

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

BOARD ORDER

IN THE MATTER OF

MUNICIPALITY OF HERSEY) MANDATORY SHORELAND ZONING ACT
AROOSTOOK COUNTY, MAINE) 38 M.R.S.A. SECTION 438-A(4)
STATE-IMPOSED) ADOPTION OF ZONING PROVISIONS
SHORELAND ZONING ORDINANCE	

CHAPTER # 1272

Pursuant to the provisions of 5 M.R.S.A. Section 8053, 38 M.R.S.A. Sections 435-449, and 06-096 CMR, Chapter 1000, State of Maine, Guidelines for Municipal Shoreland Zoning Ordinances, as amended July 14, 1992, the Board of Environmental Protection has reviewed the existing land use regulations relating to the shoreland zone in the municipality of Hersey, and FINDS THE FOLLOWING FACTS:

1. The Mandatory Shoreland Zoning Act (Act) requires all municipalities to establish zoning controls in areas within 250 feet of the normal high-water line of any great pond or river; within 250 feet of the upland edge of a freshwater wetland; and within 75 feet of the normal high-water line of a stream. Such zoning standards must be consistent with or no less stringent than those in the State of Maine Guidelines for Municipal Shoreland Zoning Ordinances (Guidelines) as adopted by the Board of Environmental Protection (Board).
2. The Guidelines were revised by the Board, effective March 24, 1990, and again on July 14, 1992. The revised Guidelines include more stringent land use standards than the Board's earlier Guidelines. In addition, the revised Guidelines contain new zoning and land use provisions for activities in shoreland areas adjacent to streams and freshwater wetlands as required by the Act as amended in January of 1989. Following the Board's revisions to the Guidelines in 1990, the Maine legislature, and the Board as authorized in 38 M.R.S.A. Section 438-A(2), established July 1, 1992 as the deadline for local ordinances to be amended consistent with the Guidelines.
3. 38 M.R.S.A. Section 438-A(4) requires the Board to adopt suitable zoning ordinances for municipalities which fail to adopt shoreland zoning ordinances consistent with or no less restrictive than the Guidelines.
4. The Municipality of Hersey has failed to adopt a shoreland zoning ordinance consistent with the Board's Guidelines within the time frame established by the Board. As of September 22, 1993 the municipality of Hersey has not revised its shoreland zoning and land use standards, consistent with the Board's Guidelines.

5. The Board can ensure that the municipality of Hersey has adequate shoreland zoning and land use provisions for all shoreland areas within the municipality by adopting the Board's Guidelines ordinance and an appropriate zoning map based on the districting criteria contained in the Guidelines, for the municipality.
6. On June 30, 1993 and July 28, 1993, copies of the Guidelines and draft zoning map were forwarded to the municipality of Hersey for public comment. The Board also advertised in newspapers of state-wide circulation, its intent to adopt the Guidelines and zoning map for the Municipality. No comments were received on the proposed ordinance during the comment period which ended on September 3, 1993.

BASED on the above FINDINGS OF FACT, the Board makes the following CONCLUSIONS:

1. Whereas the deadline has past for municipalities to amend local shoreland zoning ordinances consistent with the Board's Guidelines, and whereas the municipality of Hersey has failed to do so, the Board has a responsibility to adopt a suitable ordinance for the Municipality.
2. The Board can adopt a suitable ordinance for the Municipality by adopting the provisions contained in the State of Maine Guidelines for Municipal Shoreland Zoning Ordinances, as amended July 14, 1992, with an appropriate zoning map, based on the districting criteria contained in the Guidelines.

THEREFORE, THE BOARD HEREBY ORDERS AND ADOPTS for the municipality of Hersey, all of the provisions contained in the State of Maine Guidelines for Municipal Shoreland Zoning Ordinances, as amended July 14, 1992, for all areas within 250 feet, horizontal distance, of the normal high-water line of any great pond or river; within 250 feet, horizontal distance, of the upland edge of any freshwater wetland; and within 75 feet, horizontal distance, of the normal high-water line of all streams, as defined in 38 M.R.S.A. Section 436. The Board further Orders that the map entitled Town of Hersey Shoreland Zoning Map, adopted by the Board of Environmental Protection is hereby incorporated into the Ordinance. The adoption of this Order hereby repeals the State-imposed shoreland zoning ordinance, Chapter 91, adopted for the municipality of Hersey on June 13, 1979.

