

Proposed Changes to
The Lamoine Shoreland Zoning
Ordinance

April 2, 2008

The following amendments are offered to the Lamoine Shoreland Zoning Ordinance approved March 7, 2007:

Add the following as Section 4-A:

A. The effective date of this ordinance is March 7, 2007

Add the following as Section 4-B:

REPEAL OF MUNICIPAL TIMBER HARVESTING REGULATION. The municipal regulation of timber harvesting activities is repealed on the statutory date established under 38 M.R.S.A section 438-A(5), at which time the State of Maine Department of Conservation's Bureau of Forestry shall administer timber harvesting standards in the shoreland zone. On the date established under 38 M.R.S.A section 438-A (5), the following provisions of this Ordinance are repealed:

- *Section 14. Table of Land Uses, line 12 (Forest management activities except for timber harvesting) and line 32 (Timber harvesting);*
- *Section 15.N in its entirety;*
- *Section 17. Definitions, the definition of "forest management activities".*

Add the following language to section 12 (C) (2):

When it is necessary to remove vegetation within the water or wetland setback area in order to relocate a structure, the Planning Board shall require replanting of native vegetation to compensate for the destroyed vegetation. In addition, the area from which the relocated structure was removed must be replanted with vegetation. Replanting shall be required as follows:

- (a) Trees removed in order to relocate a structure must be replanted with at least one native tree, three (3) feet in height, for every tree removed. If more than five trees are planted, no one species of tree shall make up more than 50% of the number of trees planted. Replaced trees must be planted no further from the water or wetland than the trees that were removed. Other woody and herbaceous vegetation, and ground cover, that are removed or destroyed in order to relocate a structure must be re-established. An area at least the same size as the area where vegetation and/or ground cover was disturbed, damaged, or removed must be reestablished within the setback area. The vegetation and/or ground cover must consist of similar native vegetation and/or ground cover that was disturbed, destroyed or removed.*

(b) Where feasible, when a structure is relocated on a parcel the original location of the structure shall be replanted with vegetation which may consist of grasses, shrubs, trees or a combination thereof.

Add the following language to section 12 (C) (3):

If the reconstructed or replacement structure is less than the required setback it shall not be any larger than the original structure, except as allowed pursuant to Section 12(C)(1) above, as determined by the non-conforming floor area and volume of the reconstructed or replaced structure at its new location. If the total amount of floor area and volume of the original structure can be relocated or reconstructed beyond the required setback area, no portion of the relocated or reconstructed structure shall be replaced or constructed at less than the setback requirement for a new structure. When it is necessary to remove vegetation in order to replace or reconstruct a structure, vegetation shall be replanted in accordance with Section 12.C.2 above.

The land use table (Section 14, line 16) shall read as follows:

16 Mineral exploration	NO	NO	NO	NO	NO
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Change the language in section 15 (J) to read:

1. All subsurface sewage disposal systems shall be installed in conformance with the State of Maine Subsurface Wastewater Disposal Rules, and the following: a) clearing or removal of woody vegetation necessary to site a new system and any associated fill extensions, shall not extend closer than seventy-five (75) feet, horizontal distance, from the normal high-water line of a water body or the upland edge of a wetland and b) a holding tank is not allowed for a first-time residential use in the shoreland zone.

NOTE: The Maine Subsurface Wastewater Disposal Rules require new systems, excluding fill extensions, to be constructed no less than one hundred (100) horizontal feet from the normal high-water line of a perennial water body. The minimum setback distance for a new subsurface disposal system may not be reduced by variance.

Add the following language to the beginning of section 15 (N):

Timber Harvesting from the May 8, 1993 Lamoine Shoreland Zoning Ordinance (see Attachment A) shall remain in effect until the effective date in Section 4B is met.

Change the language in section 16 (l) (1) (a) to read:

- a. *To hear and decide administrative appeals on a de novo basis where it is alleged by an aggrieved party that there is an error in any order, requirement, decision or determination made by, or failure to act by, the Code Enforcement Officer in his or her review of and action on a permit application under this Ordinance. Any order, requirement, decision or determination made, or failure to act, in the enforcement of this ordinance is not appealable to the Board of Appeals.*

Add the following definitions to Section 17:

Basal Area – *the area of cross-section of a tree stem at 4 ½ feet above ground level and inclusive of bark.*

Basement – *any portion of a structure with a floor-to-ceiling height of 6 feet or more and having more than 50% of this volume below the existing ground level.*

Canopy – *the more or less continuous cover formed by tree crowns in a wooded area.*

Coastal wetland - all tidal and subtidal lands; all lands *in the Shoreland Zone* below any identifiable debris line left by tidal action; all lands with vegetation present that is tolerant of salt water and occurs primarily in a salt water or estuarine habitat; and any swamp, marsh, bog, beach, flat or other contiguous low land which is subject to tidal action during the maximum spring tide level as identified in tide tables published by the National Ocean Service. Coastal wetlands may include portions of coastal sand dunes.

