



# Shoreland Zoning Newsletter



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## Share the News

Please distribute to the Select Board, Planning Board, Appeals Board, and the Code Enforcement Officer.

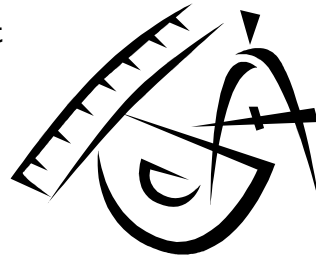
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## About the News

For over 15 years, the Shoreland Zoning Newsletter has been helping town officials better understand common issues regarding shoreland zoning administration and enforcement. Feedback is always welcome. Submit comments and topics for Your Questions to [stephenie.mcgarvey@maine.gov](mailto:stephenie.mcgarvey@maine.gov).

## Amending Shoreland Zoning Map

The July 1, 2009 deadline for updating municipal shoreland zoning ordinances, consistent with the *State of Maine Guidelines for Municipal Shoreland Zoning Ordinances* as amended May 1, 2006 is fast approaching. For most municipalities the amendment process will include district changes to their Official Shoreland Zoning Map.



One criterion for placing an area in the Resource Protection district has changed. Specifically, the 2006 Guidelines reference the Department of Inland Fisheries and Wildlife's updated ratings for freshwater wetlands supporting moderate/high value for waterfowl habitat. The Shoreland Zoning Unit has forwarded maps titled "Town of \_\_\_\_\_ Moderate & High Value Freshwater Wetlands- Revised" to all organized municipalities; please use these to update zones adjacent to freshwater wetlands. Within 250 feet of the newly rated moderate/high value freshwater wetlands, Re-

source Protection zones must be established in order to provide waterfowl with the necessary protections from human disturbance.

There are a few exceptions to this rule. First, areas that are currently developed do not have to be zoned for Resource Protection, even if the area is rated moderate/high value. The Department's policy for distinguishing developed areas from undeveloped areas was first published in the Department's Shoreland Zoning News in 1991. In part, areas which have fewer than one principal structure per 500 feet of shore frontage for more than 1000 feet must be designated as a Resource Protection or equivalent district. If an area is more developed it does not require a Resource Protection designation. Second, the Department is not requiring "streams" to be zoned for greater distances than the standard 75-foot Stream Protection district.

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## Interpretation of non-conforming lots

What happens when a non-conforming lot is created from splitting a larger non-conforming lot?

A lot of record (meaning a lot and its dimensions that were recorded in the Registry of Deeds before an ordinance or amendment took effect),

when changed (such as creating two lots or moving a boundary line) is no longer a lot of record. The lot(s) with changed boundary lines are new lots and any of those new lots, if non-conforming, are not grandfathered lots of record. The allowances for a non-

*Continues on PG 3*

# Alternative energy structures in shoreland setbacks

As you likely know, solar arrays and wind turbines are considered structures under shoreland zoning and therefore must meet the structure setback requirements. However, with fluctuating energy costs and the recent movement to convert to a cleaner form of energy, we have had recent cause to reconsider the current State shoreland zoning policies as they apply to solar and wind energy.

We also conferred with the Department of the Attorney General and determined that the structure of the current language in the Act does provide municipalities the option of amending their local shoreland zoning ordinances to begin permitting solar panels and wind turbines within the shoreland setback in some cases. The Department is allowing municipalities to amend local ordinances to permit solar arrays and wind turbines within the shoreland setback with certain conditions.

Specifically, the area within the setback in which the solar and wind-power structures are proposed must be a legally existing clearing (e.g. existing lawn), and any additional vegetation removal necessary must conform to the vegetation removal provisions within the ordinance. In addition, the extent of a proposed alternative energy project must be limited by design to the energy needs of the existing use on the property. Sale of energy to the power grid must be limited to incidental excess power generation. Projects designed for commercial generation of power must comply with structure setback requirements.



If your municipality wishes to establish this allowance for such structures, feel free to contact us with any questions as you develop your local ordinance language. 🐾

## Map continued from page 1

If an area is being exempted from the Resource Protection district because of existing development within the shoreland zone, but practically all of that development is, for example, 150 feet from the wetland or water body, then the town may elect to create a split zone. Such a split zone would put the first 150 feet in the Resource Protection district and the last 100 feet in the district that is appropriate for the existing development.

*“The town may elect to create a split zone.”*

When an area is determined to be “developed” and not required to be zoned for Resource Protection, how far from the last structure should the Resource Protection district begin? The Department recommends that the Resource Protection district begin 100 feet from the last structure or at the extent of existing cleared area. Whatever method is chosen, it is important that it be consistently applied so that others cannot claim that illegal spot zoning has occurred.

Illegal spot zoning is “the process of singling out a

small parcel of land for a use classification totally different from that of the surrounding area, for the benefit of the owner of such property and the detriment of other owners”

[Anderson, *The American Law of Zoning* (2<sup>nd</sup> ed.)].

