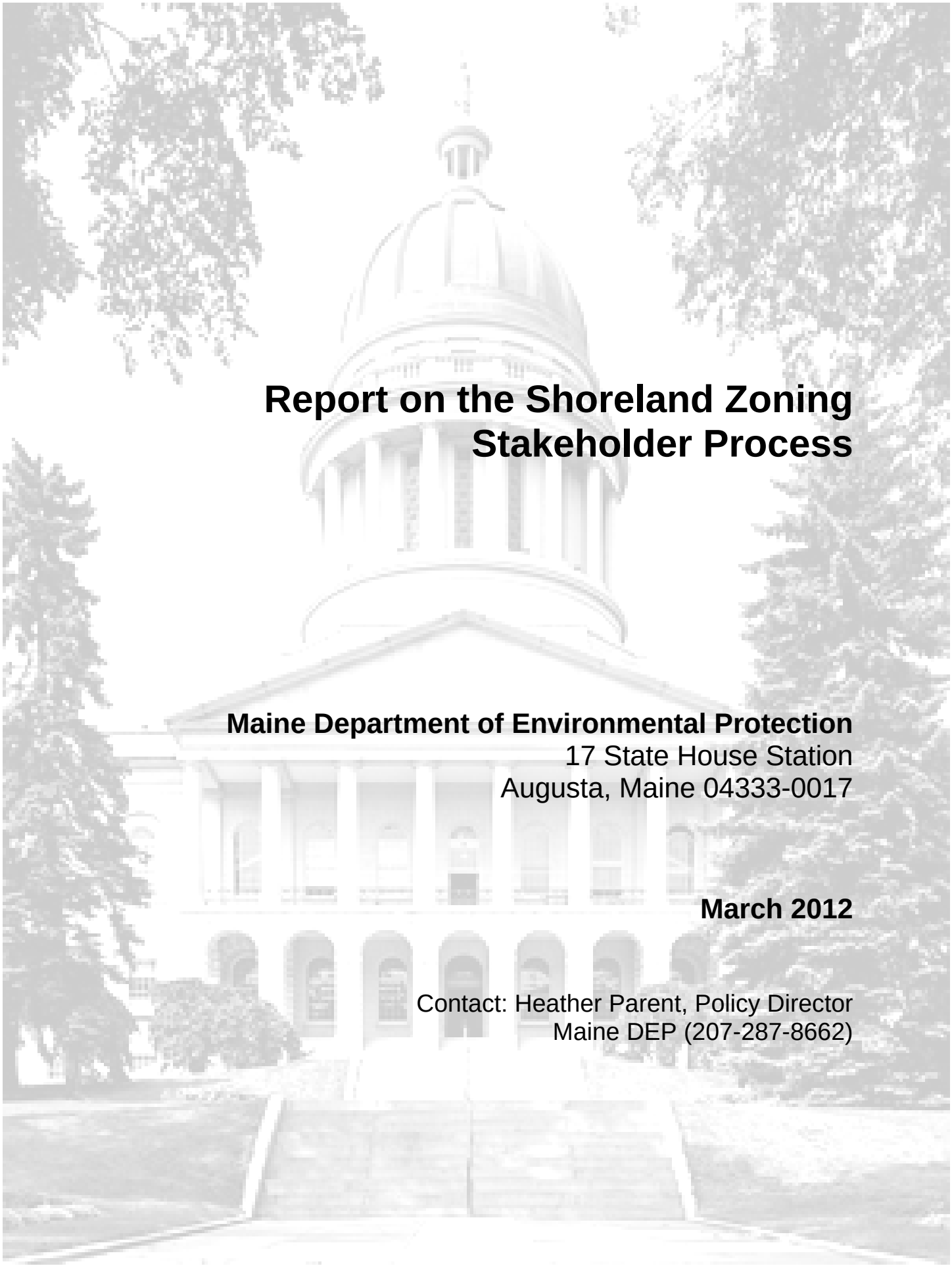

Report on the Shoreland Zoning Stakeholder Process

Maine Department of Environmental Protection
17 State House Station
Augusta, Maine 04333-0017

March 2012

Contact: Heather Parent, Policy Director
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March 13, 2012

Senator Thomas B. Saviello, Chair
Representative James M. Hamper, Chair
Joint Standing Committee on Environment and Natural Resources
2 State House Station
Augusta, ME 04333

RE: Report on the Shoreland Zoning Stakeholder Process

Dear Senator Saviello, Representative Hamper, and members of the Joint Standing Committee on Natural Resources,

In a letter dated May 31, 2011, this Committee encouraged the Department of Environmental Protection (Department) to engage in a stakeholder process to discuss the State of Maine Guidelines for Municipal Shoreland Zoning Ordinances, 06-096 C.M.R. ch. 1000 (amended November 22, 2010)(guidelines), in order to find ways to make the rules easier to understand for both landowners and municipalities

This report summarizes the findings of this stakeholder process, along with Department recommendations for amendment to the guidelines. While, the majority of stakeholders did not find the need to make major changes to the standards themselves, most were in agreement that at a minimum, the guidelines should be reorganized and rewritten to provide more clarity.

In forming this stakeholder group, the Department worked to achieve a balancing of interests and viewpoints. We also tried to have representation from multiple geographic portions of the State of Maine, and encouraged participation through offering videoconferencing from our Portland, Bangor and Presque Isle offices.

The Department feels that if changes proposed during this process are made to the guidelines the rule will not only be easier to understand, but will be more flexible for both landowners, and municipalities who are charged with administering and enforcing these rules through local ordinance.

I would be happy to present the report to the Committee at your convenience.

Sincerely,

Heather Parent
Policy Director

Report to the Joint Standing Committee on Natural Resources
2nd Session of the 125th Maine Legislature

Report on the Shoreland Zoning Stakeholder Process

Executive Summary

The Department of Environmental Protection engaged in a series of stakeholder meetings to discuss the guidelines governing shoreland zoning in organized municipalities. While the majority of stakeholder participants did not advocate for major changes to the standards, they did feel that reorganization and redrafting of the rule is necessary to make the rule easier for landowners, and for municipalities who are charged with administering and enforcing the shoreland zoning standards through local ordinance to understand.

Other ideas for changes include:

- Allowing a municipality to include both expansion rules for nonconforming structures within their ordinance;
- Remove volume and floor area from the "30% expansion rule", and switch to footprint for both expansion rules;
- Change to assessed value instead of market value in determining if the 50% threshold has been met;
- Under a limited set of circumstances allow in-place replacement for nonconforming structures that are removed by more than 50% of the market value;
- Require that a landowner document any clearing activities they undertake when a permit is not required;
- Expand the language for the removal of storm damaged, diseased, dead and unsafe trees;
- Remove vague references to aesthetics within the guidelines; and
- Amend and add definitions to the Section 17 of the guidelines.

In addition to those suggestions agreed upon by stakeholder consensus, the Department believes other changes are necessary to make this rule amendment a success. The details of this process are outlined below. The Department would like to work over the next several months to incorporate some of the changes suggested by stakeholders, as well as other changes the Department deems are necessary to create a rule that is easier for all to understand, while maintaining the substance of shoreland zoning.

I. Stakeholder Process

Starting in August 2011, the Department convened the first of seven stakeholder meetings to review the guidelines to generate ideas on how the rules could be amended to be more user friendly for both landowners looking to do projects in the shoreland zone, as well as municipalities, who are charged with administering and enforcing the shoreland zoning rules through local ordinances. In a letter dated May 31, 2011, the Joint Standing Committee on Environment and Natural Resources (Committee) expressed strong support for this process as a way to get input for revisions to the rule.

