

**Maine Revised Statutes**  
**Title 38: WATERS AND NAVIGATION**  
**Chapter 3: PROTECTION AND IMPROVEMENT OF WATERS**

**§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.

[ 1987, c. 815, §§7, 11 (NEW) . ]

**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 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.

[ 1999, c. 243, §5 (AMD) . ]

**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.

[ 1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §47 (AMD); 2003, c. 689, Pt. B, §6 (REV) . ]

**4. Setback requirements.** Notwithstanding any provision in a local ordinance to the contrary and except as provided in this subsection, all new principal and accessory structures and expansions of such structures within the shoreland zone as established by section 435 must meet the water body or wetland setback requirements approved by the board, except functionally water-dependent uses. 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 an otherwise permissible expansion of a legally existing nonconforming structure, as long as the expansion does not create further nonconformity with the water body or wetland setback requirement.

A. All new principal and accessory structures, excluding functionally water-dependent uses, must meet the water body or wetland setback requirements approved by the board. An expansion of a legally existing nonconforming structure pursuant to this subsection may not create further nonconformity with the water body or wetland setback requirement. [ 2013, c. 320, §8 (NEW) . ]

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 body or wetland 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 nonconformity with the water body or wetland setback requirement.

(1) Notwithstanding this paragraph, if a legally existing nonconforming principal structure is entirely located less than 25 feet from the normal high-water line of a water body or upland edge of a wetland, that structure may be expanded as follows, as long as all other applicable standards of land use adopted by the municipality are met and the expansion is not prohibited by paragraph A.

(a) The maximum total footprint for the principal structure may not be expanded to a size greater than 800 square feet or 30% larger than the footprint that existed on January 1, 1989, whichever is greater. The maximum height of the principal structure may not be made greater than 15 feet or the height of the existing structure, whichever is greater. [ 2013, c. 320, §8 (NEW) . ]

C. All other legally existing nonconforming principal and accessory structures that do not meet the water body or wetland 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 footprint for all structures may not be expanded to a size greater than 1,000 square feet or 30% larger than the footprint that existed on January 1, 1989, whichever is greater. The maximum height of any structure may not be made greater than 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 footprint for all structures may not be expanded to a size greater than 1,500 square feet or 30% larger than the footprint that existed on January 1, 1989, whichever is greater. The maximum height of any structure 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 or upland edge of a wetland must meet the footprint and height limits in subparagraph (1).

(3) In addition to the limitations in subparagraphs (1) and (2), for structures that are legally nonconforming due to their location within the Resource Protection District when located at less than 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 1,500 square feet or 30% larger than the footprint that existed at the time the Resource Protection District was established on the lot, whichever is greater. The maximum height of any structure 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 or upland edge of a wetland must meet the footprint and height limits in subparagraph (1). [ 2013, c. 320, §8 (NEW) . ]

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

(1) "Water body" means a great pond, river or stream.

(2) "Wetland" means a coastal wetland or freshwater wetland. [ 2013, c. 320, §8 (NEW) . ]

Plans approved by the municipality for expansions under this subsection must be filed in the registry of deeds of the county in which the property is located within 90 days of approval.

[ 2013, c. 320, §8 (AMD) . ]

**4-A. Alternative expansion requirement.**

[ 2013, c. 320, §9 (RP) .]

**4-B. Exemption from setback requirements for decks over rivers within a downtown revitalization project.** In accordance with the provisions of this subsection, a municipality may adopt an ordinance that exempts a deck from the water and wetland setback requirements otherwise applicable under this section.

A. Notwithstanding subsection 4, a municipality may adopt an ordinance pursuant to this subsection that exempts a deck from the otherwise applicable water or wetland setbacks if the following requirements are met:

- (1) The deck does not exceed 700 square feet in area;
- (2) The deck is cantilevered over a segment of a river that is located within the boundaries of a downtown revitalization project; and
- (3) The deck is attached to or accessory to a use in a structure that was constructed prior to 1971 and is located within a downtown revitalization project. [2013, c. 588, Pt. A, §48 (AMD) .]

