



# Shoreland Zoning Newsletter



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## Inside this issue:

- Changes Coming to Shoreland Zoning* 1
- Kudos to Code Enforcement Officers* 1
- Story Series: Non-Conforming Lots* 2
- One CEO to Another* 3
- Successful Enforcement* 3
- Your Questions* 3
- Notes from the Shoreland Zoning Program* 4

## Share the News

Please share with the Code Enforcement Officer and municipal boards. To receive by email, please send request to [stephenie.maclagan@maine.gov](mailto:stephenie.maclagan@maine.gov).

New and old newsletters are available at: <http://tinyurl.com/depsznews>

## About the News

Since 1987, the Shoreland Zoning Newsletter has been helping municipal officials better administer and enforce shoreland zoning ordinances. Your feedback is always welcome. Feel free to submit comments and topics for articles to Stephanie MacLagan.

## Changes Coming to Shoreland Zoning

**C**urious what's happening to shoreland zoning in the State Legislature? Below is a list of bills that have been discussed before the Joint Standing Committee on Environment and Natural Resources.

The Department testified against the passage of LD 219, because of the risks it poses to water quality and property values. However, the Department did acknowledge that the Guidelines for Municipal Shoreland Zoning Ordinances (Guidelines) are somewhat complex,

and that moderate and high value bird habitat (habitat) should be removed from resource protection (RP). This opinion was based on many letters and statements made by property owners concerning their shoreland zoning experiences.

The majority of the Committee agreed and ordered the removal of habitat from RP, and directed the formation of a stakeholder group to review the Guidelines to make improvements.

The removal of habitat

*Continues on p. 2*

Bill Number	Effect of the Bill	Bill Status
LD 219	Reduces shoreland zone from 250 to 75 feet from the shoreline	DEAD
LD 434	Removes all wetlands created by natural and manmade barriers from shoreland zoning	DEAD
LD 552	Allows cupolas even if height standard is exceeded	Enacted w/ Amendments (awaiting Governor's Signature)
LD 888	Allows use of both non-conformance expansion rules	DEAD
LD 1108	Removes requirement that court mandate a tree per tree replacement for cutting violations	Enacted w/ Amendments (awaiting Governor's Signature)

## Kudos to Code Enforcement Officers

This article features the successful work of code enforcement officers in reducing the number of unintentionally permitted decks within the shoreline setbacks.

Over the past handful of years, the Department has worked closely

with CEO's to try to eliminate the construction of new decks within the shoreline buffer. The recurring issue was permit applications for a dock or stairway would include a deck "landing" that was claimed necessary for the dock or stairway.

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# Story Series: Non-Conforming Lots

Our story series on non-conformance began in the Spring Newsletter with non-conforming structures, and continues in this newsletter with non-conforming lots.

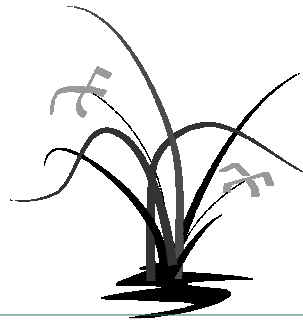
A lot is non-conforming when it doesn't meet the dimensional standards for a principal use on that lot. For example, it doesn't have the minimum shore frontage or lot width or doesn't have the minimum lot area required for the principal use. Non-conforming lots could be vacant or could contain structures.

Remember local ordinances can vary, but generally non-conforming lots can be transferred. A principal use or structure can be added to a vacant, non-conforming lot without a variance from the minimum lot standards. Setback and lot coverage are not lot standards, and would require variances

if needed. Whenever two lots are owned by the same landowner(s), they have to be combined if at least one of them is vacant and at least one of them is non-conforming. Some municipalities have an exemption for lots when both lots are owned by the same landowner(s) prior to the increase in minimum lot standards. The exact adoption date after 1989 varies by municipality though. The exemption works when both lots are served by public sewer or can accommodate a conforming subsurface sewage disposal system. The lots also

have, or can be reconfigured to have, 100 feet of shore frontage and 20,000 square feet of area each.