In creating this group, the Department tried to seek a variety of perspectives from regions across the state (see Appendix A for a list of stakeholders). The first meeting was viewed as an opportunity to see what portions of the rules the stakeholders found issue with. This introductory meeting aided in shaping agenda topics for future meetings (See Appendix B for a compilation of agendas).

Two areas within the rule were identified by most participant stakeholders as most problematic: they were the sections on nonconformance and the clearing standards for activities other than timber harvesting.

II. Nonconformance

The nonconformance section of the guidelines deals with legally existing nonconforming structures, lots, and uses within the shoreland zone. While the stakeholders discussed many issues relating to nonconformance, a majority felt that the standards should remain the same with the few exceptions detailed below.

a. Expansions

The current guidelines allow for the expansion of legally existing nonconforming structures through either the "30% expansion rule," or the "alternative expansion rule." Currently, a municipality must choose between the two rules, meaning only one expansion rule is permitted per municipality. Through this process, a majority of stakeholders felt that it would be appropriate to allow a municipality to have both expansion rules available to landowners looking to expand. A majority also felt if both expansion rules would be in effect, there should be a requirement that expansions be recorded at the Registry of Deeds, so that there was no confusion as to whether or not a certain expansion rule had been utilized. As Maine Municipal Association noted, they would not want it to be required that municipalities have to utilize both, but merely that if they choose to use both expansion rules it would be permissible under the guidelines.

The Department feels this is a reasonable change to the current rules. It allows more flexibility for both municipalities and landowners. In addition, this change would not be in conflict with the purposes of the Mandatory Shoreland Zoning Act (Act).

In discussing expansions, the "30% expansion rule" was described as being difficult to understand, difficult to track and sometimes difficult to calculate. The rule currently allows for the expansion of no more than 30% in floor area and volume for any legally existing nonconforming structure. Calculating floor area does not appear to be the issue, but the volume component of this section is seen as problematic. However, for purposes of tracking, and ease of administration stakeholders felt it would be better to utilize footprint instead of floor area. In fact, the majority of stakeholders felt that it would be easier if 30% only applied to the footprint of the structure; meaning they favored the removal of floor area and volume from the rule. A few stakeholders felt that volume was a helpful limiting factor to expansions, and hoped that there would be some distinction between enclosed and unenclosed portions of the structure. For example, some stakeholders would prefer the rule if it would not allow a nonconforming structure with 200 square feet of unenclosed deck, to expand the deck area by 30% and then enclose it. This would mean the rule would allow a legally existing nonconforming structure to be expanded by up to 30% of the footprint of the unenclosed portion of the structure, and up to 30% of the enclosed portion of the structure, and the two could not be combined. A switch to footprint would also be applicable to the "alternative expansion rule."

The Department feels the use of footprint would be a much more simplified calculation for applicants and municipalities. We would also support the removal of volume and feel it is a fair compromise to distinguish between enclosed and unenclosed portions of the structure. However, the potential issue with this is that footprint is not story specific. If a structure has a second story deck, how would that be treated under this enclosed versus unenclosed distinction? This is an area the Department will need to explore further when drafting the new rules. Since this was not majority preference, it may be left out of the final rule, but the Department feels the issue is at least worth exploring further. The Department also believes that these changes would not be in conflict with the Act.

Note: The proposed change to move from floor area and volume to footprint would require statutory changes. (See 38 M.R.S.A. §§ 439-A(4) & (4-A)).

b. Reconstruction or Replacement (Nonconforming Structures)

The current rule states then whenever a nonconforming structure is removed by more than 50% of the market value, regardless of cause, the structure may be reconstructed/replaced, but must be located to meet the structure setback to the greatest practical extent. This provision aims to reduce nonconformities over time.

A majority of stakeholders felt that two changes should be made to this section: the first being to change the 50% market value threshold to 50% assessed value; and to allow limited in place replacement for structures damaged or destroyed by sudden catastrophic events, such as fires.

The change to assessed value was preferred over the current rule because many felt market value was difficult to explain and support, especially because the text speaks to this threshold in terms of the structure, but the definition of market value in the rule references the property as a whole. Assessed value was seen as something that was easy to access and understand. While the majority preferred the use of assessed value, they felt it was appropriate to allow a landowner to challenge the municipality's assessment by hiring an expert.

The change to allow in place replacement under certain limited circumstances was that sometimes removal of a structure by more than 50%, was not voluntary and stakeholders felt it was not fair to fault someone for this. While stakeholders felt that in place replacement would be reasonable in certain situations, if the landowner wanted to expand what they had, they would then need to engage in the greatest practical extent review. Therefore, this allowance would only be applicable when a structure is removed by more than 50% of the market/assessed value and the structure will be no larger than the original structure. There were some stakeholders who expressed an interest in limiting this even further by not allowing in-place replacements when the loss is due to flooding (and the structure is located in the flood zone/floodway), for structure located on an unstable or highly unstable coastal bluff, or in areas prone to coastal storm surges.

The Department feels that moving to assessed value from market value is a reasonable change to the rule that has the potential to simplify the rule for both landowners and municipalities. We also believe that allowing in-place replacement under a very limited set of circumstances is both fair and appropriate. This will not be in conflict with the purposes of the Act because of its limited scope and applicability. As far as limiting this exception even further, by not allowing in-place replacement in sensitive areas is something the Department would like to further explore during the rule revision process. The rationale behind this limitation is sound, and there may already be other rules that would not allow in-place replacements in certain areas. We would not want to create more conflicts with other laws that are applicable in the shoreland zone; therefore would like time to consider this further.

III. Clearing Standards

The clearing for activities other than timber harvesting section of the guidelines deals with vegetation removal within the entire shoreland zone. While stakeholders felt various portions of this section were confusing, such as the points standards and 40% volume provision, again most did not favor making any substantive changes to the guidelines, with the exception of the few concepts described below.

a. Permits, notification and record keeping

Under this section of the current guidelines a permit for vegetation clearing is only required when the activity takes place in either a Stream Protection or Resource Protection District. In all other districts no permit is required, but the standards still must be met.

During several meetings stakeholders discussed possibly requiring a permit for vegetation clearing in all shoreland zoning districts, including the removal of storm damaged, diseased, dead and unsafe trees. There are several rationales for this concept. First, any time clearing occurs within the shoreland zone, the CEO is often contacted by a member of the public reporting the clearing activities. In visiting the site to assess the situation, pre-clearing conditions are not always evident and sometimes this results in the issuance of a notice of violation. If there was a permit requirement for clearing, then these types of conflicts may be avoidable because the CEO would be aware of the clearing, what the pre-clearing conditions were, and the extent of what was being proposed. A second reason for requiring a permit would be to avoid inadvertent violations of the rules. If a landowner was required to obtain a permit prior to clearing, the CEO would be able to identify issues before the clearing occurred.

Considering these and other rationales for requiring a permit, the majority of the group did not want to see this change in the guidelines. Some stakeholders felt this would be creating an additional burden for landowners, especially for someone only looking to remove one or two trees. Others felt this would create an additional burden for municipalities, who already have stretched resources.

Another concept that also did not receive majority support for the same reasons stated above was to require a “notice of intent to clear” form with the CEO. This notice would contain site photos with a description of the proposed clearing. While, the majority did not agree that a permit or notification should be required, they did agree that the landowner should be required to keep a record of the clearing so if a question was raised they would have the proper documentation available for the CEO to review.

