfillment of the State's role as trustee of its waters and to promote public health, safety and the general welfare, it is declared to be in the public interest that shoreland areas be subject to zoning and land use controls. Shoreland areas include those areas within 250 feet of the normal high-water line of any great pond, river or saltwater body, within 250 feet of the upland edge of a coastal wetland, within 250 feet of the upland edge of a freshwater wetland except as otherwise provided in section 438-A, subsection 2, or within 75 feet of the high-water line of a stream. The purposes of these controls are to further the maintenance of safe and healthful conditions; to prevent and control water pollution; to protect fish spawning grounds, aquatic life, bird and other wildlife habitat; to protect buildings and lands from flooding and accelerated erosion; to protect archaeological and historic resources; to protect commercial fishing and maritime industries; to protect freshwater and coastal wetlands; to control building sites, placement of structures and land uses; to conserve shore cover, and visual as well as actual points of access to inland and coastal waters; to conserve natural beauty and open space; and to anticipate and respond to the impacts of development in shoreland areas.

It is further declared that, in accordance with Title 12, section 402, certain river and stream segments, as identified in the Department of Conservation's 1982 Maine Rivers Study and as specifically delineated in section 437, are significant river segments and deserve special shoreland zoning controls designed to protect their natural and recreational features.

Zoning ordinances adopted pursuant to this article need not depend upon the existence of a zoning ordinance for all of the land and water areas within a municipality, notwithstanding Title 30-A, section 4503, as it is the intention of the Legislature to recognize that it is reasonable for municipalities to treat shoreland areas specially and immediately to zone around water bodies rather than to wait until such time as zoning ordinances may be enacted for all of the land within municipal boundaries.

All existing municipal ordinances dealing with subjects of this section currently in effect and operational on April 18, 1986, are declared to be valid and shall continue in effect until rescinded, amended or changed according to municipal ordinance, charter or state law.

**38 \_ 436. Definitions (REPEALED)**

**38 \_ 436-A. Definitions**

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

**1. Coastal wetlands.** "Coastal wetlands" means all tidal and subtidal lands; all lands with vegetation present that is tolerant of salt water and occurs primarily in a salt water or estuarine habitat; and any swamp, marsh, bog, beach, flat or other contiguous low land that is subject to tidal action during the highest tide level for the year in which an activity is proposed as identified in tide tables published by the National Ocean Service. Coastal wetlands may include portions of coastal sand dunes. (2005)

**1-A. Basement.** "Basement" means any portion of a structure with a floor-to-ceiling height of 6 feet or more and having more than 50% of its volume below the existing ground level.

**2. Commercial fishing activities.** "Commercial fishing activities" means activities directly related to commercial fishing and those commercial activities commonly associated with or supportive of commercial fishing, such as the manufacture or sale of ice, bait and nets, and the sale, manufacture, installation or repair of boats, engines and other equipment commonly used on boats.

**3. Densely developed area.** "Densely developed area" means any commercial, industrial or compact residential area of 10 or more acres with a density of at least one principal structure per 2 acres.

**4. Floodway.** "Floodway" means the channel of a river or other water course and the adjacent land areas that must be reserved to allow for the discharge of a 100-year flood without cumulatively increasing the water surface elevation of the 100-year flood by more than one foot.

**5. Freshwater wetlands.** "Freshwater wetlands" means freshwater swamps, marshes, bogs and similar areas, other than forested wetlands, which are:

A. Of 10 or more contiguous acres, or of less than 10 contiguous acres and adjacent to a surface water body, excluding any river, stream or brook, such that, in a natural state, the combined surface area is in excess of 10 acres; and

B. Inundated or saturated by surface or ground water at a frequency and for a duration sufficient to support, and which under normal circumstances do support, a prevalence of wetland vegetation typically adapted for life in saturated soils.

Freshwater wetlands may contain small stream channels or inclusions of land that do not conform to the criteria of this subsection.

**5-A. Forested wetland.** "Forested wetland" means a freshwater wetland dominated by woody vegetation that is 6 meters tall or taller.

**6. Functionally water-dependent uses.** "Functionally water-dependent uses" means those uses that require, for their primary purpose, location on submerged lands or that require direct access to, or location in, coastal or inland waters and that can not be located away from these waters. These uses include commercial and recreational fishing and boating facilities, excluding recreational boat storage buildings, finfish and shellfish processing, fish storage and retail and wholesale marketing facilities, waterfront dock and port facilities, shipyards and boat building facilities, marinas, navigation aids, basins and channels, retaining walls, industrial uses dependent upon water-borne transportation or requiring large volumes of cooling or processing water that can not reasonably be located or operated at an inland site and uses that primarily provide general public access to coastal or inland waters.

**7. Great pond.** "Great pond" means any inland body of water which in a natural state has a surface area in excess of 10 acres and any inland body of water artificially formed or increased which has a surface area in excess of 30 acres except for the purposes of this article, where the artificially formed or increased inland body of water is completely surrounded by land held by a single owner.

**8. Maritime activities.** "Maritime activities" means the construction, repair, storage, loading and unloading of boats, chandlery and other commercial activities designed and intended to facilitate maritime trade.

**9. Normal high-water line.** "Normal high-water line" means that line which is apparent from visible markings, changes in the character of soils due to prolonged action of the water or changes in vegetation, and which distinguishes between predominantly aquatic and predominantly terrestrial land.

**9-A. Outlet stream.** "Outlet stream" means any perennial or intermittent stream, as shown on the most recent edition of a 7.5-minute series or, if not available, a 15-minute series topographic map produced by the United States Geological Survey, that flows from a freshwater wetland.

**10. Principal structure.** "Principal structure" means a building other than one which is used for purposes wholly incidental or accessory to the use of another building on the same premises.

