



## SHORELAND PROTECTION LAWS

By: Kristen Miller, Senior Legislative Attorney

### STATE WETLANDS LAWS

Many states regulate activity near water bodies through interlocking laws, regulations, and programs. They often work in conjunction with federal requirements such as those of the Clean Water Act.

One example is wetlands laws, which regulate certain activity in or near wetlands and watercourses. Connecticut's Inland Wetlands and Watercourses Act requires municipalities to regulate certain activities affecting these areas within their municipal boundaries (CGS §§ [22a-36](#) to [22a-45d](#)) (there is a separate law for activities in tidal areas). Wetlands and watercourses include, among other things, rivers, streams, brooks, lakes, ponds, swamps, and bogs. The types of activity covered are construction, removing material, and filling.

The Environmental Law Institute, a nonpartisan research center, has a 50-state summary of [state wetlands programs](#) and non-regulatory efforts states use to protect these areas.

### ISSUE

This report broadly summarizes "shoreland protection laws" in New England states.

### SUMMARY

Shoreland protection laws are statutory mechanisms to protect, on a statewide basis, the land near lakes, ponds, and rivers from pollution and other environmental challenges.

Maine, New Hampshire, and Vermont each have a shoreland protection law that generally restricts certain activities (e.g., construction or clearing) within these areas through a permitting process. The laws vary in scope and in how they are administered.

Maine's Mandatory Shoreland Zoning Act requires municipalities to adopt shoreland zoning ordinances to regulate land use activity within (1) 250 feet of great ponds, rivers, and wetlands and (2) 75 feet of streams. The state sets minimum guidelines for the ordinances, and municipalities failing to adopt one must apply the state's model ordinance. The model ordinance (1) divides the shoreland zone into six land use districts; (2) specifies which activities are prohibited or allowed in each zone; and (3) sets standards for the activities, such as setbacks or minimum lot size or frontage.



New Hampshire's shoreland law (the Shoreland Water Quality Protection Act) restricts development and land use activity within 250 feet of large streams and designated rivers; tidal waters; and certain lakes, ponds, and impoundments. The law sets minimum standards for activities in this area. It also establishes two buffer areas within the 250-foot zone (the "waterfront" and "natural woodland" buffers), with differing vegetative cover requirements. The state's Shoreland Program issues permits, variances, and waivers for activity in these areas. The state must administer and enforce the law.

The scope of Vermont's Shoreland Protection Act is limited to land surrounding certain lakes and ponds. The act regulates development activity within 250 feet of these water bodies. It divides the area into two zones – a "lakeside" and an "upland" zone. There are specific slope, cleared area, and impervious surface limitations, though exceptions are allowed. Undeveloped properties or nonconforming parcels as of July 1, 2014 (the law's effective date) have different standards to follow than new development or redevelopment activity. The state generally administers and enforces the law, but municipalities may do so under certain circumstances.

This report summarizes these shoreland protection laws generally. Each law contains many specific exceptions and exemptions, and detailed provisions for notice, administration, and enforcement, which are beyond the scope of this report.

Also, these shoreland laws work in conjunction with other laws that regulate activity near waterbodies, such as state wetlands laws (see sidebox on page one). In Vermont, for example, certain wetlands have a required 100-foot or 50-foot buffer area. Consequently, there may be shoreland areas that are also wetlands, potentially requiring both wetlands and shoreland permits.