The Department does not feel that this amendment should be made to the guidelines. While this is a valid concern and addressing it in some way would likely be helpful, the requirement that a landowner keep a record of their clearing activities could pose a few new issues and could be seen as the same amount of burden to a landowner as a permit. This requirement could be used as a tool to target certain landowners, and can be an avenue for abuse. Additionally, unlike a permit, this requirement is a little grayer and has the potential to create more confusion and complicate the rules further. While the Department does agree that assessing clearing activities after cutting has occurred is often complicated, this proposal has the potential to create additional issues and will not provide resolution to all the concerns raised while discussing this subject. Therefore, the

Department feels it would be best to not amend the guidelines to require record keeping of clearing in the shoreland zone.

b. Storm damaged, diseased, dead and unsafe trees

The current guidelines at Section 15(P)(2)(e), contains one sentence to deal with trees within the buffer that are deemed storm damaged, diseased, dead or unsafe. This one small sentence sets out to do many things, and is a source of many inadvertent violations, as well as blatant abuse.

The Department, at the request of the stakeholders, drafted new language for this section. When the subject was first broached it quickly became confusing, and the stakeholders felt it would be helpful to have some new language to better discuss this subject. The newly drafted language separates storm damaged and dead trees from diseased and unsafe trees. It also adds the term hazard trees in place of unsafe trees. Under the proposed language, a landowner would not be required to replant a storm damaged or dead tree if the removal resulted in a cleared opening unless no natural regeneration occurs within one growing season. The replanting requirement for storm damaged or dead trees in these circumstances would be less substantial than for hazard/diseased trees.

In addition, this section would apply to the entire shoreland zone and not just the buffer, so that if a landowner has cleared the entire lot in the shoreland zone to the maximum allowed under the Act and the guidelines, they would have an avenue to pursue in removing hazard/storm damaged/diseased/dead trees. The majority of stakeholders preferred the drafted language with a few exceptions.

The majority of stakeholders did not think it was necessary to treat dead trees differently than hazard/diseased trees. While most were in agreement that the distinction was proper for storm damaged trees, the consensus was that dead trees should be included in the hazard tree section. The new language also specifies a height for replacement trees. The majority of stakeholders felt a height range was more appropriate than a singular height requirement. Additionally, a majority felt that more than a one-for-one replacement would be appropriate for the removal of hazard/dead/diseased trees because the likelihood that not all newly planted trees will survive.

The Department feels that this change is necessary. It will help clarify the rule, it provides more tools for the municipality and it provides the landowner with some benefits that the prior language did not. The Department is in agreement with stakeholders that a height range is a better approach than a specific height requirement for replacement trees. However, we would like to further explore not including dead trees with storm damaged trees, and requiring more than a one-for-one replacement. Perhaps, as one stakeholder suggested replanting would be based on restoring what was lost. If canopy openings are the trigger for replanting, then replacement vegetation should be sufficient to close the cleared

canopy opening. This draft language was meant to serve as a starting point for discussion and requires further analysis to ensure consistency and clarity.

c. Miscellaneous

Current policy encourages that stumps be left in place when tree removal occurs within the buffer area, but allows activities that do not disturb soils, such as stump grinding. The rationale for leaving stumps within the buffer is that they provide stability for soils and they are part of the natural succession of the forested buffer. Stakeholders felt it would be appropriate to put language in the guidelines so the policy was clear and both landowners and municipalities would know how to address stumps when vegetation is removed within the buffer area.

There were many discussions surrounding the 40% volume limitation on clearing. In the guidelines, this limitation is applicable in the buffer, in the area outside the buffer to the outer limits of the shoreland zone, and to the entire lot. The Act places this limitation only on the lot. Additionally, the language in the Act differs from the language in the guidelines because the Act refers to 40% of the trees, whereas the guidelines refer to 40% of the volume of trees. In essence the two have different connotations.

While acknowledging this inconsistency, as well as the confusion this provision can create, the majority of stakeholders voted to keep the 40% limitation the same. It was suggested that if the 40% limitation was removed from the buffer, then the points per plot in all shoreland areas should be 24 (instead of 16 points per plot in all areas except those adjacent to a great pond). The shoreland zoning unit actually engaged in a clearing exercise to apply these standards on an actual lot and found some discrepancies with the points system versus the 40% volume limitation. In that particular exercise, if a person were to remove all trees to maximize clearing (meaning all plots were cleared to meet the minimum requirement), then plots where 16 points are allowed would create a violation of the 40% limitation rule. However, if points were increased to 24 points, the 40% volume limitation would be met; thereby the 40% limitation language could be removed from the section of the guidelines dealing with clearing within the buffer.

While the majority of stakeholders felt the clearing standards should be rewritten/reorganized, but the standards themselves should remain the same, the Department feels this is an area that needs further exploration. If redrafting this section provides the necessary relief, then the Department is in agreement with stakeholders. However, as illustrated above there are inconsistencies, not only with the Act and guidelines, but within the rule itself. In order for this to be a successful exercise, something needs to be done to not only make this section easier to understand, but to remove any inconsistencies.

IV. Aesthetics

Throughout the Guidelines are references to things such a natural beauty and visual impacts. For example, in Section 12(C)(2)(4), a planning board may approve a change of use of a nonconforming structure, as long there is no adverse impact on natural beauty; in Section 15(L)(2), the installation of essential services can only be allowed in a Stream Protection or Resource Protection District if visual impacts are minimized; and in Section 16(D)(5), a planning board shall approve an application as long as the project will conserve shore cover and visual, as well as actual points of access to inland and coastal waters. While much of this language comes directly from 38 M.R.S.A. § 435, there is nothing in the Guidelines to measure these standards. How would a planning board make a finding that natural beauty has not been impacted; how would an applicant show visual impacts were minimized when installing essential services; where is the access to the waters measures from? With no objective standards to measure these impacts, the test becomes too subjective.

The stakeholders discussed the use of aesthetics in the guidelines and found that these types of vague references should be removed for several reasons. First, decisions made by the municipality based solely on these types of provisions, subjects the municipality to a greater chance of being challenged in court. Additionally, some felt that planning boards could use this to stop a project even though all other standards have been met because there is no objective test to prove these standards. Lastly, a landowner does not have a reasonable understanding of what they need to prove in order to show their project meets these standards.

The Department supports the removal of vague aesthetic references in the Guidelines. The purposes of the Act are met through the standards themselves and without an objective test to quantify these things a landowner is at a disadvantage in permitting projects within the shoreland zone.

V. De Minimis Exception Provision

The current guidelines contain two provisions that allow exceptions to the rule. Both the shed exemption and the retaining walls provision allow these types of structures to be located at a setback less than what is required for other structures, as long as certain conditions are met or exist. In an effort to streamline the regulations, and provide some more tools for municipalities in the administration of the shoreland zoning rules, the Department would like to eliminate these two separate provisions and create one provision to deal with these types of small exceptions. This new de minimis exception provision would be along the lines of the variance process, but would be done at the planning board level, and the test to allow for such deviations would not be as difficult to meet as the undue hardship test.

This concept was not discussed through the stakeholder process, because the details of how this work were not available. In fact the Department is still working on an approach

to this provision. At a minimum, the scope of this would be fairly limited, not unlike the current exception provisions, in order to avoid abuse and to still be consistent with purposes of the Act. The size of the structures would be limited, where these structures could be located would be limited, and all additional standards would need to be met, such as lot coverage and vegetation clearing.

The Department feels that this is a necessary amendment because there are other small structures (besides a shed) that could be added to a lot without having negative impacts, such as a child's tree house. Under the current definition of structure, a tree house is a structure and should meet the structure setback. To allow for a tree house at less than the required setback would require a variance, and under the undue hardship test, a tree house would not meet all four prongs of the test. Adding a tree house is likely not more impactful than a shed; therefore expanding the concept of the shed exemption seems appropriate. Like the two existing exceptions to the rule, the addition of this provision would be optional for a municipality.