This ORDER shall remain in effect, and shall be binding upon the municipality of Hersey until amended or repealed by the Board, or until the municipality of Hersey adopts a shoreland zoning ordinance consistent with the Board's Guidelines, and is approved by the Commissioner.

DONE AND DATED AT AUGUSTA, MAINE, THIS 22 DAY OF SEPTEMBER, 1993.

BOARD OF ENVIRONMENTAL PROTECTION

BY:

Owen R. Stevens, Chairman

BASIS STATEMENT

The Mandatory Shoreland Zoning Act, Title 38 section 438-A, requires all municipalities to adopt shoreland zoning provisions for shoreland areas. Shoreland areas include areas within 250 feet of the normal high-water line of tidal waters, great ponds, and rivers; within 250 feet of the upland edge of freshwater and coastal wetlands; and within 75 feet of streams. Section 438-A also requires the Board of Environmental Protection to adopt minimum guidelines for shoreland zoning ordinances. Municipal ordinances must be consistent with or no less restrictive than the Board's guidelines.

In 1990 the Board of Environmental Protection amended its shoreland zoning guidelines and later established July 1, 1992 as the deadline for municipalities to update their local ordinances consistent with the guidelines. The Mandatory Shoreland Zoning Act requires the Board to adopt suitable ordinances for those municipalities which fail to adopt updated ordinances. This rule adopts a suitable ordinance for this municipality consistent with the Board's Guidelines and repeals the state-imposed ordinance, Chapter 91, adopted June 13, 1979 by the Board of Environmental Protection and the Land Use Regulation Commission.

The Department received no public comments on the proposed ordinance during the public comment period which ended September 3, 1993.

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

BOARD ORDER

IN THE MATTER OF

AMENDMENT TO STATE-IMPOSED
SHORELAND ZONING ORDINANCE
FILE #BEP-B-94

MANDATORY SHORELAND ZONING ACT
38 M.R.S.A., SECTION 438-A

Pursuant to the provisions of the Mandatory Shoreland Zoning Act, 38 M.R.S.A., Sections 435-449, and 06-096 CMR, Chapter 1000, State of Maine Guidelines for Municipal Shoreland Zoning Ordinances (Guidelines), effective August 7, 1994, the Board of Environmental Protection (Board) has considered the shoreland zoning ordinances for the municipalities listed in Appendix A (attached) and FINDS THE FOLLOWING FACTS:

1. Since 1974, the Mandatory Shoreland Zoning Act (MSZA) has required all municipalities to establish zoning and land use controls in areas located within 250 feet of the normal high water line of any great pond, river or saltwater body. In 1989, that requirement was expanded to also include areas within 250 feet of the upland edge of freshwater and coastal wetlands, and within 75 feet of the normal high water line of streams.
2. The Board establishes minimum guidelines for the local land use control ordinances. The MSZA authorizes the Board to establish a deadline for municipalities to adopt local ordinances consistent with the Guidelines and the purposes of the MSZA. The MSZA also authorizes the Board to adopt shoreland zoning ordinances for those municipalities which fail to adopt a suitable local ordinance.
3. On March 24, 1990, the Board of Environmental Protection amended the Guidelines. The Board also established July 1, 1992 as the deadline for amending local ordinances consistent with the Guidelines. The municipalities listed in Appendix A did not meet the July 1 deadline, resulting in the Board adopting the State of Maine Guidelines for Municipal Shoreland Zoning Ordinances, including amendments which became effective on July 14, 1992, for those municipalities. Those state-imposed ordinances can only be amended by the Board.
4. Additional amendments were made to the Guidelines effective August 7, 1994. It is the responsibility of the Board to amend the state-imposed ordinances for the municipalities listed in Appendix A, in order to make those ordinances consistent with the current Guidelines.
5. The August 7, 1994 amendments as listed in Appendix B, and made part of this Order, include provisions which allow :

- A. The issuance of a special exception permit by the planning board, for a single family residence in a resource protection district under certain limited conditions;
 - B. Conversion of seasonal residences in a Resource Protection District;
 - C. Subsurface sewage disposal systems in a Resource Protection District for uses allowed in that district;
 - D. Existing road culverts to be replaced without the need for a permit, regardless of the diameter of the replacement culvert; and
 - E. The applicability of the shoreland zoning ordinance to structures built in, on, or over a water body or wetland but not attached to the shoreline.
6. Amendments referred to in paragraphs A. , B. , C. , D. above, result in a relaxation of the Guideline standards. Paragraph E. requires additional permitting activities, whereas that paragraph establishes a greater area of jurisdiction.
7. No written comments were received during a written comment period which ended on December 1, 1994.