## **MAINE'S MANDATORY SHORELAND ZONING ACT**

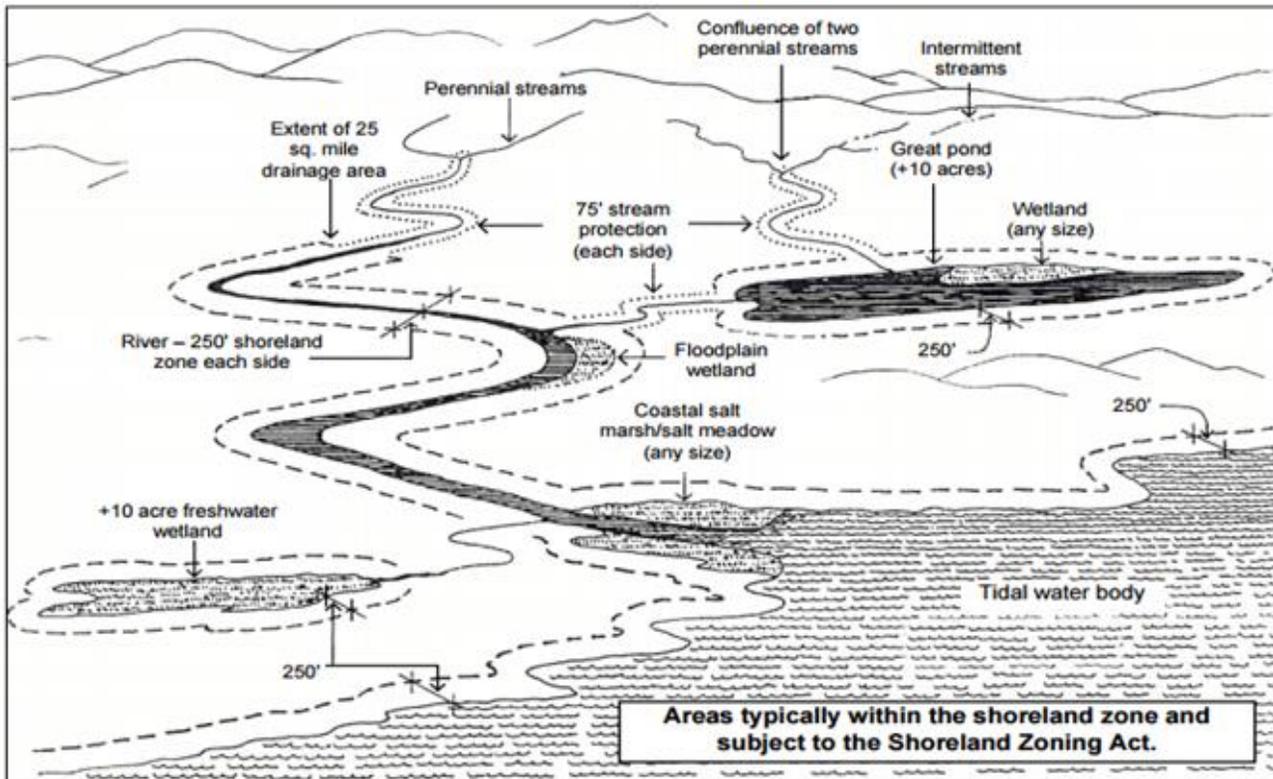
### ***Scope***

Maine law requires municipalities to adopt, administer, and enforce shoreland zoning ordinances that regulate land use activity within (1) 250 feet horizontal distance of great ponds (generally, inland natural water bodies of at least 10 acres surface area or inland artificial water bodies of at least 30 acres surface area), rivers, saltwater bodies, and freshwater and coastal wetlands and (2) 75 feet of streams ([38 M.R.S.A. § 435 et seq.](#)). The regulated area is referred to as the "shoreland zone," which Diagram 1 shows.

The regulated area begins at the normal high-water line or upland edge of the applicable water area. Municipalities may apply the requirements of shoreland zoning ordinances to construction projects on or over structures that extend beyond the line (e.g., docks or piers).

Separate requirements apply to certain statutorily-identified river segments with “significant” natural or recreational features.

**Diagram 1: Areas Subject to Maine’s Mandatory Shoreland Zoning**



Source: Maine Shoreland Zoning: A Handbook for Shoreland Owners, Maine DEP, Publication Number: DEPLW0674, <http://www.maine.gov/dep/land/slz/citizenguide.pdf> (page 3).

### **Minimum Guidelines**

The law requires the state’s Board of Environmental Protection to set minimum guidelines for the ordinances, which it must review and update at least every four years. The [Department of Environmental Protection](http://www.maine.gov/dep/) (DEP) provides technical assistance to municipalities that adopt, administer, and enforce the ordinances.

Municipalities must adopt ordinances that are consistent with the guidelines, but they may adopt more stringent requirements. Each ordinance, an amendment to it, or its repeal must be approved by DEP. DEP must also approve (1) exceptions from the minimum guidelines when adopting ordinances and (2) municipal requests for variances from adopted ordinances.

Municipalities failing to adopt ordinances must follow the state's model ordinance, which includes the minimum guidelines.

### ***Model Ordinance Provisions***

The state's [model ordinance](#) establishes six types of land use districts within the shoreland zone and outlines the land use activities that are allowed, allowed with a permit, or prohibited within the districts. The six districts are: (1) resource protection, (2) limited residential, (3) limited commercial, (4) general development (two types), (5) commercial fisheries or maritime activities, and (6) stream protection.

Not all activities within these areas require a permit, but they must all comply with an ordinance's land use standards. Variances from certain requirements may also be granted by the administering authority. Nonconforming structures existing prior to an ordinance's effective date may continue, but certain activity on a nonconforming structure, such as an expansion, requires a permit.

Shoreland development activity in these areas must generally conform to such standards as minimum lot area and frontage, structure setbacks, vegetation removal and timber harvesting limitations, erosion and sediment control, and sewage disposal requirements.