VI. Definitions

The current definitions section of the guidelines needs to be addressed through this rewriting process. There are many definitions missing, and some of the existing definitions are weak. For example, there are numerous activities that do not require any permitting, such as fire prevention activities, wildlife management practices and soil and water conservation practices, but are not defined anywhere within the guidelines. This is not only a source of confusion, but provides for difficult administration for a municipality. A CEO may think a landowner committed a violation of ordinance in removing vegetation within the shoreland zone, but they could claim it was for fire prevention. As there is no definition to clarify what constitutes a fire prevention activity, it makes the job for the CEO more difficult.

During the stakeholder process, a stakeholder requested that the definition for height of structure be amended to measure from the uphill side of the structure, instead of the downhill side. Overall, the majority of stakeholders felt comfortable with this change. The two concerns raised with this proposition were aesthetics and fire safety. Some felt that changing the side of measurement may lead to an increase in significantly taller structures in the shoreland zone. If this definition creates the addition of taller structures, some questioned whether this would be an issue in context of equipment availability to fight fires. The current rule caps the height of structure at 35 feet. This would continue to be the height limitation, but theoretically, the downhill side of the structure may now be 40 plus feet and some municipalities may not have the equipment to reach upper stories with this change. While, the Department feels this change will not negatively impact the integrity of the shoreland zone, we have been trying to communicate with the Fire Marshal's Office, to make sure that this change would not create unforeseen consequences.

By adding more definitions to the guidelines and clarifying the ones that currently exist, the Department believes this will set the framework for a set of rules that are clearer and

potentially more concise. Some amendments to definitions may require statutory changes because 38 M.R.S.A. §§ 436-A(1-13) contains definitions such as height of a structure.

VII. Conclusion

This stakeholder process was helpful in identifying where the bulk of confusion lies within the guidelines. In general, the majority of stakeholders did not feel changes in the standards were necessary; however, all were in agreement that the rules could be reorganized and redrafted in order to provide more clarity. Some suggested that illustrations would also be helpful. All felt that explaining the "whys" would be beneficial to those reading the rules. If what was trying to be accomplished was clearly identified, then the standards themselves would make more sense. The Department agrees that the rule needs to be revised. We would like to amend the rule to read and function as a rule instead of a model ordinance. We would then provide model ordinances for municipalities. For those municipalities that have incorporated shoreland zoning into more comprehensive land use ordinances, the rule would be easier to incorporate than it is in its current form. In order to avoid any legal conflicts by including illustrations within the rule, the guidance documents we provide to municipalities can contain the illustrations for clarity. The Department feels that increased training opportunities will also be helpful in making shoreland zoning more comprehendible for municipalities.

Additionally, the Department feels that this may also be an opportunity to address inconsistencies with other Department rules, such as those associated with the Natural Resources Protection Act. This was discussed during the stakeholder process, and some stakeholders felt this was an important issue to look into further. While all inconsistencies may not be able to be addressed due to the Acts themselves having different purposes, this may be an opportunity to at least assess those inconsistencies to see if there is a way to address them so as to avoid confusion and frustration.

Overall, the Department feels that other changes may be necessary in order to fully achieve its goal in making a rule that is easier to understand for all. Changes to the structure of the land use table, organization of lot standards, use of terminology, as well as clarifying policy that is not clearly defined in the rule are all necessary changes needed to make this revision successful. Over the next several months, the Department will be working on these amendments to improve the shoreland zoning rules while still maintaining the important protections that the guidelines provide for water quality, property values, building integrity, and habitat.

Appendix A

Shoreland Zoning Stakeholder Participants

- Barbara Berry – Maine Association of Realtors
- Barbara Charry – Maine Audubon
- Brian Rayback – Pierce Atwood, MEREDA
- Chris Leavitt – Code Enforcement Officer – St. George; President of Midcoast CEO's Association
- Dana and Anita Lampron – Property owners in the shoreland zone
- David Hediger, - Planner/CEO, City of Lewiston
- David Kent – Property owner in the shoreland zone
- Doug Denico – Maine Forest Service Director, Madison Planning Board member
- Grant Plummer – Fieldstone Builders
- Greg Connors - Maine Municipal Association
- Jay Kamm – Northern Maine Development Commission
- Jim Boyle- Consultant/Forester, Boyle and Associates
- Jon Pottle – Attorney, Eaton Peabody
- J.T. Lockman – Southern Maine Regional Planning Commission
- Larry Grondin - R.J. Grondin and Sons
- Lewis Cousens, Code Enforcement Officer, President Aroostook Code Enforcement Officers Organization
- Liz Hertz, Maine State Planning Office
- Maggie Pierce, Code Enforcement Officer, Portage Lake
- Maggie Shannon – Maine Congress of Lake Associations
- Maureen O'Meara – Maine Association of Planners, Planner, Cape Elizabeth
- Nick Bennett, Natural Resources Council of Maine
- Peter Kallin – Belgrade Regional Conservation Alliance
- Peter Lowell, Lakes Environmental Association
- Rich Baker – Planning Board Member, Belgrade; Former Shoreland Zoning Coordinator
- Steve Walker- Beginning with Habitat/IF&W

Appendix B

Shoreland Zoning Stakeholder Meeting Agendas

Shoreland Zoning Stakeholder Group Meeting #1 – August 3, 2011

- **DEP Introduction**
  - Purposes of these meetings
  - Goals for the Guidelines
  - Portions of the Guidelines the Department thinks need to be reviewed

- **Stakeholder Introductions**
  - Individual stakeholder perspectives
    - What stakeholders hope to accomplish
    - What portions of the Guidelines would stakeholders like to focus on

- **Future Meetings**
  - Scheduling
  - Plans for future agendas
  - Timeframe fro completion

- **Questions/Comments**

Shoreland Zoning Stakeholder Group: Meeting #2 - August 23, 2011

I. Introductions (for those participants who could not make the first meeting)
- **a.** Individual stakeholder perspectives
  - **i.** What stakeholders hope to accomplish
  - **ii.** What portions of the Guidelines would stakeholders like to focus on

II. Nonconforming Structures (Section 12 (C))
- **a.** Expansions (12 (C)(1), 30% Rule, and Appendix A, Alternative to the 30% Rule)
  - **i.** What are the pros and cons of these existing standards?
  - **ii.** Is there something better or what should we keep?

- **b.** Relocation/Reconstruction/Replacement (Sections 12 (C)(2-3))
  - **i.** Greatest Practical Extent Review (pros and cons of existing criteria)
  - **ii.** 50% market value threshold (When should the setback be met to the greatest practical extent?)
  - **iii.** Vegetation replacement (pros and cons of existing standards)

- **c.** Change of Use Language (Section 12(C)(4)
  - **i.** What are the pros and cons of these existing criteria?

- **d.** Miscellaneous

III. Nonconforming Uses (Sections 12 (D)(1-3))
- **a.** What are the pros and cons of the existing standards in 1-2?
- **b.** What are the pros and cons of the existing criteria in 3?

IV. Nonconforming Lots (Section 12 (E)(1-3))
- **a.** What are the pros and cons of these existing standards?
- **b.** What are the pros and cons of the existing conditions required in 2?

Notes: I imagine that we will spend a majority of time on the nonconforming structures portion of the Guidelines. This discussion on nonconformance may also extend into meeting three as well.

In addition to the Guideline sections on nonconformance it may also be helpful to look at the following definitions in the Guidelines: basement, development, dimensional requirements, expansion of a structure, expansion of use, floor area, foundation, height of a structure, increase in nonconformity of a structure, market value, non-conforming condition, non-conforming lot, non-conforming structure, structure, vegetation.

