UNDERSTANDING SHORELAND ZONING

IS YOUR LAND USE ACTIVITY IN A SHORELAND ZONE?

If there is a waterbody near your land use activity, it may be in the Shoreland Zone. Activity within the Shoreland Zone is highly regulated. Knowing and understanding these regulations before your project begins is key for its success.

Waterbodies subjected to Shoreland Zoning include:

- Coastal Wetland, including all areas affected by tidal action
- Freshwater Wetland (does not include forested wetlands, but includes wetlands of 10 or more acres, or of less than 10 acres if adjacent to a surface waterbody, excluding any river stream or brook, such that in a natural state, the combined surface area is in excess of 10 acres)
- Great Pond (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 with a surface area in excess of 30 acres)
- Stream or Tributary Stream

The Shoreland Zone was created by the adoption of The Mandatory Shoreland Zoning Act, 38 M.R.S.A. Sections 435-449, requiring all municipalities to adopt, administer, and enforce ordinances which regulate land use activities within 250 feet of great ponds, rivers, freshwater and coastal wetlands, including all tidal waters; and within 75 feet of streams as defined. The Act directs the Maine Department of Environmental Protection (DEP) to establish minimum guidelines for municipalities for creating shoreland zoning for their towns. These guidelines are found in what is known as Chapter 1000.

Pro Tip: Many towns have resources available online such as ordinances and zoning maps.

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WHAT MUNICIPAL ZONE IS YOUR LAND USE ACTIVITY IN?

If it is determined your land use activity is in the Shoreland Zone, the next step is to consult the municipal zoning map. It is the municipal zoning that defines minimum guidelines for your land use activity.

However, some municipalities do not have town wide zoning, in which case, their shoreland zoning map should be used to determine which district, within the Shoreland Zone, your land use activity is in. The DEP has defined the following zoning districts within the Shoreland Zone:

- Resource Protection District
- Limited Residential District
- Limited Commercial District
- General Development I District
- General Development II District
- Commercial Fisheries/Maritime Activities District
- Stream Protection District

Once a zone or district has been determined, minimum land use activity standards, such as setbacks, are known.

"All new principal and accessory structures shall be set back at least one hundred (100) feet, horizontal distance, from the normal high-water line of great ponds classified Great Ponds Act (GPA) and rivers that flow to great ponds classified GPA, and seventy-five (75) feet, horizontal distance, from the normal high-water line of other water bodies, tributary streams, or the upland edge of a wetland, except that in the General Development I District the setback from the normal high-water line shall be at least twenty-five (25) feet, horizontal distance, and in the Commercial Fisheries / Maritime Activities District there shall be no minimum setback. In the Resource Protection District the setback required shall be two hundred and fifty (250) feet, horizontal distance."

Credit or Reference: DEP Chapter 1000, Section 15B

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IS YOUR LAND USE ACTIVITY SUBJECTED TO ADDITIONAL REGULATION BECAUSE OF COASTAL BLUFFS?

Because it has been determined your land use activity is in a Shoreland Zone, additional regulation may affect your project if it is near a coastal bluff. To determine this, check Coastal Bluff maps as published by the Maine Geological Survey.

If your land use activity is near a coastal bluff, it is important to note that setbacks will now be measured from the top of bank and not from the upland edge of a coastal wetland, per Shoreland Zoning.

Water and wetland setback measurements shall be taken from the top of a coastal bluff that has been identified on Coastal Bluff maps as being "highly unstable" or "unstable" by the Maine Geological Survey pursuant to its "Classification of Coastal Bluffs" and published on the most recent Coastal Bluff map. If the applicant and the permitting official(s) are in disagreement as to the specific location of a "highly unstable" or "unstable" bluff, or where the top of the bluff is located, the applicant may at his or her expense, employ a Maine Registered Professional Engineer, a Maine Certified Soil Scientist, a Maine State Geologist, or other qualified individual to make a determination. If agreement is still not reached, the applicant may appeal the matter to the board of appeals.

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IS YOUR LAND USE ACTIVITY SUBJECTED TO ADDITIONAL REGULATION BECAUSE OF BIRD HABITAT?

Because it has been determined your land use activity is in a Shoreland Zone, additional regulation may affect your project if it is near a bird habitat.

The Natural Resources Protection Act (NRPA), 38 M.S.R.A. Sections 480-A through 480-HH, requires the Department of Environmental Protection to designate areas of "significant wildlife habitat."

