STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

JOHN ELIAS BALDACCI
GOVERNOR

BETH NAGUSKY
ACTING COMMISSIONER

MEMORANDUM

TO: Board of Environmental Protection
FROM: Mike Morse, Assistant Shoreland Zoning Coordinator
DATE: October 7, 2010

SUBJ: Amendment to Chapter 1000 Section 13(A), *State of Maine Guidelines for Municipal Shoreland Zoning Ordinances*

STATUTORY AND REGULATORY REFERENCE: 38 M.R.S.A., Section 438-A(1) (Mandatory Shoreland Zoning Act) and Chapter 1000, *State of Maine Guidelines for Municipal Shoreland Zoning Ordinances*.

Section 438-A(1) states that "the Board of Environmental Protection (Board) shall adopt, and from time to time shall update and amend, minimum guidelines for municipal zoning and land use controls" to carry out the purposes of the Mandatory Shoreland Zoning Act. The Department is requesting that the Board authorize the Shoreland Zoning Unit to initiate a rule-making activity to amend one of the criteria for establishing a Resource Protection District in the shoreland zone.

LOCATION: The amended standard for establishing a Resource Protection District would apply in all organized municipalities.

DESCRIPTION: On May 1, 2006, the Board amended Chapter 1000 and established a time-frame within which municipalities must update their local ordinances. An amendment to the Guidelines pertained to Section 13(A)(1) which includes one of the criteria for establishing the Resource Protection District.

The amendment to Section 13(A)(1) changed the date of the Department of Inland Fisheries and Wildlife data set for rating "waterfowl and wading bird habitat". Prior to the 2006 amendment the data source was from 1973 Inland Fisheries and Wildlife ratings. Specifically, the Guidelines criterion for adopting a Resource Protection District for areas associated with wetlands was as follows:

(1) Areas within 250 feet, horizontal distance, of the upland edge of freshwater wetlands, salt marshes and salt meadows, and wetlands associated with great ponds and rivers, which are rated "moderate" or "high" value by the Maine Department of Inland Fisheries and Wildlife (DIF&W) as of January 1, 1973.

By 2006, the 1973 DIF&W data was significantly out of date as it pertained to freshwater wetlands. In fact, the DIF&W no longer even used the 1973 data and had since that time rated many other wetlands for their habitat value across the state. This process included both adding and deleting

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wetlands from the rating inventory. In order to ensure that the municipalities' shoreland zoning programs were using the most current and accurate information, the Department amended the Guidelines, adopting the 2006 ratings for just the freshwater wetlands. The DIF&W continued to use the 1973 ratings for coastal wetlands, including salt marshes and salt meadows.

While the data contained in the 2006 ratings inventory had been developed over a number of years, the maps produced from this data contained areas that should not be subjected to resource protection zoning under the criteria of the *State of Maine Guidelines for Municipal Shoreland Zoning Ordinances* (Chapter 1000). This included narrow wetlands along river flowages, as well as significantly developed areas. When this problem was recognized the Department of Inland Fisheries and Wildlife agreed to devote considerable manpower to review and modify the 2006 maps according to the new protocol and through established and quality-assured processes, and have those maps available to the municipalities by the end of 2008. DIF&W completed the task by October 2008 and officially published the data on December 31, 2008. Since then the Department has been recommending that towns amend their zoning maps with the 2008 ratings for freshwater wetlands, rather than the 2006 data. The Department has been recommending that towns adhere to the 1973 ratings for coastal areas. Most of the towns have accepted the Department's recommendation and are using the 2008 ratings for freshwater wetlands because the 2008 ratings require less Resource Protection zoning.

ENVIRONMENTAL ISSUES: Use of the most recent wetlands ratings when municipalities amend their shoreland zoning maps will provide appropriate protection of waterfowl and wading bird habitat. Buffers of 250 feet will be provided adjacent to those habitats, but developed areas will be removed from the more restrictive zoning district. In addition, towns will not be forced to zone an area as Resource Protection when the wetlands are too narrow to provide significant habitat. Overall, the changes made to the maps after 2006 will require less area to be zoned for Resource Protection across the state.

DEPARTMENT RECOMMENDATION: Amend Section 13(A)(1), Chapter 1000, the Department's *State of Maine Guidelines for Municipal Shoreland Zoning Ordinances* as indicated in Attachment A.

ESTIMATED TIME OF PRESENTATION: 20 minutes