If one location is excluded from an area determined to be developed because the landowner agitated the Planning Board, then that would be considered illegal spot zoning.

Please remember that state law [Title 38 MRSA section 438-A(1-B)] requires

a municipality to provide written notification to landowners whose property is being considered for placement in a Resource Protection district. Notification must be made by first-class mail to persons against whom property tax on each parcel is assessed. The municipality must send notice not later than 14 days before its planning board votes to establish a public hearing on adoption or amendment of an ordinance or map that places the landowner’s property in the Resource Protection district. 🐾

## Checklist for the Shut-Ins

Suggested winter tasks for code enforcement officers:

1. Would the planning board like to have the Department review ordinance or map drafts?
2. Catch up on paperwork, like any notices of violation or consent agreements that need to be issued.
3. Check inventory of public handouts. Contact us if you need more issue profiles or handbooks.
4. Remember to attend trainings you registered for.
5. Build a Snow Code Enforcement Officer! 🐾



## Lots continued from page 1

conforming lot of record do not apply to a non-conforming lot created after the ordinance or amendment took effect.

Since the lot is no longer grandfathered for frontage and lot area, any development that is contingent on meeting lot size and frontage requirements cannot move forward unless a variance is obtained. However, the hardship of having a non-conforming lot was created by the applicant or prior landowner when the lot of record was changed; therefore, a variance cannot be legally granted. Since the minimum lot standards are not met, new principal uses and structures would be prohibited.

Remember also that a lot of record cannot be changed so that non-conformity is increased. 🐾

## Legislation Update

Legislation regarding malfunctioning subsurface waste water disposal systems (systems) became effective July 2008.

An Act to Protect Shellfish Waters and Shellfish Resources from Coastal Pollution (Ch. 568) outlines new procedures for addressing complaints of malfunctioning systems. Abatement orders, to address malfunctioning systems, must be enforced by the municipality, and the Department of Health and Human Services may also enforce an abatement order.

*Malfunctioning systems must be abated in 10 days.*

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The Act also contains inspection requirements for systems in shoreland areas, both inland and coastal, upon transfer of property. Notice to the transferee of whether the system malfunctioned in the preceding 180 days is required; additionally in the coastal shoreland areas, inspection of most systems will be required prior to purchase. 🐾

## Your Questions

**Q: When do contiguous lots have to be combined?**

**A:** Contiguous lots must be combined to the extent necessary to meet the minimum lot standards if either of the lots does not individually meet the minimum lot standards and one or both are vacant or contain no principal structure.

Some municipalities have adopted a provision that exempts continuous lots of record that were owned by the same person or persons on the effective date of the Ordinance if, 1) the non-conforming lot(s) is served by a public sewer or can accommodate a subsurface sewage disposal system in conformance with the State of Maine Subsurface Wastewater Disposal Rules, and 2) each lot contains at least 100 feet of shore frontage and at least 20,000 square feet of lot area, or if not then the lots are reconfigured or combined so that they do.

Contiguous lots of record do not have to be combined if, 1) they are in the same ownership on the effective date of the Ordinance, and 2) each lot has a principal use or structure, as long as the State Minimum Lot Size Law and the State of Maine Subsurface Wastewater Disposal Rules are complied with. 🐾

# Notes from the Shoreland Zoning Unit

Does your municipality have a draft Ordinance, or a part, that you'd like to have reviewed before it goes up for adoption?

We'd love to help make sure your Ordinance is good for adoption. When we can catch errors or issues before adoption, it helps us reduce the number of Ordinances we have to approve with conditions, giving us more time to answer your phone calls and help with site visits.

Mike Morse reviews drafts and adopted Ordinances for municipalities in Southern Maine. Municipalities in Central Maine can contact Rich Baker. Northern and Eastern Maine municipalities can reach Stephenie McGarvey in the Bangor Office. Generally we can review drafts either electronically or in hard copy; adopted Ordinances must be mailed as an attested copy. Remember to include a copy of the Map if amendments

were adopted or at least a cover letter stating the current Map is still effective.

A reminder: Any municipality with an adopted Ordinance, even if it's "the State's minimum standards" still made choices on which optional provisions to include. Always refer to the locally adopted ordinance, not the State's Guidelines (Chapter 1000). A municipal decision referencing standards in the Guidelines that differ from the local ordinance could cause legal trouble for the municipality if someone appeals that decision. 🐾

## Contact Us

Augusta	1-800-452-1942	Rich Baker, Coordinator	287-7730
Bangor	1-888-769-1137	Stephenie McGarvey	941-4116
Portland	1-888-769-1053	Mike Morse	822-6328
Presque Isle	1-888-769-1053	Eric Hitchcock	764-0477

DEPARTMENT OF ENVIRONMENTAL PROTECTION  
 17 STATE HOUSE STATION  
 AUGUSTA, MAINE 04333-0017