If non-conforming lots are already developed, each



*Continues on p. 4*

## Changes continued from page 1

For more information on legislation: [http://www.mainelegislature.org/legis/bills/bills\\_125th/billtexts/](http://www.mainelegislature.org/legis/bills/bills_125th/billtexts/)  
For legislator contacts: <http://www.maine.gov/legis/>

from the Guidelines is likely to occur over the next few months. Municipalities who have adopted these areas as RP will be allowed to choose whether or not to remove them from RP by amending their maps and ordinances.

**A full revision to the Guidelines will also be occurring over the next 8 to 12 months. At this time, municipalities that have not have not adopted**

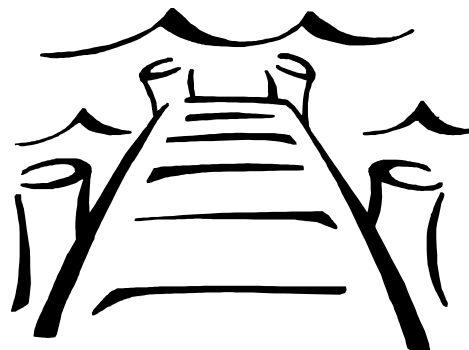
**the 2006 amendments will not be required to do so, and the Department will suspend plans to embark on the State-Imposed process. The aim is not to remove the substance of shoreland zoning, but rather to make it more user friendly.**

The stakeholder process and revision will require a great deal of time from shoreland zoning staff. However, we will still be available for assistance during the field season and for trainings. Planned advanced, topic specific workshops will likely occur after the revised Guidelines are completed. 🐟

## Kudos continued from page 1

However, the dock or stairway was just a mere component of the deck structure and some CEO's were mistakenly approving such applications.

When we realized how widespread this problem was, we incorporated an education component about this in our Annual Basic CEO Trainings



and the newsletter, and the CEO's have responded well.

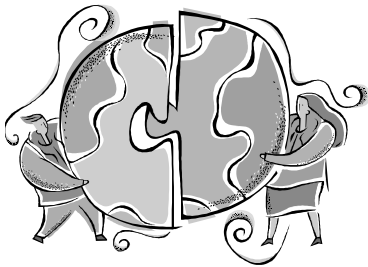
We are seeing far fewer new decks being permitted along the shorelines, and we thank you for your efforts to identify this problem in your application review. Keep up the good work! 🐟

## One CEO to Another

Maggie Pierce, Code Enforcement Officer for Portage Lake, shares her story of becoming acquainted with resources helpful to code officers.

Starting out as a new Code Enforcement Officer, I was well aware that there were going to be many ordinances that needed further explanation. Thanks to Lewis Cousins, I was able to become a member of Aroostook County Code Enforcement Officers. I knew I could go to any one of them for help and guidance.

Then I was hit with a question that I thought I knew the answer to, but as I tried to explain the ordinance to the camp owner, I only seemed to confuse us both. Luckily for me I was referred to Shoreland Zoning Staff at DEP. Stephenie MacLagan turned out to be an excellent resource. She was very thorough in explaining the ordinances and whether they were applicable to my questions. She also offered to travel to a planning board meeting to train the members on the Shoreland Zoning Ordinance, which the members greatly appreciated.



I am grateful to know that I have several resources to aid me when I come across a question or ordinance that is a bit unclear. 🐟

## Successful Enforcement

As you’ve no doubt seen in past newsletters, we like to share with you noteworthy shoreland zoning enforcement actions we’ve seen carried out by municipalities. This edition’s noteworthy enforcement comes from the heart of the Lakes Region.

*“The cleared swath, 125 feet in width extends the full depth of the buffer.”*

A well known shoreline developer received a permit from the Town of Naples (Town) to build a new home on an undeveloped and well-vegetated lot on Long Lake.

