

Article _____ Shall an ordinance entitled “Amendments to Chapter 44, Shoreland Zoning and amendments to the Official Eliot Zoning Map of the Municipal Code of Ordinances of the Town of Eliot, Maine to rezone certain wetland habitat areas from the Resource Protection district to the Limited Residential Shoreland district” dated _____ be enacted?

THE AMENDMENT WILL:

- Rezone areas around wetlands that contain waterfowl and wading bird habitat from Resource Protection to the Limited Residential Shoreland zoning district provided there is no other condition that would otherwise require a Resource Protection designation (e.g. areas of 2 or more acres of steep slopes, floodplains of rivers and coastal wetlands, and areas of severe bank erosion).
- Afford property owners greater flexibility in the use of their land. For example, a new single family dwelling in the Resource Protection district would require a 250’ setback from the normal high water line of a wetland whereas, a new single family dwelling in the Limited Residential district would require a 75’ setback from the wetland.

BACKGROUND AND RATIONALE:

- On May 5, 2012, amendments to Chapter 1000, *State of Maine Guidelines for Municipal Shoreland Zoning Ordinances* took effect, which eliminated the requirement for municipalities to designate areas around wetlands that contain waterfowl and wading bird habitat as Resource Protect District. Under the amended law, these areas must still be Shoreland zone protected with a minimum 75’ setback from the normal high water line of a wetland but no longer require a 250’ minimum setback. The amendments were enacted due in part to overlapping jurisdiction of these habitat areas under a separate law, the Natural Resources Protection Act.

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Sec. 44-33. Establishment of districts.

(a) *Resource protection district* (as identified on zoning map). The resource protection district includes areas in which development would adversely affect water quality, productive habitat, biological ecosystems, or scenic and natural values. This district shall include the following areas when they occur within the limits of the Shoreland zone, exclusive of the stream protection district, except that areas which are currently developed and areas which meet the criteria for the limited commercial, or general development districts need not be included within the resource protection district.

~~(1) Areas within 250 feet, horizontal distance, of the upland edge of freshwater wetlands, salt marshes and salt meadows, and wetlands associated with great ponds and rivers, which are rated "moderate" or "high" value waterfowl and wading bird habitat, including nesting and feeding areas, by the Maine Department of Inland Fisheries and Wildlife (MDIF&W) that are depicted on a Geographic Information System (GIS) data layer maintained by either MDIF&W or the Department. For the purposes of this paragraph "wetlands associated with great ponds and rivers" shall mean areas characterized by non-forested wetland vegetation and hydric soils that are contiguous with a great pond or river, and have a surface elevation at or below the water level of the great pond or river during the period of normal high water. "Wetlands associated with great ponds or rivers" are considered to be part of that great pond or river.~~

(1) Floodplains along rivers and floodplains along artificially formed great ponds along rivers, defined by the 100-year floodplain as designated on the Federal Emergency Management Agency's (FEMA) flood insurance rate maps or flood hazard boundary maps, or the flood of record, or in the absence of these, by soil types identified as recent floodplain soils. This district shall also include 100-year floodplains adjacent to tidal waters as shown on FEMA's flood insurance rate maps or flood hazard boundary maps.

(2) Areas of two or more contiguous acres with sustained slopes of 20 percent or greater.

(3) Areas of two or more contiguous acres supporting wetland vegetation and hydric soils, which are not part of a freshwater or coastal wetland as defined, and which are not surficially connected to a water body during normal high water. NOTE: These areas usually consist of forested wetlands abutting water bodies and non-forested wetlands.

(4) Land areas along rivers subject to severe bank erosion, undercutting, or river bed movement and lands adjacent to tidal waters which are subject to severe erosion or mass movement, such as steep coastal bluffs.

(b) *Limited residential district* (as identified on zoning map). The limited residential district includes those areas suitable for residential and recreational development. It includes areas other than those in the resource protection district, or stream protection district, and areas which are used less intensively than those in the limited commercial district, or the general development district.

(c) *Limited commercial district* (as identified on zoning map). The limited commercial district includes areas of mixed, light commercial and residential uses, exclusive of the stream protection district, which should not be developed as intensively as the general development district. This district includes areas of two or more contiguous acres in size devoted to a mix of residential and low intensity business and commercial uses. Industrial uses are prohibited.

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(d) *General development district* (as identified on zoning map). The general development district includes the following types of existing, intensively developed areas:

- (1) Areas of two or more contiguous acres devoted to commercial, industrial or intensive recreational activities, or a mix of such activities, including but not limited to the following:
 - a. Areas devoted to manufacturing, fabricating or other industrial activities;
 - b. Areas devoted to wholesaling, warehousing, retail trade and service activities, or other commercial activities; and
 - c. Areas devoted to intensive recreational development and activities, such as, but not limited to amusement parks, race tracks and fairgrounds.
- (2) Areas otherwise discernible as having patterns of intensive commercial, industrial or recreational uses.

Portions of the general development district may also include residential development. However, no area shall be designated as a general development district based solely on residential use.

In areas adjacent to great ponds classified GPA and adjacent to rivers flowing to great ponds classified GPA, the designation of an area as a general development district shall be based upon uses existing at the time of adoption of this chapter. There shall be no newly established general development districts or expansions in area of existing general development districts adjacent to great ponds classified GPA, and adjacent to rivers which flow to great ponds classified GPA.

(e) *Stream protection district* (as identified on zoning map). The stream protection district includes all land areas within 75 feet, horizontal distance, of the normal high-water line of a stream, exclusive of those areas within 250 feet, horizontal distance, of the normal high-water line of a great pond, river or saltwater body, or the upland edge of a freshwater or coastal wetland. Where a stream and its associated Shoreland area are located within 250 feet, horizontal distance, of the above water bodies or wetlands, that land area shall be regulated under the terms of the Shoreland district associated with that water body or wetland.

(T.M. of 12-15-93, § 13)

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Municipal Officers' Certification of Official Text of a Proposed Ordinance [30-A M.R.S.A. § 3002(2)]

To the Town Clerk of the Town of Eliot, Maine:

We hereby certify to you that the document to which we have affixed this certificate is a true copy of the official text of an ordinance entitled **“Amendments to Chapter 44, Shoreland Zoning and amendments to the Official Eliot Zoning Map of the Municipal Code of Ordinances of the Town of Eliot, Maine to rezone certain wetland habitat areas from the Resource Protection district to the Limited Residential Shoreland district”**, which is to be presented to the voters for their consideration on June 14, 2014.

Pursuant to 30-A M.R.S.A. § 3002(2), you will retain this copy of the complete text of the ordinance as a public record and make other copies available for distribution to the voters, and you will ensure that copies are available at the town meeting/polling places on the day of the vote.

Dated: _____

Town of Eliot Board of Selectmen

[Notes: This form should be executed, and the ordinance and the form delivered to the Clerk, not less than seven days before the day of voting. See 30-A M.R.S.A. § 3002(2).

When voting is to be by secret ballot, municipal officers should endeavor to certify the ordinance text not later than the 45th day before the meeting. See 30-A M.R.S.A. § 2528(5). This would mean that all *developmental* hearings on the ordinance will have to be held before the 45th day before Election Day.

By law, no ordinance of any municipality subject to this subsection may be held invalid due to the municipality's failure to comply with this subsection unless the plaintiff is harmed or prejudiced by that failure. 30-A M.R.S.A. § 3002(2)(A).]