**11. River.** "River" means a free-flowing body of water including its associated flood plain wetlands from that point at which it provides drainage for a watershed of 25 square miles to its mouth.

**11-A. Stream.** "Stream" means a free-flowing body of water from the outlet of a great pond or the point of confluence of 2 perennial streams as depicted by a solid blue line on the most recent edition of a United States Geological Survey 7.5-minute series topographic map, or if not available, a 15-minute series topographic map, to the point where the body of water becomes a river or flows to another water body or wetland within a shoreland area.

**12. Structure.** "Structure" means anything built for the support, shelter or enclosure of persons, animals, goods or property of any kind, together with anything constructed or erected with a fixed location on or in the ground, exclusive of fences.

**13. Timber harvesting.** "Timber harvesting" means the cutting and removal of trees from their growing site and the attendant operation of cutting and skidding machinery, but not the construction or creation of roads. Timber harvesting does not include the clearing of land for approved construction.

### **38 \_ 437. Significant river segments identified**

For purposes of this chapter, significant river segments include the following:

**1. Aroostook River.** The Aroostook River from St. Croix Stream in Masardis to the Masardis and T.10, R.6, W.E.L.S. townline, excluding segments in T.9, R.5, W.E.L.S.; including its tributary the Big Machias River from the Aroostook River in Ashland to the Ashland and Garfield Plantation townlines;

**2. Dennys River.** The Dennys River from the railroad bridge in Dennysville Station to the dam at Meddybemps Lake, excluding the western shore in Edmunds Township and No. 14 Plantation;

**3. East Machias River.** The East Machias River from 1/4 of a mile above the Route 1 bridge in East Machias to the East Machias and T.18, E.D., B.P.P. townline, and from the T.19, E.D., B.P.P. and Wesley townline to the outlet of Crawford Lake in Crawford, excluding Hadley Lake;

**4. Fish River.** The Fish River from the former bridge site at the dead end of Mill Street in Fort Kent Mills to the outlet of Eagle Lake in Wallagrass, and from the Portage Lake and T.14, R.6, townline to the Portage Lake and T.13, R.7, W.E.L.S. townline, excluding Portage Lake; (2007)

**5. Machias River.** The Machias River from the Whitneyville and Machias townline to the Northfield T.19, M.D., B.P.P. townline;

**6. Mattawamkeag River.** The Mattawamkeag River from the outlet of Mattakeunk Stream in Winn to the Mattawamkeag and Kingman Township townline, and from the Reed Plantation and Bancroft townline to the East Branch, including its tributaries the West Branch from the Mattawamkeag River to the Haynesville T.3, R.3, W.E.L.S. townline and from its inlet into Upper Mattawamkeag Lake to the Route 2 bridge; the East Branch from the Mattawamkeag River to the Haynesville and Forkstown Township townline and from the T.4, R 3, W.E.L.S. and Oakfield townline to Red Bridge in Oakfield; the Fish Stream from the Route 95 bridge in Island Falls to the Crystal-Patten townline; and the Baskehegan Stream from its inlet into Crooked Brook Flowage in Danforth to the Danforth and Brookton Township townline;

**7. Narraguagus River.** The Narraguagus River from the ice dam above the railroad bridge in Cherryfield to the Beddington and Devereaux Township townline, excluding Beddington Lake;

**8. East Branch of Penobscot.** The East Branch of the Penobscot from the Route 157 bridge in Medway to the East Millinocket and Grindstone Township townline;

**9. Pleasant River.** The Pleasant River from the railroad bridge in Columbia Falls to the Columbia and T.18, M.D., B.P.P. townline, and from the T.24, M.D., B.P.P. and Beddington townline to the outlet of Pleasant River Lake;

**10. Rapid River.** The Rapid River from the Magalloway Plantation and Upton townline to the outlet of Pond in the River;

**11. West Branch Pleasant River.** The West Branch Pleasant River from the East Branch to the Brownville and Williamsburg Township townline; and

**12. West Branch of Union River.** The West Branch of the Union River from the Route 9 bridge in Amherst to the outlet of Great Pond in the Town of Great Pond.

**38 \_ 438. Municipal control (REPEALED)**

**38 \_ 438-A. Municipal authority; state oversight**

With respect to all shoreland areas described in section 435, municipalities shall adopt zoning and land use control ordinances pursuant to existing enabling legislation, under home rule authority and in accordance with the following requirements. The deadline for municipalities to adopt a shoreland zoning ordinance meeting the minimum guidelines adopted by the Board of Environmental Protection is extended to July 1, 1992.

Notwithstanding other provisions of this article, 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 Commissioner of Conservation pursuant to Title 12, section 8867-B. (2003)

**1. Land use guidelines.** In accordance with Title 5, chapter 375, subchapter II, the Board of Environmental Protection shall adopt, and from time to time shall update and amend, minimum guidelines for municipal zoning and land use controls that are designed to carry out the legislative purposes described in section 435 and the provisions of this article. These minimum guidelines must include provisions governing building and structure size, setback and location and establishment of resource protection, general development, limited residential, commercial fisheries and maritime activity zones and other zones. Within each zone, the board shall prescribe uses that may be allowed with or without conditions and shall establish criteria for the issuance of permits and nonconforming uses, land use standards and administrative and enforcement procedures. These guidelines must also include a requirement for a person issued a permit pursuant to this article in a great pond watershed to have a copy of the permit on site while work authorized by the permit is being conducted. The board shall comprehensively review and update its guidelines and shall reevaluate and update the guidelines at least once every 4 years.

A. Minimum guidelines adopted by the board under this subsection may not require the issuance of a municipal permit for the repair and maintenance of an existing road culvert or for the replacement of an existing road culvert, as long as the replacement culvert is:

(2) Not more than 25% longer than the culvert being replaced; and

(3) Not longer than 75 feet.