BASED on the above Findings of Fact, the Board makes the following CONCLUSIONS:

1. The municipalities listed in Appendix A (attached) are subject to a state-imposed shoreland zoning ordinance consisting of the State of Maine Guidelines for Municipal Shoreland Zoning Ordinances, effective July 14, 1992. It is the Board's responsibility to amend the existing state-imposed ordinances, consistent with the August 7, 1994 amended Guidelines. However, the Guideline amendment which broadens the scope of the shoreland zone to include structures located beyond the normal highwater line, is not a mandatory requirement and should not be imposed upon the municipalities listed in Appendix A.

THEREFORE, the Board hereby AMENDS the State-imposed Shoreland Zoning Ordinances for the municipalities listed in Appendix A (attached), by adopting as the text of the ordinance, the State of Maine Guidelines for Municipal Shoreland Zoning Ordinances, effective August 7, 1994, except that the ordinance shall not apply to those structures located beyond (waterward) the normal high water line or upland edge of a wetland.

DONE AND DATED AT AUGUSTA, MAINE, THIS 14 DAY OF December, 1994.

BOARD OF ENVIRONMENTAL PROTECTION

BY: _____
Owen R. Stevens, Chairman

APPENDIX A TO BOARD ORDER #BEP-B-94

AMITY	(1267)	LIMINGTON	(1299)
ATHENS	(1245)	LOVELL	(1276)
AURORA	(1288)	LUDLOW	(1277)
BANCROFT	(1268)	MECHANIC FALLS	(1300)
BOWDOINHAM	(1246)	MEDFORD	(1279)
BOWERBANK	(1289)	MERRILL	(1281)
BRADFORD	(1247)	MILO	(1301)
BRIDGTON	(1290)	MOOSE RIVER	(1257)
BROWNVILLE	(1291)	NEWCASTLE	(1302)
CARTHAGE	(1292)	NORTH HAVEN	(1304)
CENTERVILLE	(1235)	ORIENT	(1282)
CHARLOTTE	(1249)	PARIS	(1260)
CHESTER	(1250)	PARSONSFIELD	(1306)
COLUMBIA	(1251)	PASSADUMKEAG	(1264)
COOPER	(1270)	PENOBSCOT	(1307)
CORINTH	(1271)	PLYMOUTH	(1308)
CRYSTAL	(1320)	ROCKLAND	(1325)
DURHAM	(1321)	SEDGWICK	(1241)
EDINBURG	(1253)	SHIRLEY	(1309)
ETNA	(1322)	SPRINGFIELD	(1261)
EXETER	(1293)	STACYVILLE	(1283)
FARMINGDALE	(1294)	STEUBEN	(1262)
FRANKFORT	(1295)	STOCKTON SPRINGS	(1310)
FREEDOM	(321.1)	STONINGTON	(1311)
GREENE	(1237)	STOW	(1326)
GUILFORD	(1296)	TALMADGE	(1263)
HANOVER	(1254)	TROY	(1243)
HARRINGTON	(1327)	VANCEBORO	(1285)
HERSEY	(1272)	WADE	(1286)
HIRAM	(1273)	WAITE	(1265)
ISLE AU HAUT	(1323)	WALDO	(1312)
KNOX	(1255)	WHITEFIELD	(1244)
LAGRANGE	(1275)	WOODVILLE	(1266)
LIMERICK	(1256)		
		TOTAL:67	

APPENDIX B TO BOARD ORDER #BEP-B-94

CHAPTER 1000: AMENDMENTS TO THE STATE OF MAINE GUIDELINES FOR MUNICIPAL SHORELAND ZONING ORDINANCES1. Change Section 3. Applicability, to read:

This ordinance applies to all land areas within 250 feet, horizontal distance, of the normal high-water line of any great pond, river or saltwater body; within **250** feet, horizontal distance, of the upland edge of a coastal or freshwater wetland; and within 75 feet, horizontal distance, of the normal high-water line of a stream. This Ordinance also applies to any structure built on, over, or abutting a dock, wharf or pier,, or other structure extending or located beyond the normal high-water line of a water body or within a wetland.

