

SUMMARY OF CUSHING'S SHORELAND ZONE ORDINANCE-IT'S PURPOSE AND RELEVANT REVISIONS

The proposed, updated Shoreland Zone Ordinance (SZO), is a product of the Planning Board's months-long review and revision of Cushing's outdated 2011 SZO. It brings our regulations and procedures into compliance with current state law. The revised SZO also preserves, as far as possible, Cushing-specific oversight of land use in coastal areas. A summary of the SZO and pertinent revisions follows below.

WHO IS GOVERNED BY THE SZO?: Individuals and entities seeking to develop land and/or build, remodel, repair or move structures in the designated Shoreland Zone must follow regulations and procedures in the SZO. The Planning Board (PB) and Code Enforcement Officer (CEO) oversee compliance with the SZO. The Maine Forest Bureau oversees Timber Harvesting in the Shoreland Zone.

WHAT DOES THE SZO DO?: The SZO protects land, water, plants, animals, buildings, and other structures on or adjacent to Cushing's waterfront. It regulates land use activity within: a.) 250 feet of great ponds, rivers, freshwater and coastal wetlands, including all tidal waters; and b.) 75 feet of certain perennial streams. The SZO also applies to any structure built on, over or abutting a dock, wharf or pier, or other structure extending or located below the normal high-water line of a water body within a wetland.

WHEN DOES THE SZO APPLY?: Since 1991, Cushing has imposed conditions on coastal land use, development and associated procedures by way of a SZO. The rules and regulations imposing conditions have been revised twelve times in the period from 1991 to 2011. The current revision serves to bring Cushing's SZO into compliance with current state law.

WHERE DOES THE SZO APPLY?: Cushing land subject to the SZO includes all land within 250 feet of a water body and all land within 75 feet of a stream (as described more fully above). The land subject to the SZO is divided into 6 Districts:

1. Resource Protection (RP)
2. Limited Residential (LR)
3. Limited Commercial (LC)
4. Commercial Fisheries/Maritime Activities (CFMA)
5. Fishing Home Business (FHB)
6. Stream Protection (SP)

The Districts are defined at Section 13 and delineated on the Official Shoreland Zoning Map in the Town Office.

WHY THE REVISION?: Cushing's SZO updates local regulations and brings Cushing's 2011 SZO into compliance with state-mandated regulations and administrative procedures pertaining to coastal land use and development. It preserves allowed Cushing-specific provisions embodied in the 2011 version of the SZO.

HOW DOES THE SZO WORK?: Land use requirements and standards specific to the use of land within the Shoreland Zone are defined in the SZO. Procedures and policies defined in the SZO identify who must follow which standards as well as the person or entity authorized and required to provide oversight and issue permits for land use in the SZO.

HIGHLIGHTS AND DETAILS OF THE PROPOSED REVISION

General Substantive Changes to the 2011 SZO Mandated by State Law

1. The revised SZO clarifies setback requirements for any proposed change to a non-conforming structure made by expansion, relocation, reconstruction or replacement. (see Section 12.M.).
2. The revised SZO re-defines the allowed degree of expansion of non-conforming structures, as measured by the footprint of the existing non-conforming structure. (see Section 12.M.1.b.i.). The 2011 SZO based the allowed degree of expansion on the volume of the existing non-conforming structure.
3. The revised SZO allows the expansion of a non-conforming principal structure to have the greater of the height of the existing structure or the maximum-allowed height as defined in Section 15.B.2. (see Section 12.M.).
4. The revised SZO streamlines the definition of “Wetlands, Marshes and Wet Meadows” as well as “Flood Plains,” both of which are within the Resource Protection District. (see Section 13.A.).
5. Language and clarification regarding the Department of Environmental Protection’s designation of “significant wildlife habitats” and limitations placed on the construction of piers, docks, wharves, bridges and other structures extending or located below the normal high-water line or within a wetland added to comply with current state law. (see Section 15).
6. Applicants are required to provide a written soil and erosion plan conforming to “Maine Erosion and Sediment Best Practices Management Practices” for certain activities involving filling, grading, excavation or similar activities which result in un-stabilized soil conditions. (see Section 15).
7. Language added for new construction involving subsurface disposal systems. With limited exception, the minimum setback distance for those systems may not be reduced by variance. (see Section 15).
8. Permit applicants must provide preconstruction photographs to the municipal permitting authority. In addition, and no later than 20 days after completion of development, postconstruction photographs of the shoreline vegetation and development site must be submitted to the municipal permitting authority. (see Section 15).
9. Cushing’s timber harvesting rules and procedures follow and are administered and overseen by the Maine Forest Bureau. (see 38 M.R.S.A. sec. 43A & B, 12 M.R.S.A. sec. 8867-B & Section 15).
10. “Accessory Dwelling Unit” (ADU) defined and language added for clarification to address the impact and guide the application of LD 2033 “An Act to Implement the Recommendations of the Commission to Increase Housing Opportunities in Maine by Studying Zoning and Land Use Regulations”. (see Section 17).
11. “Functionally Water Dependent Uses” definition amended to include “shoreland structures necessary for erosion control purposes”. Language was added to comply with state law. (see Section 17).