Ancillary culverting activities, including excavation and filling, are included in this exemption. A person repairing, replacing or maintaining an existing culvert under this paragraph shall ensure that erosion control measures are taken to prevent sedimentation of the water and that the crossing does not block fish passage in the water course.

**1-A. Minimum guidelines; limitations.** The minimum guidelines adopted under subsection 1 may not require a municipality, in adopting an ordinance, to:

A. Treat an increase in hours or days of operation of a nonconforming use as an expansion of a nonconforming use; or

B. Treat as a single lot, 2 or more contiguous lots, at least one of which is nonconforming, owned by the same person or persons on the effective date of the municipal 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 state subsurface wastewater disposal rules, and:

(1) Each lot contains at least 100 feet of shore frontage and at least 20,000 square feet of lot area; or

(2) Any lots that do not meet the frontage and lot size requirements of subparagraph (1) 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.

For purposes of this paragraph the term "nonconforming" means that a lot does not meet the minimum standards for lot area and shore frontage required by municipal ordinances adopted pursuant to this article.

**1-B. Notification to landowners.** This subsection governs notice to landowners whose property is being considered for placement in a resource protection zone.

A. In addition to the notice required by Title 30-A, section 4352, subsection 9, a municipality shall provide written notification to landowners whose property is being considered by the municipality for placement in a resource protection zone. Notification to landowners must be made by first-class mail to the last known addresses of the persons against whom property tax on each parcel is assessed. The municipal officers shall prepare and file with the municipal clerk a sworn, notarized certificate indicating those persons to whom notice was mailed and at what addresses, and when, by whom and from what location notice was mailed. This certificate constitutes prima facie evidence that notice was sent to those persons named in the certificate. The municipality must send notice not later than 14 days before its planning board votes to establish a public hearing on adoption or amendment of a zoning ordinance or map that places the landowners' property in the resource protection zone. Once a landowner's property has been placed in a resource protection zone, individual notice is not required to be sent to the landowner when the zoning ordinance or map is later amended in a way that does not affect the inclusion of the landowner's property in the resource protection zone.

B. In addition to the notice required by this Title or by rules adopted pursuant to this Title, the board shall provide written notification to landowners whose property is being considered by the board for placement in a resource protection zone. Notification to landowners must be made by first-class mail to the last known addresses of the persons against whom property tax on each parcel is assessed. The board shall prepare and file with the commissioner a sworn, notarized certificate indicating those persons to whom notice was mailed and at what addresses, and when, by whom and from what location notice was mailed. This certificate constitutes prima facie evidence that notice was sent to those persons named in the certificate. The board must send notice not later than 30 days before the close of the public comment period prior to formal consideration of placement of the property in a resource protection zone by the board. Upon request of the board, the municipality for which the ordinance is being adopted shall provide the board with the names and addresses of persons entitled to notice under this subsection. Notification and filing of a certificate by the department are deemed to be notification and filing by the board for purposes of this section.

C. Any action challenging the validity of an ordinance based on failure by the board or municipality to comply with this subsection must be brought in Superior Court within 30 days after adoption or amendment of the ordinance or map. The Superior Court may invalidate an amended ordinance or map if the appellant demonstrates that the appellant was entitled to receive notice under this subsection, that the municipality or board failed to send notice as required, that the appellant had no knowledge of the proposed adoption or amendment of the ordinance or map, and that the appellant was materially prejudiced by that lack of knowledge. This paragraph does not alter the right of a person to challenge the validity of any ordinance or map based on the failure of a municipality to provide notice as required by Title 30-A, section 4352, subsection 9 or the failure of the board to provide notice as required by this Title.

**2. Municipal ordinances.** In accordance with a schedule adopted by the board and acting in accordance with a local comprehensive plan, municipalities shall prepare and submit to the commissioner zoning and land use ordinances that are consistent with or are no less stringent than the minimum guidelines adopted by the board and, for coastal communities, that address the coastal management policies cited in section 1801. When a municipality determines that special local conditions within portions of the shoreland zone require a different set of standards from those in the minimum guidelines, the municipality shall document the special conditions and submit them, together with its proposed ordinance provisions, to the commissioner for review and approval.

Notwithstanding section 435, a municipality may limit to 75 feet the shoreland zone around a freshwater wetland that has not been rated by the Department of Inland Fisheries and Wildlife as having moderate or high value provided that the municipality applies the requirements of this article regarding streams as defined under section 436-A to any outlet stream from any freshwater wetland.

**3. Commissioner approval.** Municipal ordinances, amendments and any repeals of ordinances are not effective unless approved by the commissioner. In determining whether to approve municipal ordinances or amendments, the commissioner shall consider the legislative purposes described in section 435, the minimum guidelines and any special local conditions which, in the judgment of the commissioner, justify a departure from the requirements of the minimum guidelines in a manner not inconsistent with the legislative purposes described in section 435. Recognizing that the guidelines are intended as minimum standards, the commissioner shall approve a municipal ordinance that imposes more restrictive standards than those in the guidelines. If an ordinance or an amendment adopted by a municipality contains standards inconsistent with or less stringent than the minimum guidelines, the commissioner, after notice to the municipality, may approve the proposed ordinances or amendment with conditions imposing the minimum guidelines in place of the inconsistent or less stringent standard or standards. Those conditions are effective and binding within the municipality and must be administered and enforced by the municipality. If the commissioner fails to act on any proposed municipal ordinance or amendment within 45 days of the commissioner's receipt of the proposed ordinance or amendment, the ordinance or amendment is automatically approved. Any application for a shoreland zoning permit submitted to a municipality within the 45-day period is governed by the terms of the proposed ordinance or amendment if the ordinance or amendment is approved under this subsection. A municipality may appeal to the board a decision of the commissioner under this subsection.