The Mandatory Shoreland Zoning Act at 38 M.R.S.A. §§ 439-A (4) & (4-A), are the statutory sections related to this topic.

Shoreland Zoning Stakeholder Group: Meeting #3 - September 16, 2011

I. Introductions (for any participants who have not been able to make prior meetings)
- **a.** Individual stakeholder perspectives
  - **i.** What stakeholders hope to accomplish
  - **ii.** What portions of the Guidelines would stakeholders like to focus on

II. Nonconforming Structures (Section 12 (C))

- **a.** Relocation/Reconstruction/Replacement (Sections 12 (C)(2-3))
  - **i.** Greatest Practical Extent Review (pros and cons of existing criteria)
  - **ii.** 50% market value threshold (When should the setback be met to the greatest practical extent?)
  - **iii.** Vegetation replacement (pros and cons of existing standards)

- **b.** Change of Use Language (Section 12(C)(4))
  - **i.** What are the pros and cons of these existing criteria?

- **c.** Miscellaneous

III. Nonconforming Uses (Sections 12 (D)(1-3))
- **a.** What are the pros and cons of the existing standards in 1-2?
- **b.** What are the pros and cons of the existing criteria in 3?

IV. Nonconforming Lots (Section 12 (E)(1-3))
- **a.** What are the pros and cons of these existing standards?
- **b.** What are the pros and cons of the existing conditions required in 2?

V. Clearing Standards (not Timber Harvesting) (Section 15 (P))
- **a.** Clearing in the buffer
  - **i.** Cleared opening provision in the buffer (Section 15 (P)(2)(a))
    1. Pros and Cons?

  - **ii.** The Points System 15 (P)(2)(b)
    1. Pros and Cons?
    2. Is the concept good? Is the issue in the wording/organization?
    3. Would illustrations help?
    4. Is there another way to preserve the buffer?

- **b.** Hazard Trees (Section 15(P)(2)(e))
  - **i.** Pros and Cons?
  - **ii.** Does this section need to be better defined?

c. Clearing Outside of the buffer
  i. 40% provision (Section 15 (P)(3))
    1. Pros and Cons?

  ii. Cleared openings (Section 15 (P)(3))
    1. Pros and Cons?

d. Open discussion on any portion of the clearing or removal of vegetation standards not outlined above

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Notes: We may not get to the Clearing Standards, however, outside of the relocation/reconstruction/replacement discussion; I do not imagine the other nonconforming sections will take quite as much time as the discussion on nonconforming structures.

In addition to the Guideline sections on nonconformance it may also be helpful to look at the following definitions in the Guidelines: basement, development, dimensional requirements, expansion of a structure, expansion of use, floor area, foundation, height of a structure, increase in nonconformity of a structure, market value, non-conforming condition, non-conforming lot, non-conforming structure, structure, vegetation.

The Mandatory Shoreland Zoning Act at 38 M.R.S.A. §§ 439-A (4) & (4-A), are the statutory sections related to this topic.

For clearing standards, the definitions that may be helpful are basal area; canopy; ground cover; residual basal area; vegetation; woody vegetation (also timber harvesting just to understand how it is distinguished from the clearing standards).

The Mandatory Shoreland Zoning Act at 38 M.R.S.A. §§ 439-A(6)(A-C), are the statutory sections related to this topic.

Shoreland Zoning Stakeholder Group: Meeting #4 - October 12, 2011

I. Building checklist
- **a.** Would this be helpful to determine the 50% threshold that triggers greatest practical extent review?

II. Nonconforming Uses (Sections 12 (D)(1-3))
- **a.** What are the pros and cons of the existing standards in 1-2?
- **b.** What are the pros and cons of the existing criteria in 3?

III. Nonconforming Lots (Section 12 (E)(1-3))
- **a.** What are the pros and cons of these existing standards?
- **b.** What are the pros and cons of the existing conditions required in 2?

IV. Clearing Standards (not Timber Harvesting) (Section 15 (P))
- **a.** Clearing in the buffer
  - **i.** Cleared opening provision in the buffer (Section 15 (P)(2)(a))
    - **1.** Pros and Cons?
  - **ii.** The Points System 15 (P)(2)(b)
    - **1.** Pros and Cons?
    - **2.** Is the concept good? Is the issue in the wording/organization?
    - **3.** Would illustrations help?
    - **4.** Is there another way to preserve the buffer?
- **b.** Hazard Trees (Section 15(P)(2)(e))
  - **i.** Pros and Cons?
  - **ii.** Does this section need to be better defined?
- **c.** Clearing Outside of the buffer
  - **i.** 40% provision (Section 15 (P)(3))
    - **1.** Pros and Cons?
  - **ii.** Cleared openings (Section 15 (P)(3))
    - **1.** Pros and Cons?
- **d.** Open discussion on any portion of the clearing or removal of vegetation standards not outlines above

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Notes: We may not get to the Clearing Standards, however, outside of the relocation/reconstruction/replacement discussion; I do not imagine the other nonconforming sections will take quite as much time as the discussion on nonconforming structures.

In addition to the Guideline sections on nonconformance it may also be helpful to look at the following definitions in the Guidelines: basement, development, dimensional requirements,

expansion of a structure, expansion of use, floor area, foundation, height of a structure, increase in nonconformity of a structure, market value, non-conforming condition, non-conforming lot, non-conforming structure, structure, vegetation.

The Mandatory Shoreland Zoning Act at 38 M.R.S.A. §§ 439-A (4) & (4-A), are the statutory sections related to this topic.

For clearing standards, the definitions that may be helpful are basal area; canopy; ground cover; residual basal area; vegetation; woody vegetation (also timber harvesting just to understand how it is distinguished from the clearing standards).

The Mandatory Shoreland Zoning Act at 38 M.R.S.A. §§ 439-A(6)(A-C), are the statutory sections related to this topic.

Shoreland Zoning Stakeholder Group: Meeting #5 - November 4, 2011
Location: Maine State Library

I. Clearing Standards (not Timber Harvesting) (Section 15 (P))

a. Clearing in the buffer
- **i.** Cleared opening provision in the buffer (Section 15 (P)(2)(a))
  - **1.** Pros and Cons?

- **ii.** The Points System 15 (P)(2)(b)
  - **1.** Pros and Cons?
  - **2.** Is the concept good? Is the issue in the wording/organization?
  - **3.** Would illustrations help?
  - **4.** Is there another way to preserve the buffer?

b. Hazard Trees (Section 15(P)(2)(e))

- **i.** Pros and Cons?
- **ii.** Does this section need to be better defined?

c. Clearing Outside of the buffer
- **i.** 40% provision (Section 15 (P)(3))
  - **1.** Pros and Cons?

- **ii.** Cleared openings (Section 15 (P)(3))
  - **1.** Pros and Cons?

d. Open discussion on any portion of the clearing or removal of vegetation standards not outlined above

II. The concept of natural beauty and visual access (See also Sections 15(B)(1)(b), 15(H)(3)(b), 15(L)(2) and 15(M)(3) which also reference aesthetics)

a. Section 12 (C)(4) and Section 12(D)(3) – greater adverse impact determination
- **i.** Is this too subjective?
- **ii.** Should there be an objective test?

b. Section 16(D)(5)
- **i.** Is this too subjective?
- **ii.** Should there be an objective test?
- **iii.** Do the rules get at the purposes portion of the Act " . . . to conserve shore cover, and visual as well as actual points of access to inland and coastal waters; to conserve natural beauty and open space . . ." through other provisions such as setbacks, clearing standards, etc.?

Notes: I have left the clearing information as is from the last agenda, because some of this was left open for further discussion. We only really decided that the points should be kept as is, in reference to increasing coastal areas to 24 points per plot.