B. A downtown revitalization project under this subsection must be defined in a project plan approved by the legislative body of the municipality and may include the revitalization of buildings formerly used as mills that do not meet the water or wetland setback requirements in subsection 4. [2013, c. 588, Pt. A, §48 (AMD) .]

C. Except for the water and wetland setback requirements in subsection 4, a deck that meets the requirements of this subsection must meet all other state and local permit requirements and comply with all other applicable rules. [2013, c. 588, Pt. A, §48 (AMD) .]

D. A deck exempt under this subsection may be either privately or publicly owned and maintained. [2013, c. 140, §1 (NEW) .]

[ 2013, c. 588, Pt. A, §48 (AMD) .]

**4-C. Exemption from setback requirements for walkways and trails over rivers within a downtown revitalization project.** In accordance with the provisions of this subsection, a municipality may adopt an ordinance that exempts pedestrian walkways and trails from the water and wetland setback requirements otherwise applicable under this section.

A. Notwithstanding subsection 4, a municipality may adopt an ordinance pursuant to this subsection that exempts a pedestrian walkway or trail from the otherwise applicable water or wetland setbacks if the following requirements are met:

- (1) The walkway or trail is adjacent to a segment of a river that is located within the boundaries of a downtown revitalization project;
- (2) If cantilevered over a segment of river, the walkway or trail does not extend over the river more than 10 feet from the normal high-water line;
- (3) If cantilevered over a segment of river, the walkway or trail is attached to a structure that was constructed prior to 1971 and is located within a downtown revitalization project; and
- (4) If the walkway or trail is cantilevered over a segment of river, the municipal planning board has determined there is no other practical means to construct the walkway or trail without cantilevering over that segment of the river. If there are no other practical means to construct the walkway or trail, approaches to the cantilevered walkway or trail may also cantilever off adjacent retaining walls but no more than is necessary to access the cantilevered walkway or trail. [2015, c. 11, §1 (NEW) .]

B. A downtown revitalization project under this subsection must be defined in a project plan approved by the legislative body of the municipality and may include the revitalization of buildings formerly used as mills that do not meet the water or wetland setback requirements in subsection 4. [ 2015, c. 11, §1 (NEW) . ]

C. Except for the water and wetland setback requirements in subsection 4, a walkway or trail that meets the requirements of this subsection must meet all other state and local permit requirements and comply with all other applicable rules. [ 2015, c. 11, §1 (NEW) . ]

D. A walkway or trail exempt under this subsection may be either privately or publicly owned and maintained. [ 2015, c. 11, §1 (NEW) . ]

[ 2015, c. 11, §1 (NEW) . ]

**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, c. 292, §21 (AMD) . ]

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 1/2 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 [ 1999, c. 370, §2 (AMD) . ]

C. 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. [ 1991, c. 66, Pt. A, §10 (RPR) . ]

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.

[ 2007, c. 292, §21 (AMD) . ]

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

A. Within a strip extending 100 feet inland from the normal high-water line of a great pond classified as GPA under section 465-A or a river that flows to a great pond classified as GPA under section 465-A or within a strip extending 75 feet inland from the normal high-water line of other water bodies or the upland edge of a wetland, there may be no cleared opening or openings greater than 250 square feet and a well-distributed stand of vegetation must be retained. The restrictions in this paragraph do not apply to the construction of a structure or the establishment of a land use within 75 feet of the normal high-water line of a water body or upland edge of a wetland that is specifically allowed by municipal ordinance in a general development district, commercial fisheries and maritime activities district or other equivalent zoning district approved by the commissioner; [2013, c. 231, §1 (AMD); 2013, c. 320, §10 (AMD).]

B. Within a shoreland area zoned for resource protection abutting a great pond there may 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 [2013, c. 231, §1 (AMD); 2013, c. 320, §10 (AMD).]

C. Except as otherwise provided in this paragraph, selective cutting of no more than 40% of the total volume of trees 4 inches or more in diameter, measured at 4 1/2 feet above ground level, is allowed in any 10-year period. Rules adopted by the board may allow for 70% of a lot to be nonvegetated in a general development district, commercial fisheries and maritime activities district or other equivalent zoning district approved by the commissioner. [2013, c. 231, §1 (AMD); 2013, c. 320, §10 (AMD).]

