

From: [Benjamin T. McCall](#)
To: [Anthony Ward](#)
Subject: RE: Water Quality
Date: Wednesday, January 7, 2026 1:34:33 PM

Tony –

I have reviewed the Water Quality Plan (the “Plan”) recently presented to the Selectboard for its consideration. On the whole, I think the Plan presents a laudable set of goals for the Town to monitor and improve water quality. However, this email is limited to outlining several concerns or points that the Plan raises. These are, generally, as follows:

- **Establishment:** Although not expressly stated in the Plan, any standing committee of the town (in municipal legal parlance, board, committee, and commission are synonymous) should be established by ordinance. See 30-A M.R.S. § 3001; Casco, Me. Code ch. 22. Note, however, that once established, the committee/commission could form subcommittees of its members without the need for approval by town meeting or the Selectboard. I do not want there to be a misperception that this committee would be created by order of the Selectboard alone. Chapter 22 presents a number of good examples of what such an ordinance would look like.
- **Shoreland zone permitting and enforcement:** Under the Town Code, § 215-9.39D, the authority to issue permits within the shoreland zone is reserved to the Planning Board or the Code Enforcement Officer, depending on the location and type of activity. Goal 1 of the Plan (p. 6) calls for a newly formed Water Quality Commission to, in part, review and provide recommendations on all shoreland zoning permits. Goal 1 also calls for the Commission to “identify where enforcement [of shoreland zoning violations] was inconsistent or insufficient.” It is reasonable and appropriate for a water quality committee or commission to remain up to date on permitting decisions that affect water quality – particularly those within the shoreland zone. And, as the Plan anticipates, it is encouraged for such a body to prepare recommendations on ordinance amendments that would facilitate improvements in water quality. However, I do not recommend that any such committee become involved in the administration or enforcement of shoreland zoning permits. For one, the Planning Board and CEO are required to review and act on permitting applications as outlined in the Town Code (which in the area of shoreland zoning is required to be consistent with Chapter 1000 of the DEP regulations). Even if well-intentioned, my concern is that soliciting or requiring

input from an outside body like a water quality commission would cloud this process and potentially lead for the Planning Board or CEO to act in a manner that is inconsistent with the Code. This increases the possibility of appeals or other legal challenges.

Separation of authority is even more important when enforcement is involved. Only the CEO may enforce Chapter 215 of the Code. And once enforcement action has been initiated, only the Selectboard may authorize court action to bring the subject property or violator into compliance. To the extent any member of the public feels as if the CEO has not performed their job correctly, those complaints are directed to the Town Manager, who is in charge of all town personnel. Operating within these traditional pathways is fine, but I do not recommend formalizing any sort of supervisory role re: enforcement of shoreland zoning in another town board or committee. Certainly, no other town body (besides the Town Manager) is authorized to give direction to the CEO.

Similarly, on Page 10, the Plan calls for the Water Quality Commission “requiring pre- and post-construction photographs for all permitted shoreland activities.” The Plan is correct that this is a requirement of both the Town Code and State law. But only the CEO can enforce this requirement. A proposed water quality commission cannot. Certainly, a procedure could be established for a commission to get quicker access to these photographs than currently exists, and I do not have any express concerns with a commission performing an “informal ongoing review” as the Plan contemplates – but the commission cannot play any role in enforcement as noted above. It would be important for the commission to not anticipate that the CEO could be compelled, based on their recommendations, to pursue enforcement actions in a way that they are not otherwise comfortable with.

- **Water Quality Standards/BMPs:** On Page 9 of the Plan, the Water Quality Commission would be tasked with “establishing” minimum requirements for testing water quality and checking for invasive plant species. Without offering any comment on those ideas, I want to stress that such water quality standards are only enforceable as ordinances, which under Maine law must be approved by town meeting vote. Likewise, on Page 7, the Plan calls for the “implementing” of BMPs. To the extent not otherwise adopted by the Town already, such BMPs need to be implemented via ordinance.

With these concerns in mind, I still feel as if a Water Quality Commission could be a

valuable resource to the Town, particular insofar as it studies and provides recommendations on new or additional town policies and ordinances.

Please let me know if you or the Selectboard have any questions or concerns about the above.

Best,
Ben