The state's model ordinance bars certain new commercial or industrial uses (e.g., automobile repair or washing; dry cleaning or laundering; or metal plating, finishing, or polishing) in the shoreland area next to certain great ponds, rivers, or streams. It also has specific provisions for, among other things, agriculture; campgrounds; roads, driveways, and parking areas; signs; and mineral exploration or extraction.

The law requires that ordinances be publicized and have had public hearings. Landowners whose property is considered for placement in resource protection zones must also receive written notice.

Ordinances must establish administrative and enforcement procedures. The model ordinance provides the permit application process and the procedure to appeal decisions. Each municipality must have a code enforcement officer to (1) enforce the shoreland zoning ordinance; (2) if authorized, collect fees for shoreland permits on the municipality's behalf; (3) investigate complaints of alleged violations; and (4) keep complete records of applications, permits, variances, investigations, and violations. Violators may be required to stop or correct the violation or pay civil fines.

# NEW HAMPSHIRE'S SHORELAND WATER QUALITY PROTECTION ACT

## Scope

New Hampshire's shoreland law establishes minimum standards for the subdivision, use, and development of land next to the state's public water bodies ([N.H. Rev. Stat. Ann. § 483-B:1 et seq.](#) and [N.H. Code Admin. R. Ann. Env-Wq 1400](#)).

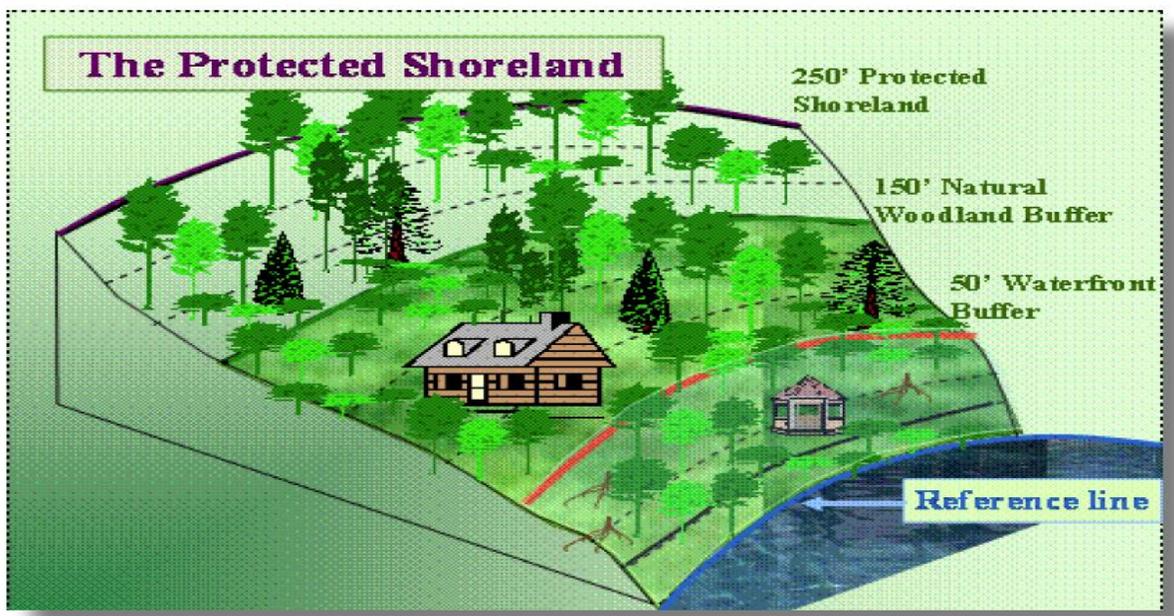
It applies to work within 250 feet of public waters, which are:

1. lakes, ponds, and artificial impoundments of at least 10 acres;
2. coastal waters and associated tidal rivers; and
3. year-round flowing rivers, excluding small streams in the upper reaches of watersheds.

The line delineating where the law's requirements begin to apply (the "reference line") is the ordinary high water mark for rivers; the highest observable tide line for coastal waters; and the surface elevation designated by the state's [Department of Environmental Services](#) (DES) for lakes, ponds, and impoundments.

The 250-foot regulated area also has two buffer areas: the "waterfront buffer," which is within 50 feet of the reference line, and the "natural woodland buffer," which applies to the adjacent 100 feet (50 to 150 feet from the reference line). Activity in each buffer area must conform to certain standards. Diagram 2 shows these areas.

