



DEPARTMENT ORDER

IN THE MATTER OF

TOWN OF LUBEC)	MANDATORY SHORELAND ZONING ACT
WASHINGTON COUNTY)	
SHORELAND ZONING ORDINANCE)	
& MAP)	
ORDER #49-2025)	CONDITIONAL APPROVAL

Pursuant to the provisions of 38 M.R.S. §§ 435-448, the *Mandatory Shoreland Zoning Act* (“Act”), and the Maine Department of Environmental Protection’s *Guidelines for Municipal Shoreland Zoning Ordinances*, 06-096 C.M.R. ch. 1000 (amended January 26, 2015) (“Guidelines”), the Department of Environmental Protection has considered the request for approval of the Town of Lubec Shoreland Zoning Ordinance (Ordinance) and Zoning Map (Map), as amended on August 6, 2025, and FINDS THE FOLLOWING FACTS:

1. The Act requires municipalities to establish zoning controls in areas within 250 feet of the normal high-water line of great ponds and rivers; within 250 feet of the upland edge of freshwater and coastal wetlands; and within 75 feet of the normal high-water line of streams. Such zoning standards must be consistent with or no less restrictive than those in the Guidelines. 38 M.R.S. §§435 & 438-A.
2. The Act specifies that before a locally adopted shoreland zoning ordinance, or amendment to that ordinance, is effective, it must be approved by the Commissioner of the Department of Environmental Protection (“Commissioner”). The Commissioner may approve, approve with conditions, or deny the ordinance or amendment. If denied, or approved with conditions, such action must be preceded by notice to the municipality. If the Commissioner fails to act within 45 days of receipt of the ordinance or amendment, then the ordinance or amendment is automatically approved. 38 M.R.S. § 438-A.
3. In Department Order #44-2024, dated October 2, 2024, the Department approved an Ordinance amendment with conditions addressing deficiencies, including the following:
 - A. Section 4.A *Effective Date of Ordinance and Ordinance Amendments*, fails to identify the effective date.
 - B. Section 9.A *Districts and Zoning Map*, fails to accurately represent applicable Shoreland Zoning districts identified on the Shoreland Zoning map.
 - C. Section 13 *Establishment of Districts*, fails to accurately represent applicable Shoreland Zoning districts identified on the Shoreland Zoning map.

TOWN OF LUBEC) MANDATORY SHORELAND ZONING ACT
WASHINGTON COUNTY)
SHORELAND ZONING ORDINANCE)
& MAP)
ORDER # 49-2025) CONDITIONAL APPROVAL

- D. Section 14 *Table of Land Uses*, fails to accurately represent applicable Shoreland Zoning districts identified on the Shoreland Zoning map.
 - E. Section 14 *Table of Land Uses*, fails to prohibit commercial structures and uses in the Limited Residential district.
 - F. Section 16.C *Permit Application*, omits the photographic record provision.
 - G. Sections on Hazard Trees, Storm-Damaged Trees, and Dead Tree Removal, Exemptions to Clearing and Vegetation Removal Requirements, and Revegetation Requirements, are missing from the document.
4. On August 19, 2025, the Town of Lubec submitted the following amendments to its Ordinance and Map as adopted on August 6, 2025, to the Department for review:
- A. The amendments make extensive revisions throughout the Ordinance, including minor corrections and clarifications, as well as changes to address the conditions outlined in Department Order #44-2024. The submitted amendments update the Ordinance and are intended to bring it into compliance with the Guidelines as amended on January 26, 2015.
 - B. The Map was amended to reflect the current zoning district designations.
5. The Department’s review of the amendments, adopted on August 6, 2025, revealed that the Ordinance, with these amendments, is now fully consistent and up to date with the Act and the Guidelines in effect as of the date of this Order. The Department's review of the Map has revealed the following significant deficiencies:
- A. Zoning map fails to establish zoning districts for some of the island properties located within the Shoreland Zone on the following properties:
 - i. Pope’s Folly - Map 9, Lot 8
 - ii. Major Island – Map 12, Lot 32
 - iii. Cooper Island – Map 14, Lot 47
 - iv. Unnamed Island – Map 8, Lot 44-B
 - v. Fox Island/Mink Island – Map 13, Lot 13
 - vi. Solomon’s Island – Map 13, Lot 2A

TOWN OF LUBEC) MANDATORY SHORELAND ZONING ACT
WASHINGTON COUNTY)
SHORELAND ZONING ORDINANCE)
& MAP)
ORDER # 49-2025) CONDITIONAL APPROVAL

vii. Parker Island – Map 10, Lot 22

viii. Unnamed Island – Map 10, Lot 5

6. On September 11, 2025, the Town of Lubec was notified by the Department of the above deficiencies, and the proposed conditional approval of the Map.

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

1. The deficiencies noted in paragraph 5 above can be addressed by the Commissioner approving the Map with conditions. This will result in the Map 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 and Map, as amended on August 6, 2025, SUBJECT TO THE ATTACHED CONDITIONS:

1. The zoning map shall be amended to reflect the following corrections:

i. Pope’s Folly Map and Lot:

a. Resource Protection (RP) – Map 9, Lot 8 (previously approved map district).

ii. Major Island Map and Lot:

a. Resource Protection (RP) – Map 12, Lot 32 (previously approved map district).

iii. Cooper Island Map and Lot:

a. Resource Protection (RP) – Map 14, Lot 47 (previously approved map district).

iv. Unnamed Island Map and Lot:

a. Resource Protection (RP) – Map 8, Lot 44-B (previously approved map district).

v. Fox Island/Mink Island Map and Lot:

a. Resource Protection (RP) – Map 13, Lot 13 (previously approved map district).

TOWN OF LUBEC) MANDATORY SHORELAND ZONING ACT
WASHINGTON COUNTY)
SHORELAND ZONING ORDINANCE)
& MAP)
ORDER # 49-2025) CONDITIONAL APPROVAL

- vi. Solomon's Island Map and Lot:
 - a. Resource Protection (RP) – Map 13, Lot 2A (previously approved map district).
- vii. Parker Island Map and Lot:
 - a. Resource Protection (RP) – Map 10, Lot 22 (previously approved map district).
- viii. Unnamed Island Map and Lot:
 - a. Resource Protection (RP) – Map 10, Lot 5 (previously approved map district).

All CONDITIONS of Department Order #44-2024 are hereby REPEALED.

DONE AND DATED AT AUGUSTA, MAINE, THIS 30th DAY OF SEPTEMBER 2025.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: 

For: Melanie Loyzim, Commissioner

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES.



DEP INFORMATION SHEET

Appealing a Commissioner's Decision on a Shoreland Zoning Ordinance

Date: April 2025 Contact: Clerk.BEP@maine.gov 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 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

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 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.