**4. Failure to adopt ordinances.** If the commissioner determines, after notice to a municipality, that the municipality has failed to adopt ordinances as required under this article or that an ordinance that the municipality has adopted does not satisfy the requirements and purposes under this article, and that the commissioner is unable to make the ordinance consistent with the minimum guidelines by the imposition of conditions, as set forth in subsection 3, then the commissioner shall request and the board may adopt, acting in accordance with Title 5, chapter 375, subchapter II, suitable ordinances, or suitable provisions of ordinances, on behalf of the municipality. Notwithstanding subsections 2 and 3, if the board determines that special water quality considerations on a great pond warrant more restrictive standards than those contained in the minimum guidelines, the board may adopt the additional standards for all municipalities outside the jurisdiction of the Maine Land Use Regulation Commission which about those

waters. Following adoption by the board, these ordinances or provisions are effective and binding within the municipality and must be administered and enforced by that municipality. The board may adopt modifications to ordinances adopted pursuant to this subsection. Preparation and notice of proposed modifications, prior to consideration by the board, may be initiated by the commissioner.

**5. Exemptions.** Any areas within a municipality that are subject to nonmunicipal zoning and land use controls may be exempted from the operation of this section upon a finding by the commissioner that the purposes of this chapter have been accomplished by nonmunicipal measures.

**6-A. Variances.** A copy of a request for a variance under an ordinance approved or imposed by the commissioner or board under this article must be forwarded by the municipality to the commissioner at least 20 days prior to action by the municipality. The material submitted must include the application and all supporting information provided by the applicant. The commissioner may comment when the commissioner determines that the municipal issuance of the variance would not be in compliance with the requirements of state law for a zoning variance or that the variance would undermine the purposes stated in section 435. These comments, if submitted by the commissioner prior to the action by the municipality, must be made part of the record and must be considered by the municipality prior to taking action on the variance request. (2005)

**7. Exclusion of recreational boat storage buildings.** Notwithstanding subsection 3, the exclusion of recreational boat storage buildings from the definition of "functionally water-dependent uses" is deemed to be incorporated into each municipal shoreland zoning ordinance on the effective date of this subsection, regardless of any prior approval of the ordinance by the commissioner.

### **38 \_ 438-B. Timber Harvesting and timber harvesting activities in shoreland areas; authority of Director of Bureau of Forestry in the Department of Conservation (2003)**

Except as provided in subsection 4, beginning on the effective date established under subsection 5, rules adopted by the Commissioner of Conservation under Title 12, section 8867-B apply statewide for the purpose of regulating timber harvesting and timber harvesting activities in shoreland areas.

**1. Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

- A. "Director" means the Director of the Bureau of Forestry within the Department of Conservation.
- B. "Statewide standards" means the performance standards for timber harvesting activities adopted pursuant to Title 12, section 8867-B.
- C. "Timber harvesting" means cutting or removal of timber for the primary purpose of selling or processing forest products.
- D. "Timber harvesting activities" means the construction and maintenance of roads used primarily for timber harvesting and other activities conducted to facilitate timber harvesting.

**2. Municipal acceptance of statewide standards.** A municipality may choose to have the statewide standards apply to timber harvesting and timber harvesting activities in that municipality by authorizing the repeal of all provisions within the municipal shoreland zoning ordinance that regulate timber harvesting and timber harvesting activities in shoreland areas and notifying the director of the repeal. The authorization must specify a repeal date consistent with the effective date established under subsection 5. When the municipality accepts the statewide standards in accordance with this subsection, the director shall administer and enforce the statewide standards within that municipality beginning on the effective date established under subsection 5.

**3. Municipal adoption of ordinance identical to statewide standards.** A municipality may adopt an ordinance to regulate timber harvesting and timber harvesting activities that is identical to the statewide standards. A municipality that adopts an ordinance under this subsection may request the director to administer and enforce the ordinance or to participate in joint administration and enforcement of the ordinance with the municipality beginning on the effective date established under subsection 5. When a municipality requests joint responsibilities, the director and the municipality shall enter into an agreement that delineates the administrative and enforcement duties of each. To continue to receive administrative and enforcement assistance from the director under this subsection, a municipality must amend its ordinance as necessary to maintain identical provisions with the statewide standards.

**4. Municipal ordinances that are not identical to statewide standards.** A municipal ordinance regulating timber harvesting and timber harvesting activities that is in effect and consistent with state laws and rules in effect on December 31, 2005 continues in effect unless action is taken in accordance with subsection 2 or 3. A municipality that retains an ordinance with provisions that differ from the statewide standards shall administer and enforce that ordinance. A municipality may not amend a municipal ordinance regulating timber harvesting and timber harvesting activities unless the process established in Title 12, section 8869, subsection 8 is followed. Beginning on the effective date established under subsection 5, a municipality may not amend an ordinance regulating timber harvesting and timber harvesting activities in a manner that results in standards that are less stringent than or otherwise conflict with the statewide standards.

**5. Effective date for statewide standards.** Except as provided in subsection 4, rules adopted by the Commissioner of Conservation under Title 12, section 8867-B apply statewide beginning on the first day of January of the 2<sup>nd</sup> year following the year in which the Commissioner of Conservation determines that at least 252 of the 336 municipalities identified by the Commissioner of Conservation as the municipalities with the highest acreage of timber harvesting activity on an annual basis for the period 1999-2003 have either accepted the statewide standards in accordance with subsection 2 or have adopted an ordinance identical to the statewide standards in accordance with subsection 3. Within 30 days of making the determination that the 252-municipality threshold has been met, the Commissioner of Conservation shall notify the Secretary of State in writing and advise the secretary of the effective date for the statewide standards.