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

[2007, c. 292, §22 (AMD); 2013, c. 231, §1 (AMD); 2013, c. 320, §10 (AMD) .]

**6-A. Clearing of vegetation; exception.** The following exceptions to the standards governing the clearing of vegetation apply.

A. The standards in subsection 6, paragraphs A and C do not apply to properties that are located within areas designated as commercial fisheries and maritime activities districts or other equivalent zoning districts approved by the commissioner that support commercial fisheries and maritime activities if:

- (1) The commissioner determines that special local conditions exist and a local municipal ordinance is approved in accordance with section 438-A, subsection 3; and
- (2) The districts are in existence at the time this subsection becomes effective. [2013, c. 231, §2 (NEW); 2013, c. 320, §11 (NEW).]

B. The standards in subsection 6, paragraphs A and C and any standards related to the clearing of vegetation contained in a municipal ordinance enacted in accordance with section 438-A, subsection 3 do not apply to remediation activities that are necessary 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 under section 343-E and that is located along:

- (1) A coastal wetland; or
- (2) A river that does not flow to a great pond classified as GPA under section 465-A. [2013, c. 231, §2 (NEW); 2013, c. 320, §11 (NEW).]

[2013, c. 231, §2 (NEW); 2013, c. 320, §11 (NEW) .]

**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. [1993, c. 318, §1 (NEW).]

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. [1993, c. 318, §1 (NEW).]

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. [1993, c. 318, §1 (NEW).]

D. The total footprint of all principal and accessory structures is limited to a maximum of 1,500 square feet. [2013, c. 320, §12 (AMD).]

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. [1993, c. 318, §1 (NEW).]

[ 2013, c. 320, §12 (AMD) .]

**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, c. 207, §1 (NEW) .]

**9. Cupolas.** For the purpose of determining the height of a structure, a municipal ordinance adopted pursuant to this article may exempt a cupola, dome, widow's walk or similar feature added to a legally existing conforming structure if:

A. The legally existing conforming structure is not located in a Resource Protection District or a stream protection district as defined in guidelines adopted by the board; and [2011, c. 231, §2 (NEW).]

B. The cupola, dome, widow's walk or other similar feature:

(1) Does not extend beyond the exterior walls of the existing structure;

(2) Has a floor area of 53 square feet or less; and

(3) Does not increase the height of the existing structure, as determined under section 436-A, subsection 7-A, by more than 7 feet. [ 2011, c. 231, §2 (NEW) . ]

For purposes of this subsection, "cupola, dome, widow's walk or other similar feature" means a nonhabitable building feature mounted on a building roof for observation purposes.

[ 2011, c. 231, §2 (NEW) . ]

#### SECTION HISTORY

1987, c. 815, §§7,11 (NEW). 1989, c. 403, §8 (AMD). 1989, c. 803, §1 (AMD). 1989, c. 838, §2 (AMD). 1989, c. 878, §G7 (AMD). 1989, c. 890, §§A40,B47 (AMD). 1991, c. 66, §A10 (AMD). 1991, c. 346, §§7-9 (AMD). 1993, c. 55, §1 (AMD). 1993, c. 318, §1 (AMD). 1993, c. 383, §1 (AMD). 1993, c. 383, §42 (AFF). 1997, c. 726, §3 (AMD). 1997, c. 748, §3 (AMD). 1999, c. 243, §§5-7 (AMD). 1999, c. 370, §2 (AMD). 2001, c. 207, §1 (AMD). 2003, c. 689, §B6 (REV). 2007, c. 292, §§21, 22 (AMD). 2011, c. 231, §2 (AMD). 2013, c. 140, §1 (AMD). 2013, c. 231, §§1, 2 (AMD). 2013, c. 320, §§8-12 (AMD). 2013, c. 588, Pt. A, §48 (AMD). 2015, c. 11, §1 (AMD).

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