



JANET T. MILLS
GOVERNOR

STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION



MELANIE LOYZIM
COMMISSIONER

May 22, 2026

Lisa M. Young
Town Clerk/Treasurer
Town of Cushing
9 Cross Road
Cushing, ME 04563

Subject: Department Review of Cushing's Shoreland Zoning Ordinance

Dear Ms. Young:

The Commissioner of the Department of Environmental Protection (Department) has reviewed the Town of Cushing's Shoreland Zoning Ordinance. We appreciate the hard work that goes into keeping an ordinance up to date.

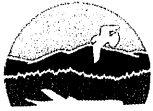
Please find enclosed Department Order # 10-2026 (Order) conditionally approving the Ordinance, as adopted on March 16, 2026, and received by the Department April 6, 2026.

The conditions of the Order are binding on the Town of Cushing and **must be administered as part of the Ordinance**. Should the Ordinance be amended in the future to address the deficiencies identified in the Order, the Department can then fully approve the Ordinance and repeal the Order.

If you or any other municipal officials have questions relating to shoreland zoning, you may reach me at 441-7419 or by e-mail colin.a.clark@maine.gov.

Sincerely,

Colin. A. Clark
Shoreland Zoning Program
Bureau of Land and Water Quality
Department of Environmental Protection



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

IN THE MATTER OF

TOWN OF CUSHING	)	MANDATORY SHORELAND ZONING ACT
KNOX COUNTY	)	
SHORELAND ZONING ORDINANCE	)	
ORDER #10-2026	)	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 Cushing Shoreland Zoning Ordinance (Ordinance), as amended on March 16, 2026, 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 April 6, 2026, the Town of Cushing submitted the following Ordinance amendments as adopted on March 16, 2026:
 - A. 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, lot coverage, shoreline stabilization projects, hazard and storm damaged tree removal, revegetation requirements, and associated definitions. The submitted amendments update the Ordinance to bring it into compliance with the Guidelines as amended on January 26, 2015.

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- B. The amendments to the Town's Ordinance, as they relate to adoption of the statewide timber harvesting standards establish the Town as option one for timber harvesting,¹ deferring all administration and regulation of all forestry activities within the municipality to the Bureau of Forestry (also commonly referred to as the Maine Forest Service), are consistent with the minimum requirements of the Chapter 1000 Guidelines.
- C. Section 12 Non-Conformance E. *Non-Conforming Lots (4) Contiguous Lots, vacant or partially built, in the same ownership* was amended to include the date of December 15, 1991.
- D. Section 15 Land Use Standards A. *Minimum Lot Standards (2) Accessory Dwelling Unit, per dwelling unit* was added to establish dimensional requirements for adding an Accessory Dwelling Unit in the shoreland.
4. The Department's review of the amended Ordinance has revealed the following significant deficiencies:
- A. Section 12 Non-Conformance C. *Non-conforming Structures 1. Expansions* fail to contain the required language to be consistent with Chapter 1000.
- B. Section 14 Table of Land Uses B. *Table 14 – Table of Land Uses* contains the language that is inconsistent standards to establish the Town as option one for timber harvesting.
5. The Town of Cushing 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

¹ 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).

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Ordinance being substantially consistent with the requirements of the Mandatory Shoreland Zoning Act, 38 M.S.R., Section 438-A, and the minimum Guidelines.

THEREFORE, the Commissioner APPROVES the Ordinance, as amended on March 16, 2026, SUBJECT TO THE FOLLOWING CONDITIONS:

- A. Section 12 Non-Conformance C. *Non-conforming Structures* 1.
Expansions shall be amended in part as follows by adding the **bold language** and removing the ~~Strikethrough language~~:

1) Expansions.

All new principal and accessory structures, excluding functionally water-dependent uses, must meet the water body, tributary stream, or wetland setback requirements contained in Section 10. A non-conforming structure may be added to or expanded after obtaining a permit from the same permitting authority as that for a new structure, if such an addition or expansion does not increase the non-conformity of the structure and is in accordance with subparagraphs a and b below.