## **38 \_ 439. Requirements (REPEALED)**

### **38 \_ 439-A. Additional municipal powers, limitations**

**1. Additional controls.** In addition to the ordinances required by this chapter, municipalities may adopt zoning and land use controls applicable to other bodies of water as may be required to protect the public health, safety and general welfare and further the purposes of this article.

**2. Jurisdiction.** Notwithstanding the scope of shoreland areas as identified in section 435, the jurisdiction of municipal shoreland zoning and land use control ordinances adopted under this article may include any structure built on, over or abutting a dock, wharf, pier or other structure extending or located below the normal high-water line of a water body or within a wetland. Accordingly, municipalities may enact ordinances affecting structures that extend or are located over the water or are placed on lands lying between high and low waterlines or within wetlands.

**3. Soil evaluation reports.** Any other law notwithstanding, when a zoning ordinance adopted in conformity with this article requires a written report of soil suitability for subsurface waste disposal or commercial or industrial development, that report must be prepared and signed by a duly qualified person who has made an on-the-ground evaluation of the soil properties involved. Persons qualified to prepare these reports must be certified by the Department of Health and Human Services and include Maine State Certified Soil Scientists, Maine Registered Professional Engineers, Maine State Certified Geologists and other persons who have training and experience in the recognition and evaluation of soil properties and can provide proof of this training and experience in a manner specified by the Department

of Health and Human Services. The Department of Health and Human Services may promulgate rules for the purpose of establishing training and experience standards required by this subsection.

**4. Setback requirements.** Notwithstanding any provision in a local ordinance to the contrary, all new principal and accessory structures and substantial expansions of such structures within the shoreland zone as established by section 435 must meet the water setback requirements approved by the board, except functionally water-dependent uses. For purposes of this subsection, a substantial expansion of a building is an expansion that increases either the volume or floor area by 30% or more. This subsection is not intended to prohibit a municipal board of appeals from granting a variance, subject to the requirements of this article and Title 30-A, section 4353, nor is it intended to prohibit a less than substantial expansion of a legally existing nonconforming structure, as long as the expansion does not create further nonconformity with the water setback requirement.

**4-A. Alternative expansion requirement.** Notwithstanding subsection 4, a municipality may adopt an ordinance pursuant to this subsection that permits expansions of principal and accessory structures that do not meet the water setback requirements approved by the Board of Environmental Protection if the ordinance is no less restrictive than the requirements in this subsection.

A. All new principal and accessory structures, excluding functionally water-dependent uses, must meet the water setback requirements approved by the Board of Environmental Protection. An expansion of a legally existing nonconforming structure pursuant to this subsection may not create further nonconformity with the water setback requirement.

B. Expansion of any portion of a structure within 25 feet of the normal high-water line of a water body or upland edge of a wetland is prohibited, even if the expansion will not increase nonconformity with the water setback requirement. Expansion of an accessory structure that is located closer to the normal high-water line of a water body or upland edge of a wetland than the principal structure is prohibited, even if the expansion will not increase the nonconformity with the water setback requirement.

C. Legally existing nonconforming principal and accessory structures that do not meet the water setback requirements may be expanded or altered as follows, as long as other applicable standards of land use adopted by the municipality are met and the expansion is not prohibited by paragraph A or B.

(1) For structures located less than 75 feet from the normal high-water line of a water body or upland edge of a wetland, the maximum combined total floor area for all structures is 1000 square feet, and the maximum height of any structure is 20 feet or the height of the existing structure, whichever is greater.

(2) For structures located less than 100 feet from the normal high-water line of a great pond classified as GPA or a river flowing to a great pond classified as GPA, the maximum combined total floor area for all structures is 1,500 square feet, and the maximum height of any structure is 25 feet or the height of the existing structure, whichever is greater, except that any portion of those structures located less than 75 feet from the normal high-water line or upland edge of a wetland must meet the floor area and height limits in subparagraph (1).

Existing principal and accessory structures that exceed the floor area or height limits under this paragraph may not be expanded, except as provided in paragraph E.

For the purposes of this paragraph, a basement is not counted toward floor area.

D. When a basement is added to an existing structure or when a basement is constructed as part of a reconstruction or replacement structure, the structure and the basement must be placed so that

the setback is met to the greatest practical extent, as determined by the municipal planning board or, if authorized by the municipal planning board, the certified code enforcement officer.

E. A municipality may permit an expansion that causes the maximum floor area limits established in paragraph C to be exceeded by not more than 500 square feet if:

(1) The principal structure is set back at least 50 feet from the normal high-water line of a water body or upland edge of a wetland;

(2) An existing well-distributed stand of trees and other vegetation, as defined in the minimum guidelines adopted by the Board of Environmental Protection, extends at least 50 feet inland from the normal high-water line or upland edge of a wetland for the entire wide of the property or, if such a stand is not present, a written plan by the property owner to reestablish a buffer of native trees, shrubs, and other ground cover within 50 feet of the normal high-water line or upland edge of a wetland is approved by the municipal planning board. The plan must be implemented at the time of construction and must be designed to meet the minimum guidelines adopted by the Board of Environmental Protection as the vegetation matures. Rules adopted pursuant to this subparagraph are routine technical rules pursuant to Title 5, chapter 375, subchapter II-A; and

(3) The municipal planning board approves a written mitigation plan. The plan must be developed, implemented and maintained by the property owner. A mitigation plan must provide for the following mitigation measures.

(a) Unstabilized areas resulting in soil erosion must be mulched, seeded or otherwise stabilized and maintained to prevent further erosion and sedimentation to water bodies and wetlands.