Diagram 2: Areas Subject to Shoreland Regulation in New Hampshire



Source: A Shoreland Homeowner's Guide to Stormwater Management, New Hampshire DES, <http://des.nh.gov/organization/commissioner/pip/publications/wd/documents/nhdes-wd-10-8.pdf> (page 3).

## ***Permit Requirement***

By law, anyone wanting to construct, excavate, or fill within the shoreland area must obtain a DES permit. There is a procedure by which certain projects which do not affect water quality may obtain a permit by formally notifying, and receiving confirmation from, DES. A permit is valid for five years. This permit may be in addition to other required local or state approvals or permits.

The law requires all state and local permits issued for work in shoreland areas to be consistent with its requirements. The DES commissioner may issue variances or waivers from the law's requirements.

Certain activities are exempt, in whole or in part, from the law's requirements. For example, agricultural activity that conforms to applicable federal and state best management practices is wholly exempt. Public road, utility line, and water access facilities are exempt from permit fees and abutter notification. And no permit is necessary for timber harvesting and activity such as commercial or industrial redevelopment permitted through another program.

The law requires that notification of shoreland area permit applications be given to the municipalities in which a property is located, abutting property owners, and, if a designated river is involved, the local river management advisory committee.

The law sets the permit application process DES must follow. The DES commissioner is responsible for enforcing the law's requirements, but municipalities with protected shoreland may also enforce the law by issuing cease and desist orders and pursuing injunctive relief and civil penalties against violators.

## ***Minimum Standards***

The law provides minimum standards that generally apply to activity in protected shoreland areas. Some of these standards are:

1. prohibiting establishment or expansion of certain activities in these areas, such as salt storage or solid or hazardous waste facilities;
2. maintaining a 50-foot waterfront buffer within which certain activity, such as removing vegetation, rocks, stumps, or natural ground cover, is restricted and may require DES approval;
3. maintaining a 100-foot natural woodland buffer beyond the waterfront buffer to keep, and potentially increase the amount of, land in an unaltered state;
4. prescribing setbacks for (a) primary and accessory structures, except water dependent structures which must be approved by DES, (b) septic systems, based on soil characteristics, and (c) fertilizer application;

5. prescribing a (a) minimum lot size for new lots in areas on public water or that are dependent on on-site septic systems and (b) maximum lot surface area that may be covered by impervious surfaces; and
6. requiring new structures, structure modifications, and extraction or earth moving activity to be conducted in a way that controls erosion and sediment.

The law allows construction of a single-family residence on a nonconforming, undeveloped lot, but the DES commissioner may impose conditions on the activity. Similarly, nonconforming structures in the shoreland area may be repaired, replaced, or expanded, but actions to bring the property into greater conformance may be required.

The law also allows municipalities to seek an exemption from the law's requirements for all or part of the shoreland area within their borders due to concentrated building and development. Municipalities may adopt ordinances affecting shoreland areas that are more stringent than the minimum standards.

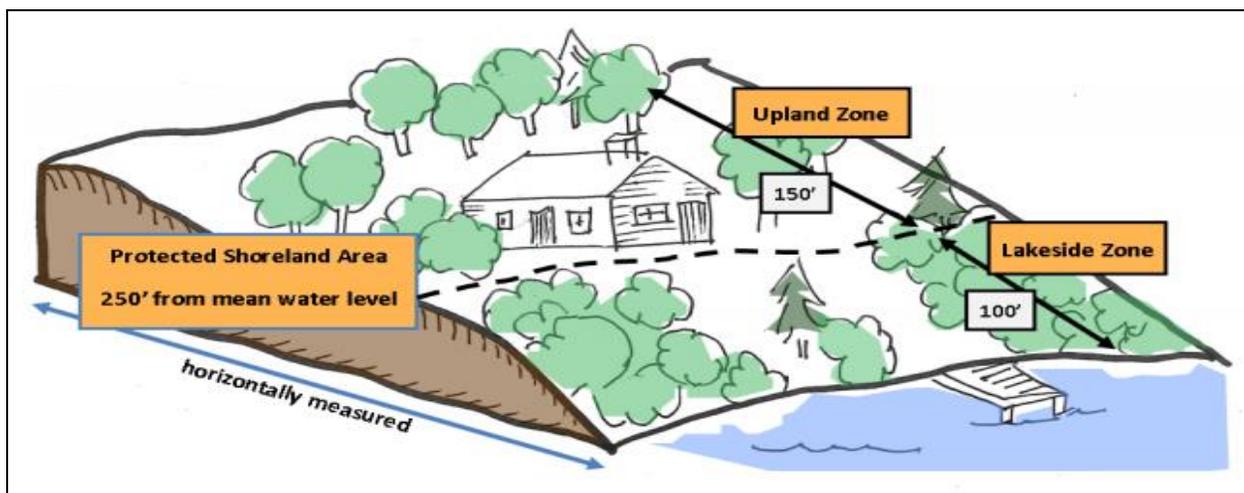
## VERMONT'S SHORELAND PROTECTION ACT

### Scope

Vermont's shoreland law regulates certain development activities within 250 feet of the mean water level for lakes and ponds greater than 10 acres in size ([Vt. Stat. Ann. tit. 10, § 1441 et seq.](#)).

