

Why Statewide Standards?

A statewide, single agency enforced standard is reasonable, more equitable to all of the state's forest landowners, and encourages understanding and compliance by the regulated community. It also provides for the efficient and effective use of limited state resources. This sentiment has been expressed not only by previous Legislatures, but also by various study committees, including the Maine Council on Sustainable Forest Management (1996) and the Logger License Technical Review Committee (1998). The Land and Water Resources Council also endorsed the concept of a statewide standard in its communication to the Joint Standing Committee on Agriculture, Conservation, and Forestry (Richert, personal communication, 1999).

The current regulatory structure has a number of flaws that merit remedy. First, education of the regulated community is hampered by multiple, inconsistent laws, rules, and jurisdictions. Second, enforcement of the timber harvesting provisions of municipal shoreland zoning ordinances and state laws is uneven. LURC has six enforcement staff to address regulatory issues across its 10+ million acre jurisdiction. DEP has more, but still inadequate staff. Both state agencies and municipalities necessarily focus their enforcement activities on development issues, which generally have more permanent impact than timber harvesting activities, with the exception of roads. Both agencies have Memoranda of Agreement with MFS to provide initial enforcement services; however, violations must be significant in order for either agency to take any action. ng March 1999

MFS Variance Procedures

MFS has received 31 petitions for variances to the shoreland zoning standards since 2013. Of those 31 petitions, MFS has approved 26 (largely related to insect, disease, and wind impacts) and denied three. Two petitions were deemed unnecessary, as the landowner was able to operate within the standards.

The average time for us to process a variance petition is about 40 days, which includes a 15-day public comment period. Other agencies and experts are consulted during the review, including the Department of Inland Fisheries and Wildlife, the Department of Environmental Protection, Maine Natural Areas Program, and the State Soil Scientist. MFS always conducts a field review of the area for which a variance is sought and consults with the Attorney General's office prior to issuing a decision. When the processing time is longer than average, that is usually because MFS received an incomplete petition and/or required additional information from the petitioner.

So, the number of petitions for variance that MFS receives is a very small fraction of the number of timber harvests that take place in Maine each year. Nearly all landowners are able to conduct timber harvesting operations in shoreland areas in conformance with the rules as they exist, which rules are necessary to protect the state's water resources. Variance procedures are established in land use regulations – not just for timber

harvesting – to provide a safety valve for situations where the rules create an undue or unusual hardship. The bar for obtaining a variance is purposefully high, and the burden of proof is on the petitioner to show that:

1. Strict compliance with the regulations or standards would, because of unique conditions of topography, access, location, shape, size, or other physical features of the site or forest condition, cause unusual hardship or extraordinary difficulties;
2. The unusual hardship or extraordinary difficulties claimed as a ground for variance have not been created by the owner or a predecessor in title;
3. The proposed use meets the purpose and intent of the law that serves as the basis for the rules; and
4. The public interest is otherwise served.

The Legislature directed MFS to administer the rules in place for very good reasons, namely, “to protect public resources while minimizing impacts on private resources; to further the maintenance of safe and healthful conditions; prevent and control water pollution from various agents, including sediment, temperature, toxic materials, and excessive nutrient inputs; to maintain shoreline stability; to protect fish spawning grounds, aquatic life, bird and other wildlife habitat; to protect freshwater and coastal wetlands; and to conserve natural beauty, open space, and public recreational values (Chapter 21 Rule).” LD 1040 would undermine the MFS’s ability to protect those important public resources.

The variance criteria in MFS’s rules are similar to the variance criteria in other land use contexts, like 30-A M.R.S. section 4353 and 12 M.R.S. section 685-A. MFS’s variance criteria ensure that variances are granted only in fairly unique circumstances, not as a matter of common practice, and certainly not because someone is inconvenienced by the regulatory process. By definition, variances exist to exceed regulatory standards. Placing the judgment of when regulations can be exceeded in the hands of private parties undermines the very nature of natural resource regulation to protect public resources.