Cushing-Specific Provisions

1. Cushing requires a larger-scale official SZO Map to more fully illustrate characteristics of the land within the Shoreland Zone. (see Section 9).
2. Cushing specifically defines “Boundaries”. These definitions are carried over from the 2011 SZO. (see Section 10).
3. General Development Districts are omitted from Description of Districts as they do not exist in Cushing. (see Section 13).
4. Cushing has a more specific description of the Limited Residential District than the state. (see Section 13). This distinction is carried over, in part, from the 2011 SZO.
5. Cushing has streamlined the Table of Land Uses to provide a more user-friendly guide for applicants seeking to determine what activities are allowed in which District. (see Section 14).

6. The streamlined Table of Land Uses identifies which entity is responsible for authorizing and overseeing activities within the Shoreland Zone. It directs interested parties to the appropriate supervising authority. (see Section 14).

7. Cushing Land Use Standards carry forward a 40,000 sq. ft. minimum lot area standards for dwelling units adjacent to both tidal and non-tidal areas. (see Section 15.a.)

8. Cushing clarifies zoning district designations as applying to the use of land and structures, irrespective of whether structures are within or outside the Shoreland Zone. (see Sections 13 & 15).

9. Administrative procedures concerning the submission of permit applications clarified. No later than noon and fourteen days in advance of the next scheduled PB meeting, applicants must submit to the Town Clerk a completed, signed and dated form together with any scheduled fee or escrow deposit. Eight signed copies of a scaled site plan must accompany each application. (see Section 15).

Noteworthy Details

1. Land Use Requirements-applicant must comply with all SZO regulations OR obtain a variance.

2. Non-Conformance-as before, existing non-conforming conditions shall be allowed to continue. Non-conforming conditions shall not be permitted to become more non-conforming, subject to requirements set forth in Section 12.

3. As regards non-conforming structures-any proposed change to a non-conforming structure must meet all setback requirements to the greatest practical extent. Additions or expansions may be allowed, by permit.

4. As regards non-conforming structures-allowed expansions of principal structures are possible, though limited to a defined square footage or 30% of the footprint of the structure that existed on 1/1/1989, whichever is greater.

5. The maximum height of the allowed expansions of a non-conforming principal structure is the greater of the height of the existing structure or the height defined in Sec. 15.B.2.

6. An approved, detailed plan of expansion of a non-conforming structure must be recorded at the registry of deeds within 90 days of approval.

7. As regards reconstruction or replacement of non-conforming structures-a.) if a structure which is located less than the required set back is removed, damaged or destroyed (the action), regardless of the cause, by more than 50% of the market value of the structure before the action, it may be reconstructed or replaced on certain conditions: a.) a permit must be obtained within 18 months of the action; b.) the reconstruction or replacement must be in compliance with setback requirements to the greatest practical extent as determined by the PB; and b.) if the structure which is located less than the required setback is removed, damaged or destroyed (the action) by 50% or less than the market value of that structure, excluding normal maintenance or repair, it may be reconstructed in place if a permit is obtained from the CEO within one year of the action.

HELPFUL RESOURCES

1. Official Shoreland Zone Map-on display at Town Office-provides an illustration of the land, by district, subject to the SZO.

2. Table of Land Uses-a graphic illustration providing an overview of mandatory land use restrictions, showing what is allow, where permits are required & who issues required permits. (see Section 14).

3. Land Use Standards-a graphic illustration of land use activities within the Shoreland Zone. (see Section 15).

4. Definitions-a glossary of terms, describing in plain language, locations, actions, individuals and authorities subject to the SZO. (see Section 17).