For clearing standards, the definitions that may be helpful are basal area; canopy; ground cover; residual basal area; vegetation; woody vegetation (also timber harvesting just to understand how it is distinguished from the clearing standards).

The Mandatory Shoreland Zoning Act at 38 M.R.S.A. §§ 439-A(6)(A-C), are the statutory sections related to this topic.

For the aesthetics discussion see Sections 12(C)(4), 12(D)(3), 15(B)(1)(b), 15(H)(3)(b), 15(L)(2), 15(M)(3) and 16(D)(5).

The Mandatory Shoreland Zoning Act at 38 M.R.S.A. § 435 is the relevant statutory provision.

See also Chapter 315, which I have sent via email.

Shoreland Zoning Stakeholder Group: Meeting #6 - November 29, 2011
Location: State Planning Office

I. Clearing Standards (not Timber Harvesting) (Section 15 (P))

a. Discussion of clearing exercise completed by the shoreland zoning unit

b. 40% provision
- **i.** Should it be applied to the buffer?
- **ii.** Should it be applied to outside of the buffer?
- **iii.** Should it be applied to the lot as a whole?
- **iv.** Should we continue to use the 40% provision at all?

c. Clearing Outside of the buffer
- **i.** 40 % provision (Section 15(P)(3))
  1. Pros and cons? (See discussion points above)
- **ii.** Cleared openings (Section 15 (P)(3))
  1. Pros and cons?

d. Hazard Trees (Section 15(P)(2)(e))
- **i.** Pros and Cons?
- **ii.** What is a hazard tree?
- **iii.** Should landowners be required to replant when tree loss is due to a storm event or the tree dies?
- **iv.** Ideas on better ways to write this section (see also materials sent out on this subject)
- **v.** Should it apply to the entire shoreland zone?

e. Open discussion on any portion of the clearing or removal of vegetation standards not outlined above

II. The concept of natural beauty and visual access (See also Sections 15(B)(1)(b), 15(H)(3)(b), 15(L)(2) and 15(M)(3) which also reference aesthetics)

a. Section 12 (C)(4) and Section 12(D)(3) – greater adverse impact determination
- **i.** Is this too subjective?
- **ii.** Should there be an objective test?

b. Section 16(D)(5)
- **i.** Is this too subjective?
- **ii.** Should there be an objective test?
- **iii.** Do the rules get at the purposes portion of the Act " . . . to conserve shore cover, and visual as well as actual points of access to inland and coastal waters; to conserve natural beauty and open space . . ." through other provisions such as setbacks, clearing standards, etc.?

III. Definitions (Section 17)
- **a.** What definitions are missing?
- **b.** What definitions need to be redefined?
- **c.** Are there definitions that do not seem necessary?
- **d.** Some examples of definitions worth looking at: structure; accessory use or structure; development
- **e.** Some examples of definitions worth adding: hydrologically connected; developed; hazard trees, etc.

Notes: For clearing standards, the definitions that may be helpful are basal area; canopy; ground cover; residual basal area; vegetation; woody vegetation (also timber harvesting just to understand how it is distinguished from the clearing standards).

The Mandatory Shoreland Zoning Act at 38 M.R.S.A. §§ 439-A(6)(A-C), are the statutory sections related to this topic.

For the aesthetics discussion see Sections 12(C)(4), 12(D)(3), 15(B)(1)(b), 15(H)(3)(b), 15(L)(2), 15(M)(3) and 16(D)(5).

The Mandatory Shoreland Zoning Act at 38 M.R.S.A. § 435 is the relevant statutory provision.

See also Chapter 315, which I have sent via email.

See 38 M.R.S.A. § 436-A to see what definitions are in statute

Shoreland Zoning Stakeholder Group: Meeting #7 - December 21, 2011
Location: Maine State Library

I. Clearing Standards (not Timber Harvesting) (Section 15 (P))

- **a.** Hazard Trees (Section 15(P)(2)(e))
  - **i.** Sample language – Pros and Cons?
  - **ii.** Other Ideas?

II. The concept of natural beauty and visual access (See also Sections 15(B)(1)(b), 15(H)(3)(b), 15(L)(2) and 15(M)(3) which also reference aesthetics)

- **a.** Section 12 (C)(4) and Section 12(D)(3) – greater adverse impact determination
  - **i.** Is this too subjective?
  - **ii.** Should there be an objective test?

- **b.** Section 16(D)(5)
  - **i.** Is this too subjective?
  - **ii.** Should there be an objective test?
  - **iii.** Do the rules get at the purposes portion of the Act " . . . to conserve shore cover, and visual as well as actual points of access to inland and coastal waters; to conserve natural beauty and open space . . ." through other provisions such as setbacks, clearing standards, etc.?

III. Definitions (Section 17)
- **a.** What definitions are missing?
- **b.** What definitions need to be redefined?
- **c.** Are there definitions that do not seem necessary?
- **d.** Some examples of definitions worth looking at: structure; accessory use or structure; development
- **e.** Some examples of definitions worth adding: hydrologically connected; developed; hazard trees, etc.

IV. Recap
- **a.** Topics discussed
- **b.** Review of ideas agreed upon
- **c.** The plan going forward

V. Open forum
- **a.** Ideas, issues, suggestion not previously discussed
- **b.** Any changes in opinions?

Notes: For the aesthetics discussion see Sections 12(C)(4), 12(D)(3), 15(B)(1)(b), 15(H)(3)(b), 15(L)(2), 15(M)(3) and 16(D)(5).

The Mandatory Shoreland Zoning Act at 38 M.R.S.A. § 435 is the relevant statutory provision.

See also Chapter 315, which I have sent via email.

See 38 M.R.S.A. § 436-A to see what definitions are in statute

Appendix C

Shoreland Zoning Stakeholder Meeting Summaries

Shoreland Zoning Stakeholder Group – Meeting #1 (August 3, 2011)

Summary

There was no meeting summary for Meeting #1. The discussions at this meeting formed the agendas for future meetings.

Shoreland Zoning Stakeholder Group – Meeting #2 (August 23, 2011)

Summary

Agenda Item: Expansions of Nonconforming Structures (Section 12(C)(1) and Appendix A)

Concerns and Solutions for Current Rule	
Poor record keeping by towns	Require that expansions be recorded at the Registry of Deeds; Require towns to keep photographic records
30% calculation is too difficult and confusing (especially volume)	Include visual aids, tables, etc. to make more understandable
The language itself is too confusing; too many cross references in the rule causes someone to have to keep going back and forth to understand the rule	Break up dense language with diagrams, tables, illustrations to better define the rule; provide step by step instruction; decrease cross references
Lack of "whys" in the rule – there is no explanation of why the rules are the way they are	Explain why we have the rule so perhaps there will be a better understanding of the value shoreland zoning provides

Suggestions for changes:

- Allow a choice for the landowner between the two expansion rules (currently, a town must choose which rule they would like to utilize, this change would have both rules in effect in all municipalities)
- Remove volume from the 30% rule
- Switch to footprint instead of floor area
- Introduce new rule for applicants who would like to go beyond the allowances under the 30% rule, whereby the review process would include looking at lake sensitivity, stormwater treatment, effectiveness of the buffer, as well as other relevant criteria that looks more towards water quality
- Change definition for the height of the structure

Overall Summary:

- It seemed the majority of participant liked the idea of allowing a municipality to have both expansion rules in effect at the same time, thus giving landowners options. There was some concern that this would makes things more complicated for the municipalities, and the poor record keeping practice may allow a landowner to get larger expansions by using both rules if expansions are not well tracked. It was suggested that perhaps expansions should be recorded at the Registry of Deeds and which expansion was chosen would be included in that language. It was also

suggested that municipalities should keep photographic records of shoreland zoned lots to better track activities on those properties.