(b) Roofs and associated drainage systems, driveways, parking areas and other nonvegetated surfaces must be designed or modified, as necessary, to prevent concentrated flow of storm water runoff from reaching a water body or wetland. Where possible, runoff must be directed through a vegetated area or infiltrated into the soil through the use of a dry well, stone apron or similar device.

The written plans required pursuant to subparagraphs 2 and 3 must be filed in the registry of deeds of the county in which the property is located.

A copy of all permits issued pursuant to this paragraph must be forwarded by the municipality to the department within 14 days of the issuance of the permit.

**5. Timber harvesting.** Municipal ordinances must regulate timber harvesting within the shoreland area. Notwithstanding any provision in a local ordinance to the contrary, standards for timber harvesting activities may not be less restrictive than the following:

A. Selective cutting of no more than 40% of the trees 4.5 inches or more in diameter, measured at 4 1/2 feet above ground level, in any 10-year period, as long as a well-distributed stand of trees and other natural vegetation remains; (2007)

B. Within a shoreland area zoned for resource protection abutting a great pond there may not be timber harvesting within the strip of land extending 75 feet inland from the normal high-water line except to remove safety hazards or if a municipality adopts an ordinance pursuant to this paragraph. A municipality may adopt an ordinance that allows limited timber harvesting within the 75-foot strip in the resource protection zone when the following conditions are met:

1) The ground is frozen;

- 2) There is no resultant soil disturbance;
  - 3) The removal of trees is accomplished using a cable or boom and there is no entry of tracked or wheeled vehicles into the 75-foot strip of land;
  - 4) There is no cutting of trees less than 6 inches in diameter; no more than 30% of the trees 6 inches or more in diameter, measured at 4 ½ feet above ground level, are cut in any 10-year period; and a well-distributed stand of trees and other natural vegetation remains; and
  - 5) A licensed professional forester has marked the trees to be harvested prior to a permit being issued by the municipality; and
- (6) Any site within a shoreland area zoned for resource protection abutting a great pond, beyond the 75-foot strip restricted in paragraph B, where timber is harvested must be reforested within 2 growing seasons after the completion of the harvest, according to guidelines adopted by the board. The board shall adopt guidelines consistent with minimum stocking standards established under Title 12, section 8869.

The board may adopt more restrictive guidelines consistent with the purposes of this subchapter that must then be incorporated into local ordinances. Timber harvesting operations exceeding the 40% limitation in paragraph A may be allowed by a planning board upon a clear showing, including a forest management plan signed by a Maine licensed professional forester, that such an exception is necessary for good forest management and is carried out in accordance with the purposes of shoreland zoning. The planning board shall notify the commissioner of each exception allowed.

**6. Clearing of vegetation.** Within the shoreland area, municipal ordinances shall provide for effective vegetative screening between buildings and shorelines. Notwithstanding any provision in a local ordinance to the contrary vegetative screening requirements shall be no less restrictive than the following:

- A. Within a strip extending 75 feet inland from the normal high-water line, there shall be no cleared opening or openings, except for approved construction, and a well-distributed stand of vegetation shall be retained;
- B. Within a shoreland area zoned for resource protection abutting a great pond there shall be no cutting of vegetation within the strip of land extending 75 feet inland from the normal high-water line except to remove safety hazards; and
- C. Selective cutting of no more than 40% of the trees 4.5 inches or more in diameter, measured at 4 1/2 feet above ground level, is allowed in any 10-year period, as long as a well-distributed stand of trees and other natural vegetation remains. (2007)

The board may adopt more restrictive guidelines consistent with the purposes of this subchapter, which shall then be incorporated into local ordinances.

**7. Special exception.** A municipal ordinance adopted pursuant to this article may include a provision for the municipal planning board to issue a permit for construction of a single-family residence in a Resource Protection District if the applicant demonstrates that all of the following conditions are met.

- A. There is no location on the property, other than a location within the Resource Protection District, where the structure can be built.
- B. The lot on which the structure is proposed is undeveloped and was established and recorded in the registry of deeds of the county in which the lot is located before the adoption of the Resource Protection District.
- C. The proposed location of all buildings, sewage disposal systems and other improvements are:

- (1) Located on natural ground slopes of less than 20%; and
- (2) Located outside the floodway of the 100-year floodplain along rivers and artificially formed great ponds along rivers and outside the velocity zone in areas subject to tides, based on detailed flood insurance studies and as delineated on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate Maps; all buildings, including basements, are elevated at least one foot above the 100-year floodplain elevation; and the development is otherwise in compliance with any applicable municipal floodplain ordinance.

If the floodway is not shown on the Federal Emergency Management Agency maps, it is deemed to be 1/2 the width of the 100-year floodplain. For purposes of this subparagraph, "floodway" means the channel of a river or other watercourse and adjacent land areas that must be reserved in order to discharge the 100-year flood without cumulatively increasing the water surface elevation more than one foot in height and "velocity zone" means an area of special flood hazard extending from offshore to the inland limit of the primary frontal dune along an open coast and any other area subject to high-velocity wave action from storms or seismic sources.

D. The total ground-floor area of all principal and accessory structures is limited to a maximum of 1,500 square feet.

E. All structures, except functionally water-dependent structures, are set back from the normal high-water line or upland edge of a wetland to the greatest practical extent, but not less than 75 feet. In determining the greatest practical extent, the planning board shall consider the depth of the lot, the slope of the land, the potential for soil erosion, the type and amount of vegetation to be removed, the proposed building site's elevation in regard to the floodplain and its proximity to moderate-value and high-value wetlands.

**8. Archaeological excavation.** A permit is not required for an archaeological excavation that is within a shoreland zone as long as the excavation is conducted by an archaeologist listed on the Maine Historic Preservation Commission level 1 or level 2 approved list and unreasonable erosion and sedimentation is prevented by means of adequate and timely temporary and permanent stabilization measures. (2001)

### **38 \_ 439-B. Contractors certified in erosion control**

**1. Definition.** For purposes of this section, "excavation contractor" means an individual or firm engaged in 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.