Maine DEP requires setbacks from bird habitat even if the municipality is less stringent. (A DEP permit is needed to build within the bird habitat buffer areas if there is no alternative)

Inland waterfowl and wading bird habitat:

Maine Department of Inland Fisheries and Wildlife (DIF&W) has identified significant inland habitats for ducks, geese, herons, and similar species of waterfowl and wading birds throughout the state, rating them as having high to moderate value. A high to moderate value inland bird habitat is a complex of freshwater wetland and open water areas plus a 250-foot wide area surrounding the complex itself where inland species of waterfowl and wading birds nest. On great ponds, only the upland area that is within 250 feet of the freshwater wetland is included as part of this bird habitat.

Shorebird feeding and roosting areas:

DIF&W has identified essential staging area habitats where concentrations of shorebirds like plovers and sandpipers congregate during migration periods. These staging areas include areas where the birds feed and rest. Shorebirds feed constantly in the intertidal area to build up reserves for their long migration. When the tide is high, they rest (or roost) just above the high tide mark. Shorebird roosts are often stony or sandy beaches, sand/gravel bars, rock ledges, or islands with little or no vegetation. Buffers near these feeding and roosting areas are a critical part of the habitat because they protect the birds from disturbance so they can prepare for their long migratory flights.

A **shorebird feeding area** includes the intertidal area used for feeding and a **100-foot buffer area**. This buffer area is measured from the edge of the coastal wetland, and includes nearby upland areas.

A **shorebird roosting area** includes the intertidal area used for feeding, the roosting area, and a **250-foot buffer area**. This buffer area is measured from the edge of the roosting area, and includes nearby upland areas.

Pro Tip: Check the DEP Geolibrary website for bird habitat.

Visit **bit.ly/3cJAGbo** or **geolibrary-maine.opendata.arcgis.com.**

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Tidal waterfowl and wading bird habitat:

The DIF&W has identified and rated certain intertidal areas along the coast as high or moderate value to waterfowl and wading birds. This high to moderate value tidal habitat is limited to the identified tidal habitat area and is located within the coastal wetland, which is already regulated as a protected natural resource pursuant to the NRPA.

The habitat area is NOT a no-build zone. The standards in the NRPA require that all land use activities avoid and minimize impacts. If it is feasible, regulated activities should occur outside of the habitat area. If it is determined that there is no practicable alternative to the land use activity outside the habitat area, a permit can be issued for the activity as long as the NRPA standards are met. If the proposed land use activity requires an individual permit, you will need to demonstrate the need for the land use activity to be within the habitat area – in other words, avoid impacting the habitat areas if possible. If being located within the habitat can't be avoided, you must minimize the amount of development that occurs. The permit applications generally require the submittal of a detailed site plan for the project, showing all property boundaries, habitat and protected resource areas, existing structures and developed areas, proposed structures and developed areas, and other items specified in Chapter 335; a description of the project with a thorough discussion of all alternatives to the current proposal; and photographs. Other specific requirements are outlined in the permit application materials and Chapter 335.

Herrick & Salsbury, Inc. specializes in the kind of detailed site plans and permit applications that make it possible to work alongside these areas and maintain compliance with the regulations.

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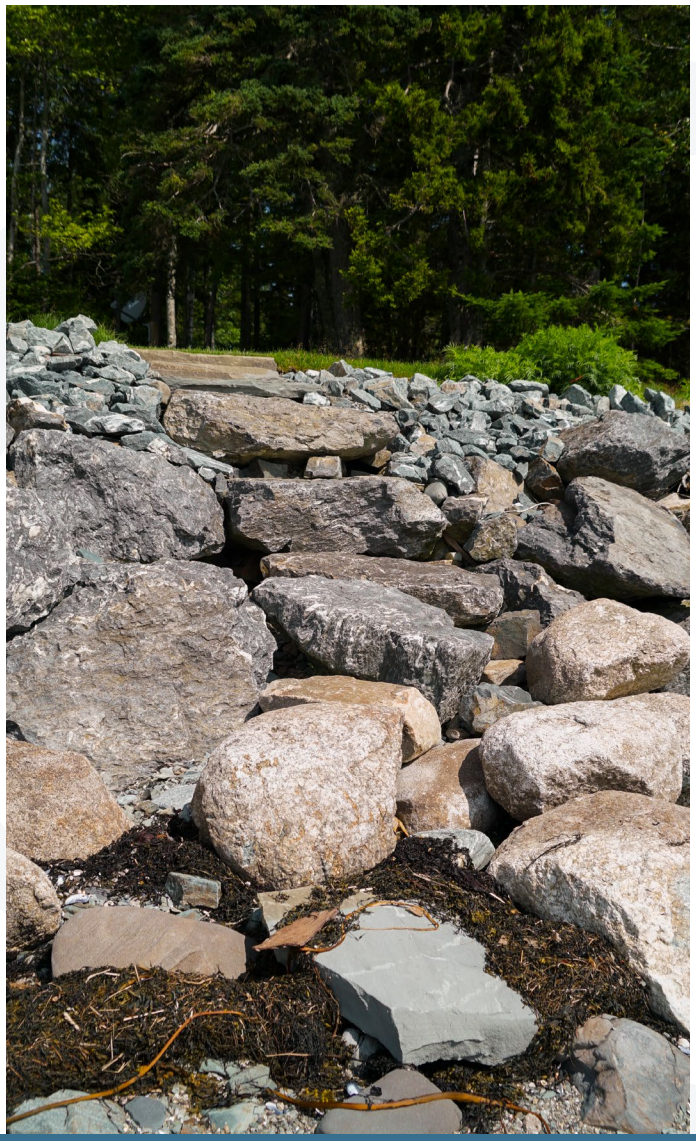
STARTING POINT FOR MEASURING SETBACKS:

- Normal high-water line of a stream/ tributary stream
- Normal high-water line of any great pond
- Upland edge of a coastal wetland, including all areas affected by tidal action
- Upland edge of a freshwater wetland
- Coastal bluff (top of bank)



Definitions (from Chapter 1000):

Normal high-water line (non-tidal waters) - 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. Areas contiguous with rivers and great ponds that support non-forested wetland vegetation and hydric soils and that are at the same or lower elevation as the water level of the river or great pond during the period of normal high-water are considered part of the river or great pond.

Coastal wetland - all tidal and subtidal lands; all lands with vegetation present that are 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.

NOTE: All areas below the highest annual tide level are coastal wetlands. These areas may consist of rocky ledges, sand and cobble beaches, mud flats, etc., in addition to salt marshes and salt meadows.

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WETLANDS IN THE SHORELAND ZONE

Any wetland within a shoreland zone (250 feet from a pond or tidal area) is considered a wetland of special significance. Any wetland within 25 feet of a river, stream or brook is also considered a wetland of special significance. Setbacks and/or permits are required for construction or earthmoving near wetlands of special significance. From NRPA Chapter 310:

All coastal wetlands and great ponds are considered wetlands of special significance. In addition, certain freshwater wetlands are considered wetlands of special significance.

A. Freshwater Wetlands of Special Significance. A freshwater wetland of special significance has one or more of the following characteristics.

(1) Critically imperiled or imperiled community. The freshwater wetland contains a natural community that is critically imperiled (S1) or imperiled (S2) as defined by the Natural Areas Program.

(2) Significant wildlife habitat. The freshwater wetland contains significant wildlife habitat as defined by 38 M.R.S.A. § 480-B(10).

(3) Location near coastal wetland. The freshwater wetland area is located within 250 feet of a coastal wetland.

(4) Location near Great Ponds Act (GPA) defined great pond. The freshwater wetland area is located within 250 feet of the normal high water line, and within the same watershed, of any lake or pond classified as GPA under 38 M.R.S.A. § 465-A.

(5) Aquatic vegetation, emergent marsh vegetation or open water. The freshwater wetland contains under normal circumstances at least 20,000 square feet of aquatic vegetation, emergent marsh vegetation or open water, unless the 20,000 or more square foot area is the result of an artificial ponds or impoundment

(6) Wetlands subject to flooding. The freshwater wetland area is inundated with floodwater during a 100-year flood event based on flood insurance maps produced by the Federal Emergency Management Agency or other site-specific information.

(7) Peatlands. The freshwater wetland is or contains peatlands, except that the department may determine that a previously mined peatland, or portion thereof, is not a wetland of special significance.

(8) River, stream or brook. The freshwater wetland area is located within 25 feet of a river, stream or brook.

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LOOKING FOR MORE CLARIFICATION ON SHORELAND ZONING?

Herrick & Salsbury, Inc. can help you determine if your property is in a shoreland zone and work with you to ensure your project meets all the permitting requirements. **Call us today for a no obligation consultation!**

SETBACK QUICK CHECKLIST:

- ☐ Check Shoreland Zoning map (waterbodies, resource protection and streams)
- ☐ Check local Shoreland Zoning for setbacks
- ☐ Check FEMA flood map
- ☐ Check Coastal Bluff map (tidal areas only)
- ☐ Check Bird Habitat map
- ☐ Stream or tributary stream?
- ☐ Check Maine Significant River Segment list if major river (some in Hancock County)
- ☐ Wetlands?
- ☐ Critically imperiled natural community? (Think Indian shellfish heap along shore, grave site, cemetery, area of special botanical feature, etc.) Check with Maine Natural Areas Program. No known GIS library for this.

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