



## TOWN OF FREEPORT, MAINE

Town Manager's Office  
30 Main Street  
Freeport, ME 04032

OB #3 VIOLATIONS

Phone: 207-865-4743  
Email: pjoseph@freeportmaine.com

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### MEMORANDUM

TO: Freeport Town Council  
FROM: Peter Joseph, Town Manager   
DATE: 01/02/20  
RE: **Notification of Enforcement Action pursuant to Freeport Zoning Ordinance**

Section 601.B of the Freeport Zoning Ordinance (Ordinance Chapter 21) requires that the Town Manager notify the Town Council of any enforcement action undertaken pursuant to that ordinance. Although formal notification is required, there is no formal action/approval required from the Town Council.

Codes Officer Nick Adams, along with the Maine Department of Environmental Protection (DEP) and Town Attorney Amy Tchao, have been working to correct two separate violations for clearing of vegetation within the 75 foot shoreland buffer (see attached memo). In both instances, the property owners have agreed to enter into an administrative consent agreement with the Town, and to correct the violations to the satisfaction of the Town and State. In both of the cases, the property owners have agreed to pay a civil penalty to cover the Town's legal and administrative costs, to complete a comprehensive replanting program designed to fully correct the violations, and to guarantee 80% survival of the replanted vegetation for 5 years. In one of the cases, where a professional tree service undertook the removal of the vegetation, the contractor has also agreed to pay a punitive civil penalty and is a party to the consent agreement.

Under an administrative consent agreement, the property owner agrees to correct the violation in exchange for the Town agreeing to forego formal enforcement action through the courts, which can carry a penalty of \$100 to \$5,000 per violation per day. Although formal enforcement action through the Courts is not sought at this time, the Town Attorney has advised that notification of the Council should still occur in both of these cases.

An administrative consent agreement authorized by the Town Manager is essentially a "settlement" of any violations that must correct the underlying violation, and is different from a formal consent agreement authorized by the Town Council, which can allow a violation to continue, pursuant to the terms of the agreement. Both of the above instances are administrative consent agreements that intend to correct the violations, and as such do not require formal Council approval.

Violations of shoreland zoning provisions are jointly enforced by the Town and the State of Maine, and as such the state has been consulted throughout the process and agreed to the consent agreements and replanting plans. It's important to note that Maine DEP can also cite the Town, along with the property owner, should the Town choose to ignore the requirements of its own shoreland zoning provisions.



TOWN OF FREEPORT  
Code Enforcement Office  
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Date: January 2, 2020  
To: Peter Joseph, Town Manager  
From: Nicholas L. Adams, CEO  
Re: Shoreland Zoning Violations, MBLU (023002000000), MBLU (24A028B 001)

Peter,

There have been two separate violations that the Town has been trying to correct over the past few months, both violations were for clearing and removal of vegetation within the Shoreland Zone. Both property owners have been corporative and diligently working with DEP staff and myself in correct the violations.

As of today, DEP staff and myself have approved the replanting plans and consent agreements have been signed for both properties. The consent agreements are to guarantee that the plantings have been completed in accordance with the approved plans and the plantings are maintained so that at least eighty (80%) percent of the plantings will survive until for five years, as required by the DEP's revegetation rules.

Let me know if you have any questions or concerns.