- a. Expansion of any portion of a structure within twenty-five (25) feet of the normal high-water line of a water body, tributary stream, or upland edge of a wetland is prohibited, even if the expansion will not increase non-conformity with the water body, tributary stream or wetland setback requirement. Expansion of an accessory structure that is located closer to the normal high-water line of a water body, tributary stream, or upland edge of a wetland than the principal structure is prohibited, even if the expansion will not increase non-conformity with the water body, tributary stream, or wetland setback requirement.
- b. Notwithstanding paragraph a above, if a legally existing non-conforming principal structure is entirely located less than twenty-five (25) feet from the normal high-water line of a water body, tributary stream, or upland edge of a wetland, that structure may be expanded as follows, as long as all other applicable municipal land use standards are met and the expansion is not prohibited by Section 12.C.1.
 - i. The maximum total footprint for the principal structure may not be expanded to a size greater than eight hundred (800) square feet or thirty percent (30%) larger than the footprint that existed on January 1,

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1989, whichever is greater. The maximum height of the principal structure may not be made greater than ~~the maximum defined in Section 15.B.2~~ **15 feet** or the height of the existing structure, whichever is greater.

- c. All other legally existing non-conforming principal and accessory structures that do not meet the water body, tributary stream, or wetland setback requirements may be expanded or altered as follows, as long as other applicable municipal land use standards are met and the expansion is not prohibited by Section 12.C.1 or Section 12.C.1.a, above.
 - i. For structures located less than seventy-five (75) feet from the normal high-water line of a water body, tributary stream, or upland edge of a wetland, the maximum combined total footprint for all structures may not be expanded to a size greater than one thousand (1,000) square feet or thirty percent (30%) larger than the footprint that existed on January 1, 1989, whichever is greater. The maximum structure height ~~must comply with the provisions of Section 15.B.2~~ **may not be made greater than 20 feet or the height of the existing structure, whichever is greater.**
 - ii. For structures located less than one hundred (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 footprint for all structures may not be expanded to a size greater than one thousand five hundred (1,500) square feet or thirty percent (30%) larger than the footprint that existed on January 1, 1989, whichever is greater. The maximum structure height ~~must comply with the provisions of Section 15.B.2.~~ **may not be made greater than 25 feet or the height of the existing structure, whichever is greater. Any portion of those structures located less than 75 feet from the normal high-water line of a water body, tributary stream, or upland edge of a wetland must meet the footprint and height limits in Section 12(C)(1)(b)(i) and Section 12(C)(1)(c)(i), above.**

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- iii. In addition to the limitations in subparagraphs i and ii, for structures that are legally non-conforming due to their location within the Resource Protection District when located at less than two hundred fifty (250) feet from the normal high-water line of a water body or the upland edge of a wetland, the maximum combined total footprint for all structures may not be expanded to a size greater than one thousand five hundred (1,500)square feet or thirty percent (30%) larger than the footprint that existed at the time the Resource Protection District was established on the lot, whichever is greater. The maximum structure height must comply with the provisions of Section 15.B.2. **may not be made greater than 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 of a water body, tributary stream, or upland edge of a wetland must meet the footprint and height limits in Section 12(C)(1)(b)(i) and Section 12(C)(1)(c)(i), above.**

- B. Section 14 Table of Land Uses B. *Table 14 – Table of Land Uses* shall be amended in part as follows by adding the **bold** and removing the ~~Strikethrough-language~~:

Land Uses	Principal Standards	Zoning Districts					
		SP	RP	LR	FHB	LC	CFM A
3. Forest management activities, defined in Sec. 17 except timber harvesting & land management roads	State	A SA	A SA	A SA	A SA	A SA	A SA
17. Portions of piers, docks, wharves, and bridges in wetlands or above the high-water line							
A. Structures thereon, as defined in Section 3	Sec. 15.C	PB	PB	PB	PB	PB	PB

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Land Uses	Principal Standards	Zoning Districts					
		SP	RP	LR	FHB	LC	CFM A
B. Permanent pier or wharf, as defined in Section 17	Sec. 15.C	CE O PB	CE O PB	CE O PB	CE O PB	CEO PB	CEO 4 PB
C. Temporary pier or wharf, as defined in Section 17	Sec. 15.C	CE O	CE O	CE O	CE O	CEO	CEO
27. Land management roads, defined in Section 17	State	PB SA	PB SA	A SA	A SA	A SA	A SA

DONE AND DATED AT AUGUSTA, MAINE, THIS 20th DAY OF MAY 2026.

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 or (207) 314-1458

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 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 30th 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

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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 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

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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 or 207-287-2811 or the Board Executive Analyst at 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.

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.