**2. Certification required.** An excavation contractor conducting excavation activity in a shoreland area shall ensure that a person certified in erosion control practices by the department:

A. Is responsible for management of erosion and sediment control practices at the site; and

B. Is present at the site each day earth-moving activity occurs for a duration that is sufficient to ensure that proper erosion and sedimentation control practices are followed.

The requirements of this subsection apply until erosion control measures that will permanently stay in place have been installed at the site or, if the site is to be revegetated, erosion control measures that will stay in place until the area is sufficiently covered with vegetation necessary to prevent soil erosion have been installed. (2008)

### **38 \_ 440. Federal flood insurance**

In addition to controls required by this chapter, municipalities may extend or adopt zoning and subdivision controls beyond the limits established by this chapter in order to protect the public health, safety and welfare and to avoid problems associated with flood plain development.

Zoning ordinances adopted or extended pursuant to this section shall be pursuant to and consistent with a comprehensive plan.

Zoning ordinances adopted or extended pursuant to this section need not depend upon the existence of a zoning ordinance for all of the land and water area within a municipality, despite the provisions of Title 30-A, section 4503, to the contrary, provided such ordinances are required for entrance of the municipality into the Federal Flood Insurance Program. Ordinances or amendments adopted by authority of this section shall not extend beyond an area greater than that necessary to comply with the requirements of the Federal Flood Insurance Program.

Zoning ordinances adopted or amended pursuant to this section shall designate as a resource protection zone or its equivalent, as defined in the guidelines adopted pursuant to section 438-A, subsection 1, all areas within the floodway of the 100-year flood plain along rivers and in the velocity zone in areas subject to tides, based on detailed flood insurance studies and as delineated on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate Maps. This provision does not apply to areas zoned for general development or its equivalent, as defined in the guidelines adopted pursuant to section 438-A, subsection 1, as of the effective date of this paragraph, or within areas designated by ordinances as densely developed. The determination of which areas are densely developed shall be based on a finding that, as of the effective date of this paragraph, existing development meets the definition in section 436, subsection 3.

All communities shall designate floodway areas, as set out in this section, as resource protection zones as of the effective date of a community's entry into the regular program of the National Flood Insurance Program or July 1, 1987, whichever comes later.

In those areas that are within the floodway, as delineated on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate Maps, all proposed activities which are permitted within the shoreland area must be shown not to increase the 100-year flood elevation. In addition, all structures built in the floodway shall have their lowest floor, including the basement, one foot above the 100-year flood elevation.

### **38 \_ 440-A. Public access**

In addition to controls required in this chapter, municipalities may extend or adopt zoning and subdivision controls to protect any public rights for physical and visual access to the shoreline.

Zoning ordinances adopted or extended pursuant to this section shall be pursuant to and consistent with a comprehensive plan.

### **38 \_ 441. Code enforcement officers**

**1. Appointment.** In every municipality, the municipal officers shall annually by July 1st appoint or reappoint a code enforcement officer, whose job may include being a local plumbing inspector or a building inspector and who may or may not be a resident of the municipality for which he is appointed. The municipal officers may appoint the planning board to act as the code enforcement officer. The municipal officers may remove a code enforcement officer for cause, after notice and hearing. This removal provision shall only apply to code enforcement officers who have completed a reasonable period of probation as established by the municipality pursuant to Title 30-A, section 2601. If not

reappointed by a municipality, a code enforcement officer may continue to serve until a successor has been appointed and sworn.

**2. Certification; authorization by municipal officers.** No person may serve as a code enforcement officer who is authorized by the municipal officers to represent the municipality in District Court unless he is currently certified under Title 30-A, section 4221, subsection 2, as being familiar with court procedures.

Upon written authorization by the municipal officers, a certified code enforcement officer may serve civil process on persons whom he determines to be in violation of ordinances adopted pursuant to this chapter and, if authorized by the municipal officers, may represent the municipality in District Court in the prosecution of violations of ordinances adopted pursuant to this chapter.

**3. Powers and duties.** The duties of the code enforcement officer shall include the following:

A. Enforce the local shoreland zoning ordinance in accordance with the procedures contained therein;

B. Collect a fee, if authorized by a municipality, for every shoreland permit issued by the code enforcement officer. The amount of any such fee shall be set by the municipality. The fee shall be remitted to the municipality;

C. Keep a complete record of all essential transactions of the office, including applications submitted, permits granted or denied, variances granted or denied, revocation actions, revocation of permits, appeals, court actions, violations investigated, violations found and fees collected. On a biennial basis, beginning in 1992, a summary of this record must be submitted by March 1 to the Director of the Bureau of Land Quality Control within the Department of Environmental Protection; and

D. Investigate complaints of alleged violations of local land use laws.

**38 \_ 442. Municipal failure to accomplish purposes (REPEALED)**

**38 \_ 443. Cooperation (REPEALED)**

**38 \_ 443-A. Cooperation; enforcement**

**1. Consultation with state agencies.** All agencies of State Government shall cooperate to accomplish the objectives of this article. To that end, the commissioner shall consult with the governing bodies of municipalities and with other state agencies to achieve the purposes of this article, and shall extend to municipalities all possible technical and other assistance for that purpose.

**2. Legal actions.** In any legal action in which the pleadings challenge the validity or legality of any ordinance adopted pursuant to this article, the Attorney General shall be made a party until removed by the Attorney General's consent.

**3. Remedies.** Any municipality which fails to adopt, administer or enforce zoning and land use ordinances as required under this article shall be subject to the enforcement procedures, equitable remedies and civil penalties set forth in sections 347 to 349.