This protected shoreland area is divided into a "lakeside zone," comprised of the first 100 feet from the mean water level, and an "upland zone," encompassing the remaining 150 feet of the regulated area. Diagram 3 shows this regulated area.

Diagram 3: Areas Subject to Shoreland Protection in Vermont



Source: The Vermont Shoreland Protection Act: A Handbook for Shoreland Development, Vermont Agency of Natural Resources, Version 1.2, April 2015, [http://www.anr.state.vt.us/dec/waterq/lakes/docs/shoreland/lp\\_ShorelandHandbook.pdf#zoom=100](http://www.anr.state.vt.us/dec/waterq/lakes/docs/shoreland/lp_ShorelandHandbook.pdf#zoom=100) (page 9).

## **General Requirements**

Under the law, new development, redevelopment, or clearing property may require a permit or registration from the state's Shoreland Permit Program, administered by the Agency of Natural Resources (ANR). It applies to residential and non-residential structures.

Registration is a simplified permitting process and is limited to projects involving a (1) cleared or impervious surface area of 100 square feet or less in certain areas of the lakeside zone or (2) new cleared or impervious area of 500 square feet or less in the upland zone that meets the slope, clearing, and impervious cover restrictions described below.

Permit requirements vary depending on a property's preexisting conditions, size, and site characteristics, but the shoreland law generally requires:

1. a limit to new construction on slopes of greater than 20% grade unless the slope will remain stable and not erode or impact water quality,
2. a limit of 20% impervious surfaces and 40% cleared area, and
3. naturally vegetated areas in the lakeside zone to be maintained according to vegetation protection standards to ensure a certain amount of vegetative cover.

The slope, impervious surface, and clearing restrictions may be exceeded if best management practices are used to limit adverse impacts (e.g., drainage ditches, planting vegetated areas, or no-mow zones).

The law applies different standards for existing (as of July 1, 2014) small legal parcels and developed properties, unless the owner seeks to redevelop. Permit applicants for activity on existing nonconforming parcels must take steps to minimize the effects of cleared areas or impervious surfaces, such as through best management practices.

The shoreland law also exempts from permitting or registration many types of projects, including maintaining existing buildings or lawns; reconstructing existing impervious areas; removing or managing certain vegetation; existing agricultural production that complies with state rules; railroad activity; utility work; state or municipal transportation projects; and development in downtowns, village centers, and urban or industrial areas.

Activity in the lakeside zone must generally meet vegetation protection standards. Clearing and creating impervious surfaces is limited, but existing nonconforming parcels are allowed flexibility and do not need to meet all the requirements.

New development on lots of at least 250 feet in depth must generally be located at least 100 feet from the mean water level (in the upland zone). New parcels must fully meet the law's standards.

### ***Administration and Enforcement***

The Shoreland Protection Act is generally administered and enforced by ANR. Permitting authority may be delegated to a municipality if it has (1) a bylaw or ordinance that is functionally equivalent to the state's shoreland requirements and (2) the resources to administer and enforce the bylaw or ordinance.

Anyone applying for a shoreland permit from ANR must also notify the municipality in which the construction is proposed. Permits may contain conditions imposed by ANR. Permits and registrations are for indefinite terms, as long as permittees or registrants comply with the law's requirements.

Violators of the law may be subject to stop work orders, administrative penalties or civil fines, or abatement or restoration requirements.

### **HYPERLINKS**

Environmental Law Institute, *Study of State Wetland Programs*,  
<http://www.eli.org/freshwater-ocean/state-wetland-programs>.

Maine Department of Environmental Protection, Mandatory Shoreland Zoning,  
<http://www.maine.gov/dep/land/slz/#publicationsz>.

New Hampshire Department of Environmental Services, Shoreland Program,  
<http://des.nh.gov/organization/divisions/water/wetlands/cspa/>.

Vermont Agency of Natural Resources, Department of Environmental Conservation,  
Shoreland Permitting,  
[http://www.watershedmanagement.vt.gov/permits/htm/pm\\_shoreland.htm](http://www.watershedmanagement.vt.gov/permits/htm/pm_shoreland.htm).

KM:cmg