2. Change Section 14. Table 1, Land Uses in the Shoreland Zone to read:

	<u>Land Uses</u>	<u>District</u>
		<u>RP</u>
15.	Principal structures and uses	
	A. One and two family residential	no <u>PB</u> ⁹
18.	Conversion of seasonal residences to year-round residences	no <u>LPI</u>
20.	Private sewage disposal systems for allowed uses	no <u>LPI</u>

Add footnote 9: Single family residential structures may be allowed by Special Exception only according to the provisions of Section 16.E, Special Exceptions. Two-family residential structures are not permitted.

3. Amend Section 16. Administration, subsection B., to read:B. Permits Required

After the effective date of this ordinance no person shall, without first obtaining a permit, engage in any activity or use of land or structure requiring a permit in the district in which such activity or use would occur; or expand, change, or replace an existing use or structure; or renew a discontinued nonconforming use.

A permit is not required for the replacement of an existing road culvert as long as:

~~1. The replacement culvert is not more than one standard culvert size wider in diameter than the culvert being replaced;~~

2.1 The replacement culvert is not more than 25% longer than the culvert being replaced

3 2. The replacement culvert is not longer than 75 feet; and

4 3. Adequate erosion Control measures are taken to prevent sedimentation of the water, and the crossing does not block fish passage in the water course

4. Add new Section 16, E., Special Exceptions, as follows:

In addition to the criteria specified in Section 16.D. above, the Planning Board may approve a permit for a single family residential structure in a Resource Protection District provided that the applicant demonstrates that all of the following conditions are met:

1. There is no location on the property, other than a location within the Resource Protection District, where the structure can be built.

2. The lot on which the structure is proposed is undeveloped and was established and recorded in the registry of deeds of the county in which the lot is located before the adoption of the Resource Protection District.

3. The proposed location of all buildings, sewage disposal systems and other improvements are:

a. Located on natural ground slopes of less than 20%; and

b. Located outside the floodway of the 100-year floodplain along rivers and artificially formed great ponds along rivers and outside the velocity zone in areas subject to tides, based on detailed flood insurance studies and as delineated on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate Maps; all buildings, including basements, are elevated at least one foot above the 100-year floodplain elevation; and the development is otherwise in compliance with any applicable municipal floodplain ordinance.

If the floodway is not shown on the federal Emergency Management Agency Maps, it is deemed to be 1/2 the width of the 100-year floodplain.

4. The total ground-floor area of all principal and accessory structures is limited to a maximum of 1,500 square feet.

5. All structures, except functionally water-dependent structures, are set back from the normal high-water line or upland edge of a wetland to the greatest practical extent, but not less than 75 feet. In determining the greatest practical extent, the planning board shall consider the depth of the lot, the slope of the land, the potential for soil erosion, the type and amount of vegetation to be removed, the proposed building site's elevation in regard to the floodplain, and its proximity to moderate-valued and high-value wetlands.

And change existing Sections 16 E., 16 F., and 16 G. to Sections 16 F., 16 G., and 16 H. respectively.

5. Add the following definitions to Section 17:

Floodway - the channel of a river or other watercourse and adjacent land areas that must be reserved in order to discharge the 100-year flood without cumulatively increasing the water surface elevation by more than one foot in height.

Velocity Zone - an area of special flood hazard extending from offshore to the inland limit of the primary frontal dune along an open coast and any other area subject to high-velocity wave action from storms or seismic sources.

BASIS STATEMENT

The Mandatory Shoreland Zoning Act, Title 38 section 438-A, requires all municipalities to adopt shoreland zoning provisions for shoreland areas. Shoreland areas include areas within 250 feet of the normal high-water line of tidal waters, great ponds, and rivers; within 250 feet of the upland edge of freshwater and coastal wetlands; and within 75 feet of streams. Section 438-A also requires the Board of Environmental Protection to adopt minimum guidelines for shoreland zoning ordinances. Municipal ordinances must be consistent with or no less restrictive than the Board's guidelines.

When a municipality fails to adopt a shoreland zoning ordinance consistent with, or more restrictive than the Guidelines the Board of Environmental Protection may adopt a suitable ordinance for the municipality. This rule amends the previously adopted state-imposed ordinances by the Board of Environmental Protection.

The amendments, however, do not incorporate the provision to regulate structures located over a water body or wetland, that provision would result in an unfunded mandate.

No comment were received during the written comment period which ended December 1, 1994.