**38 \_ 444. Enforcement**

Any person who orders or conducts any activity in violation of a municipal ordinance adopted under this chapter is penalized in accordance with Title 30-A, section 4452.

The Attorney General, the district attorney or municipal officers or their designee may enforce ordinances adopted under this chapter.

A public utility, water district, sanitary district or any utility company of any kind may not install services to any new structure located in a shoreland area, as defined by section 435, unless written authorization attesting to the validity and currency of all local permits required under this chapter has been issued by the appropriate municipal officials or other written arrangements have been made between the municipal officers and the utility.

### **38 \_ 444-A. Civil suit**

**1. Suit authorized.** Any water utility, as defined in Title 35-A, section 102, may commence a civil action for injunctive relief against an owner of property in the shoreland zone when the following conditions are met.

A. A violation of a municipal shoreland zoning ordinance is alleged to have occurred.

B. The water utility bringing the civil action has a water supply that is directly affected by the alleged violation.

**2. Suit prohibited.** An action may not be brought under this section if the Federal Government, State Government or a municipality of the State has commenced and is pursuing an administrative, civil or criminal action to remedy the alleged violation.

**3. Notice.** An action may not be commenced under this section unless the plaintiff has given at least 60 days' notice to the alleged violator, the department, the Attorney General, and the municipality or municipalities in which the violation is alleged to have occurred. If the violation occurs within the jurisdiction of the Maine Land Use Regulation Commission, the commission must be given notice in place of the department and the municipality.

**4. Jurisdiction.** An action may be commenced in the District Court or Superior Court in the county in which the violation is alleged to have occurred.

**5. Intervention.** The Attorney General may intervene in any case brought under this section.

### **38 \_ 445. Guidelines for shoreland zoning along significant river segments**

In addition to the guidelines adopted under section 438-A, the following guidelines for the protection of the shorelands shall apply along significant river segments identified in section 437. These guidelines are intended to maintain the special values of these particular river segments by protecting their scenic beauty and undeveloped character.

**1. New principal structures.** New principal structures, except for structures related to hydropower facilities, shall be set back a minimum of 125 feet from the normal high-water line of the river. These structures shall be screened from the river by existing vegetation.

**2. New roads.** Developers of new permanent roads, except for those providing access to a structure or facility allowed in the 250-foot zone, shall demonstrate that no reasonable alternative route outside of the zone exists. When roads must be located within the zone, they shall be set back as far as practicable from the normal high-water line and screened from the river by existing vegetation.

**3. New gravel pits.** Developers of new gravel pits shall demonstrate that no reasonable mining site outside of the zone exists. When gravel pits must be located within the zone, they shall be set back as far as practicable from the normal high-water line and no less than 75 feet and screened from the river by existing vegetation.

### **38 \_ 446. Municipal ordinance review and certification**

Each municipality with shorelands along significant river segments, as identified in section 437, shall review the adequacy of the zoning on these shorelands to protect the special values cited for these river segments by the Department of Conservation's 1982 Maine Rivers Study and for consistency with the guidelines established under section 445. Prior to December 15, 1984, each such municipality shall certify to the Board of Environmental Protection either that its existing zoning for these areas is at least as restrictive as the guidelines established under section 445, or that it has amended its zoning for this purpose. This certification must be accompanied by the ordinances and zoning maps covering these areas. Failure to accomplish the purposes of this section results in adoption of suitable ordinances for these municipalities, as provided for in section 438-A.

### **38 \_ 447. Functionally water-dependent use zones**

Municipalities are encouraged to give preference, when appropriate, to functionally water-dependent uses and may extend zoning controls to accomplish this.

A municipality may, within coastal shoreland areas, adopt zoning ordinances for functionally water-dependent uses. Municipalities may establish districts within these zones to give preference to commercial fishing and other maritime activities.

In creating such a zone, a municipality shall consider the demand for and availability of shorefront property for functionally water-dependent uses.

Zoning ordinances adopted or extended pursuant to this section shall be pursuant to and consistent with a comprehensive plan.

### **38 \_ 448. Municipalities establish commercial fishing and maritime activity zones**

A municipality may, within coastal shoreland areas of that municipality, adopt zoning ordinances establishing a commercial fishing and maritime activity zone. In creating that zone, the municipality shall consider at least the following:

- 1. Utilization.** The number of commercial fishermen and the utilization of the shoreland area;
- 2. Availability.** The availability of shoreland area for commercial fishing;
- 3. Demand for property.** The demands for shoreland property for commercial and residential purposes not related to commercial fishing or maritime activity; and
- 4. Access.** Access to the shore and availability of space appropriate for commercial fishing and maritime activities.

### **38 \_ 449. Shoreland zoning report to Legislature**

The Commissioner of Environmental Protection shall biennially report to the Legislature on the implementation and impact of local shoreland zoning ordinances. The report shall include:

- 1. Commissioner assistance.** A description of the assistance and supervision that the commissioner has provided to the municipalities in carrying out their shoreland zoning responsibilities;

**2. Summary of violations.** A summary of the shoreland zoning violations investigated by municipal code enforcement officers and related court actions; and

**3. Recommendations.** Where appropriate, any recommendations for legislation relating to shoreland zoning.

**PL 1997, ch. 748, sec. 7. Report; shoreland zoning,** By January 15, 2003, the Department of Environmental Protection shall submit a report to the joint standing committee of the Legislature having jurisdiction over natural resources matters regarding compliance with the Maine Revised Statutes, Title 38, section 439-A, subsection 4-A. The report must evaluate use of and compliance with the alternative expansion provisions of that subsection and evaluate the environmental benefit of the provisions in comparison with the measures permissible under Title 38, section 439-A, subsection 4.