During the site work, the trees and all other vegetation were removed from a large portion of the lot’s buffer area. The stumps were removed, and much of the buffer area was graded to bare soil. The cleared swath is about 125 feet in width and extends the full depth of the 100-foot buffer from the shoreline. It was pretty amazing to see, particularly in this day and age.

The Department provided recommendations for significant mitigation and fines;

*Continues on p. 4*

## Your Questions

### **Q: What do I do when a landowner questions an unstable or highly unstable coastal bluff?**

**A:** There is a process available to address a landowner’s concern. Contact the shoreland zoning staff person who covers your municipality (contact info on page 4). For now, we will act as the intermediary between you and the Maine Geologic Survey (MGS). Unstable and highly unstable coastal bluffs are mapped by MGS. The landowner will need to take multiple pictures of the site: one from the top of the bluff, one from the shore at low tide, and others to give an overall view of the bluff. They will also need a detailed location map. If they have GPS coordinates, or can illustrate the property on the coastal bluff map, that would help the review process. In most cases MGS can reevaluate the bluff without a field visit. If MGS finds that the bluff was mapped incorrectly—or as recently determined in St. George, not a bluff at all—then they will issue a Letter of Map Amendment, stating that the area is no longer constrained by the limits established by the map designation. If not considered an unstable or highly unstable bluff, then the highest annual tide level would be the reference point for determining the setback, and not the top of the bluff. Conflicts regarding where the top of the bluff is located should still follow the procedure outlined in Guidelines Section 15(B)(1)(c). 🐟

<http://maine.gov/doc/nrimc/mgs/pubs/online/bluffs/bluffs.htm>



## Story Series continued from page 2

having a principal use or structure, then the lots could be transferred together or separately if the lots were owned by the same landowner(s) at the date of adoption. If conveyed separately, each lot must be in conformance with both the State Minimum Lot Size Law and the State Subsurface Wastewater Disposal Rules. This also applies to just one non-conforming lot that already has two principal uses. If the uses are separated into two lots, each lot is made as conforming as possible.

The common misinterpretation of the non-conforming lot standards is that more than one principal use or structure can be added to a

vacant, non-conforming lot. The lot is non-conforming because it doesn't meet the lot dimensions needed for a principal structure. Therefore building more than one principal structure would increase its non-conformity.

Reconfiguration of lots that are not in common ownership can only occur if none of the lots that are conforming become non-conforming and non-conforming lots do not become more non-conforming. Whenever the lot lines change on a non-conforming lot, it becomes a new lot of record and loses its status as an existing non-conforming lot. 🏹

## Successful Settlement continued from page 3

but considering many variables, the Town felt our minimum recommendations were not sufficient. After the Town had filed suit in court, eventually the two parties reached a settlement agreement that includes both a significant restoration plan (costing approximately \$21,000) and monetary penalty of \$65,000.



Also intriguing, this settlement shows a

clever method to curbing the perceived or real increase in re-sale value of a property with a clear view to the lake. The agreement reached includes a provision that requires an additional payment to the Town of \$175,000 if the property is conveyed to anyone outside the violators immediate family within a 10-year period. Other municipalities may want to consider a similar provision as this with future violations in your town or city. 🏹

## Notes from the Shoreland Zoning Program

**Helpful Reminders:** During the busy field season, we know paperwork tends to stack up, but here are a few important tasks that just can't wait:

**Timber Harvest Permits:** Remember to copy to us a permit granting a timber harvest that exceeds the 40% volume removal provision within 14 days of the planning board decision.

**Variance Applications:** 20 days before the Board of Appeals takes action, copy to us the variance application. Any comments from us are then made part of the record.

**All Appeal Applications:** Once the Board of Appeals makes a decision on any application, within 7 days copy to

us the written findings of fact.

**Ordinance & Map Amendments:** When an amendment is made to the ordinance or map, an attested copy is submitted to us for Commissioner Approval for it to become effective. If a map amendment is submitted as a text description, then upon our approval the municipality has 30 days to add the amendment to the official map for it to remain effective. 🏹

### DEP Contacts

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Stephenie MacLagan	356-1643	Bangor	1-888-769-1137
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