- Another idea that seemed to have a support of the majority was to eliminate volume from the 30% expansion rule, and perhaps use footprint instead of floor area. The concern with the removal of volume, is that volume is a limiting factor on expansions and without it a structure could have a substantial increase in size. Some were concerned with aesthetics and felt that perhaps to help with limiting the expansion the rule could distinguish between enclosed and non-enclosed so that the two could not be combined. Perhaps in defining footprint, it could be stated that it does not include decks, patios, etc.

- While the idea of introducing a completely new rule had some interest, the concern that municipalities may not have the resources to conduct such a technical review was raised. If the goal is to reduce the complexity of shoreland zoning, this may not be the direction to take. Perhaps this is worth looking into as an optional provision?

- Another topic of discussion was the definition of height of a structure and how that is calculated. The suggestion was to change downhill side of the structure to uphill side of the structure. Overall, the majority felt comfortable with this, but again there is the concern with aesthetics

Additional Suggestions:

- Add a FAQ section to shoreland zoning web page
- Make available to planning boards, CEO's how issues or policies were decided

Shoreland Zoning Stakeholder Group – Meeting #3 (September 16, 2011)

Summary

Agenda Item: Relocation/Reconstruction/Replacement of Nonconforming Structures

Concerns	Suggestions
50% market value of the structure, too technical/onerous to calculate	Use town tax assessed value of the structure; and/or allow landowner to have new assessment/appraisal Use NRPA 50% of physical structure
Greatest practical extent review is being done even when damage is an involuntary/rare event Greatest practical extent review encourages structures being relocated to also be expanded	Allow reconstruction without g.p.e. review for events such as damage from a tree and/or fire with/without structurally sound foundations Allow reconstruction without g.p.e. review if no increase in nonconformity occurs
Greatest practical extent criteria only have to be considered, results in subjectivity	Add objectivity to g.p.e. criteria, people want certainty in permitting process Add objectives/intent of g.p.e. criteria
Vegetation standards for relocation too restrictive or not restrictive enough	Remove "native" requirement Add required compliance with LakeSmart, and/or consultation with SWCD, and/or BMPs, and grass is not enough

Suggestions further considered in discussion:

- Subjectivity of greatest practical extent reviews
- Allowing in-place reconstruction in some cases where there's more than 50% damage
- DEP review of permit applications and/or planning board decisions
- 50% of market value vs assessed value vs appraised value vs physical structure
  Vegetation Standards

Summary outcome:

1. About 4 stakeholders favor adding objectivity to greatest practical extent criteria, while more than 12 stakeholders favor not changing the criteria.

2. About 14 stakeholders favor allowing reconstruction in-place in some >50% cases, prohibiting expansion at time of in-place reconstruction. These stakeholders varied on how to categorize/identify the cases in which such an allowance should be granted. Some favor distinguishing rare, involuntary events based on differing resource types, while others favor only distinguishing between rare events and more common events.

These latter stakeholders favor allowing in-place reconstruction for events such as trees falling and fires. The 3 remaining stakeholders not favoring in-place >50% reconstruction cite the purpose of reducing/eliminating nonconformance over time.

3. Most stakeholders agreed that the Shoreland Zoning Program's current operating procedures for advising town officials and landowners regarding permit applications is adequate, and no new level of permitting review should be created. An opening was left to discuss this further at another meeting, or to put it on a future agenda.

4. Most stakeholders agreed that market value of the structure is a difficult task to explain and calculate, but the discussion of whether to use assessed value of the structure or the physical structure existing was left open. While about four stakeholders tentatively support using the physical structure, two stakeholders raised concerns of whether that calculation would be too complicated given the variation of structure designs.

5. Vegetation standards for relocation/reconstruction were discussed briefly. One stakeholder felt that "native" is too restricting, while many stakeholders felt the standards are not stringent enough. In the end, almost all stakeholders favor not changing the vegetation standards.

Additional Suggestions:

- Deirdre Schneider will obtain and distribute a check list proposed for use in calculating 50% of the physical structure

- Add reference to floodplain requirements in the reconstruction/relocation of nonconforming structure section

- DEP should be notified of any type of an appeal request (not just variance appeals)

Shoreland Zoning Stakeholder Group – Meeting #4 (October 12, 2011)
Summary

Agenda Items: Nonconformance (50% Market Value, Use and Lots; Vegetation Clearing)

Concerns	Suggestions
50% market value of the structure, too technical/onerous to calculate	Use town tax assessed value of the structure; and/or allow landowner to have new assessment/appraisal; Use checklist provided by stakeholder; Use NRPA 50% of physical structure
Language referring to natural beauty and visual access in Sections 12(C)(4) & 12(D)(3) is too subjective	Remove language referring to natural beauty/visual access; define what constitutes impacts to make it more of an objective test; review in concert with open space plans/comprehensive plans that often define scenic resources. Take this issue up at as later meeting as it appears elsewhere in the Guidelines.
The need to combine separate nonconforming lots when they are under the same ownership.	Lots should remain separate regardless of ownership; there should be different standards for urban areas; look at example from Ogunquit, where if a vacant lot is part of an approved subdivision plan then it is exempt from merger.
No permit requirement for vegetation clearing in multiple shoreland zones.	Add CEO permit requirement for clearing activities; require notification to the municipality before clearing instead of permit
Points for coastal areas are too permissive	For continuity and to provide greater protection make plot points in coastal areas the same as points required on great ponds (24 instead of 16).
The problem is not the rule, but rather the language (dense and somewhat confusing)	Look at issue profile (is much clearer than the rule); look to how other states are doing this, especially NH, which based a great part of their shoreland zoning rules on Maine's model.
Need more education for landowners and municipal officials	Take a look at buffer acknowledgment form distributed by LEA; provide more education and outreach; more illustrations
Hired experts (i.e. arborists and foresters) may not understand limitations	Have certification in shoreland clearing, not unlike the certified contractors requirement for earthwork in the shoreland zone
Concerns	**Suggestions**
Diseased, storm damaged, dead trees section not well written	Provide better more thorough language; provide definition of hazard trees; look to other sources or information on hazard trees

Summary of outcome:

1. 14 stakeholders preferred to use assessed value for determining if 50% of a structure has been removed, damaged or destroyed, which results in the need to perform the greatest practical extent review; as opposed to one stakeholder who would have preferred to leave it the same (market value). If a landowner wants to pay to have someone else come in because they disagree with the assessed value, then they can do so. One stakeholder wanted to utilize a checklist banks use for construction projects. The group as a whole felt the list would need to be tweaked too much to be beneficial and that assessed value is an easier number to ascertain than market value.

2. The discussion of natural beauty/visual access will be addressed at a future meeting. The group will look at the Natural Resources Protection Act for an example of an objective test to make determinations.

3. 15 stakeholders felt that the rule should be left alone in regards to the combining of nonconforming lots standards. One stakeholder thought that the rule should follow language as adopted in ordinance by the Town of Ogunquit.

4. A majority of the stakeholders (14) did not feel that a permit requirement should be added to the rule for clearing activities. A few stakeholders did feel that requiring notification before clearing would be a good idea. The idea of adding a permit/notification requirement was to help in dealing with perceived violations and to prevent accidental violations; however, the group felt that adding new requirements would be burdensome for municipal staff and for the landowner.

5. On the issue of raising the required points in a plot in coastal areas for the sake of continuity and to provide greater protections, the majority (11) felt that the rule should be left alone. The vote on this issue was closer than other votes.

Additional Suggestions:

- Deirdre Schneider will obtain information on clearing standards used in other states with shoreland zoning type rules and distribute to the group.

- Deirdre will provide a copy of the standards used for aesthetics under the Natural resources Protection Act.

- Deirdre will provide resources on hazard trees.

- It has been reiterated that increased clarity of the rule will hopefully result in better understanding for landowners and municipal officials. It is not the rule per se, but rather how the rule is presented.

- Better explanation of why we have the rules on clearing. What sort of benefits do buffers provide?

Shoreland Zoning Stakeholder Group – Meeting #5 (November 4, 2011)
Summary

Agenda Items: Clearing Vegetation (Point System and 40% Limitation)

Concerns	Suggestions
Point System too confusing 40% Limitation alone not enough And/or the buffer can be stressed by lack of good stand upland (outside buffer)	Current point system required to attain well-distributed stand of trees 40% Limitation needed to prevent excessive thinning over time
40% Limitation excessive, points system is enough alone. 40% Limitation is difficult to measure And/or rarely enforced	Remove 40% Limitation or rearrange Clearing Section so 40% limitation is explicit like in the Act 40% Limitation needed to prevent excessive thinning over time
Lack of a starting point for plot location A required starting point adds to confusion and/or limits landowner options Property line starting point would be problematic for large lots	Instead of a required starting point or standard for <u>how</u> plots are laid out, use explanation of how current provisions <u>could</u> be applied on the ground (educational approach) Or create standards of <u>how</u> to apply provisions
Lack of tracking vegetation removal over time. Lack of consistency of when/how DEP is involved.	Require landowner keeps documentation of clearing activities DEP should have formal standard operating procedures, and/or advisory opinions should have to be issued, and/or expand Chapter 2 to Chapter 1000. DEP should continue as usual but increase outreach efforts
Lack of standards to deal with removing invasive vegetation	Add explicit standards including replanting requirements; Permitting and pictures should be required; Require licensed individual

Summary of outcome:

1. At least 10 stakeholders find the point system to be confusing. Most stakeholders agreed that the point system is necessary within the buffer in order to attain a well-distributed stand of trees and other vegetation. At least 10 stakeholders find the point system to be confusing. Most stakeholders agreed that the point system is necessary within the buffer in order to attain a well-distributed stand of trees and other vegetation.

2. After much discussion about the limitation of 40% total volume of trees removed, it was decided the discussion would be continued later. At least 2 stakeholders find it confusing or difficult to administer/enforce.

3. Six stakeholders indicated the point system should be kept as is. After much discussion about changing the standards to include how provisions are to be applied, with a more flexible alternative to be reviewed, no stakeholders voted to do that.

4. Of the 22 stakeholders, 15 were in favor of requiring that landowners keep documentation of their clearing activities. Such documentation would only have to be produced when an alleged violation is being investigated. (Similar to foresters who keep forestry management plans, but don't necessarily have to have plans reviewed in order to harvest.)

5. Only 4 stakeholders specifically stated their opinions on the issue of DEP having a more formal standard operating procedure for when/how to become involved in shoreland zoning cases. The 4 were split: 2 wanted a formal policy; 2 did not, preferring the current informal policies of DEP.

6. A short conversation about invasive species consisted of 5 stakeholders calling for explicit standards on allowing removal of invasive vegetation within the buffer. DEP staff explained policy for currently allowing this.

Additional Suggestions:

- The 40% limitation is up for further discussion.

- Stakeholders want to be kept in the loop after stakeholder process is completed. Deirdre stated she'd keep them in the loop and send the draft of the new Guidelines to them for the comment period.

- In response to the discussions about DEP policies, Deirdre stated the Program will work more on outreach, so that landowners and municipal officials are aware of the flexibilities afforded when projects would meet the purposes of the ordinance but don't necessarily meet the standards.

Shoreland Zoning Stakeholder Group – Meeting #6 (November 29, 2011)
Summary

Agenda Items: Clearing Vegetation

Concerns	Suggestions
40% in the buffer is redundant	Remove the 40% requirement in the buffer, and perhaps increase the points required in areas not adjacent to great ponds.
40% in great pond setting is duplicative, but not in settings away from great ponds	Drop the 40% requirement in the buffer, in areas adjacent to great ponds, but retain it elsewhere because it provides additional protections (areas where points requirement is 16, 40% may be the limiting factor).
Concept is not bad it is the organization of the rule	State the goals upfront and reorganize clearing section
Hazard trees, storm damaged trees, dead trees, etc. are all addressed in one sentence in the rule	Rewrite section and define hazard trees

Summary of outcome:

1. While much of the discussion centered on the 40% provision, in the end a majority felt the rule should be left as is.

2. The majority also felt the points system was the best way to regulate clearing because while it may be time consuming the concept is not difficult and it is quantifiable.

3. It appears that the majority felt that addressing hazard trees should be separate from storm damaged trees. This discussion will be revisited at the next meeting.

Additional Suggestions:

- Clarify the 40% requirement. The language in the statute is different than in the rule.

- Deirdre will provide a new hazard tree/storm damaged tree section to aid in the discussion of this topic at the next meeting.

- **Shoreland Zoning Stakeholder Group – Meeting #7 (December 21, 2011) Summary**

Agenda Items: Hazard/storm-damaged trees; scenic beauty; definitions; open forum

Concerns	Suggestions
Hazard tree provision needs clarity	Include note that burden of proof is on the owner to show that trees are hazards. When replanting is required, require replanted tree heights to vary within a range, rather than require a single height tree to be planted. Don't require notification/ permit to remove hazard trees.
Treating dead trees as hazard or storm damaged trees	Standing dead trees should be treated in a similar manner as hazard trees with regard to both removal and replanting, when necessary.
Storm-damaged trees	Define storm-damaged trees so it is clear what is intended (RE: include trees that have blown down and are lying on the ground?). Revision of hazard tree provision should also address storm-damaged trees.
Subjectivity of "natural beauty" (Sec. 1 & Sec. 12(C)(4), and in statute- Purposes)	Remove references to natural beauty in rule and statute- too subjective

Summary of outcome:

1. The vast majority agreed that the hazard tree provision needs to be re-written and that new definitions should be included (storm-damaged trees, dead trees, hazard trees) in Chapter 1000.

2. While there was much discussion about whether a permit must be obtained from the CEO, or a notification submitted to the CEO, for the removal of hazard/storm-damaged/dead trees within the shoreland zone, a simple majority agreed that no such permit or notification should be required in the minimum guidelines. Municipalities may choose to require notification/permits locally if desired.

3. When considering the general concept of hazard trees, the group suggests that hazard trees and dead trees should be addressed separately from storm damaged trees. Retain the "unless existing new tree growth is present" language, but we should consider specifying the number or ratio of replanted trees when replanting is necessary. Suggestions include requiring 2:1 replacement when larger trees are removed.

Additional Discussion:

- Remove "natural beauty" from Section 12(C)(4) and also possibly from Section 1, Purposes, in the guidelines. The standards themselves get at the purposes of the Act. The concept of natural beauty is too subjective and has been a source of controversy for CEO's and planning boards.

- Definitions- there was discussion about problems with the current "*structure*" definition, particularly related to inconsistency with other State regulations (NRPA sand dune regulations in particular). It was suggested that there are problems with the regulation of decks and patios under the current definition. Also, it was suggested that we amend the definition of "*sustained slope*" for the sake of clarity. "*Height of a structure*" definition was also mentioned as it relates to floodplain regulations, sea level rise, and base flood elevations (bfe). It was suggested that this definition should allow structures to exceed the 35' height limitation when it is raised to an elevation 1'- 3' above bfe.

- DEP should provide maps to all municipalities that depict which freshwater wetlands must be regulated on their local shoreland zoning map (as was done in ~1989).