Forested wetland – *a freshwater wetland dominated by woody vegetation that is six (6) meters tall (approximately twenty (20) feet) or taller.*

Functionally water-dependent uses - those uses that require, for their primary purpose, location on submerged lands or that require direct access to, or location in, coastal and inland waters and which cannot be located away from these waters. The uses include, but are not limited to commercial and recreational fishing and boating facilities, finfish and shellfish processing, fish storage and retail and wholesale fish marketing facilities, waterfront dock and port facilities, shipyards and boat building facilities, marinas, navigation aides, basins and channels, industrial uses dependent upon water-borne transportation or requiring large volumes of cooling or processing water and which cannot reasonably be located or operated at an inland site, and uses which primarily provide general public access to marine or tidal waters. ***Recreational boat storage buildings are not considered functionally water-dependent.***

Increase in nonconformity of a structure – any change in a structure or property which causes further deviation from the dimensional standard(s) creating the nonconformity such as, but not limited to, reduction in water body, tributary stream or wetland setback distance, increase in lot coverage, or increase in height of a structure. Property changes or structure expansions which either meet the dimensional standard or which cause no further increase in the linear extent of nonconformance of the existing structure shall not be considered to increase nonconformity. For example, there is no increase in nonconformity with the setback requirement for water bodies, wetlands, or tributary streams if the expansion extends no further into the required setback area than does any portion of the existing nonconforming structure. Hence, a structure may be expanded laterally provided that the expansion extends no closer to the water body, tributary stream, or wetland than the closest portion of the existing structure from that water body, tributary stream, or wetland. Included in this allowance are expansions which in-fill irregularly shaped structures.

Subsurface sewage disposal system – any system designed to dispose of waste or waste water on or beneath the surface of the earth; includes, but is not limited to; septic tanks; disposal fields; grandfathered cesspools; holding tanks; pretreatment filter, piping, or any other fixture, mechanism, or apparatus used for those purposes; does not include any discharge system licensed under 38 M.R.S.A. section 414, any surface waste waster disposal system, or any municipal or quasi-municipal sewer or waste water treatment system.

Add Attachment A to the Ordinance as follows:

Attachment A

(From 1993 Shoreland Zoning Ordinance

N. Timber Harvesting

- 1. Within the strip of land extending 75 feet inland from the normal high-water line in a shoreland area zoned for resource protection abutting a great pond there shall be no timber harvesting, except to remove safety hazards.*
- 2. Except in areas as described in Paragraph 1 above, timber harvesting shall conform with the following provisions:*
 - a. Selective cutting of no more than forty (40) percent of the total volume of trees four (4) inches or more in diameter measured at 4 1/2 feet above ground level on any lot in any ten (10) year period is permitted. In addition:*

- i. *Within one-hundred (100) feet, horizontal distance of the normal high-water line of a great pond classified GPA, and within one hundred (100) feet, horizontal distance, of the normal high-water line of other water bodies, tributary streams, or the upland edge of a wetland, there shall be no clearcut openings and a well-distributed stand of trees and other vegetation, including existing ground cover, shall be maintained.*
 - ii. *At distances greater than one-hundred (100) feet, horizontal distance, of a great pond classified GPA, and greater than one hundred (100) feet, horizontal distance, of the normal high-water line of other water bodies or the upland edge of a wetland, harvesting operations shall not create single clearcut openings greater than ten-thousand (10,000) square feet in the forest canopy. Where such openings exceed five-thousand (5000) square feet they shall be at least one hundred (100) feet apart. Such clearcut openings shall be included in the calculation of total volume removal. For the purposes of these standards volume may be considered to be equivalent to basal area.*
- b. *No accumulation of slash shall be left within fifty (50) feet of the normal high-water line of a water body. In all other areas slash shall either be removed or disposed of in such a manner that it lies on the ground and no part thereof extends more than four (4) feet above the ground. Any debris that falls below the normal high-water line of a water body shall be removed.*
- c. *Timber harvesting equipment shall not use stream channels as travel routes except when:*
 - i. *Surface waters are frozen; and*
 - ii. *The activity will not result in any ground disturbance.*
- d. *All crossings of flowing water shall require a bridge or culvert, except in areas with low banks and channel beds which are composed of gravel, rock or similar hard surface which would not be eroded or otherwise damaged.*
- e. *Skid trail approaches to water crossings shall be located and designed so as to prevent water runoff from directly entering the water body or tributary stream. Upon completion of timber harvesting, temporary bridges and culverts shall be removed and areas of exposed soil revegetated.*

f. Except for water crossings, skid trails and other sites where the operation of machinery used in timber harvesting results in the exposure of mineral soil shall be located such that an unscarified strip of vegetation of at least seventy-five (75) feet in width for slopes up to ten (10) percent shall be retained between the exposed mineral soil and the normal high-water line of a water body or upland edge of a wetland. For each ten (10) percent increase in slope, the unscarified strip shall be increased by twenty (20) feet. The provisions of this paragraph apply only to a face sloping toward the water body or wetland, provided, however, that no portion of such exposed mineral soil on a back face shall be closer than twenty five (25) feet from the normal high-water line of a water body or upland edge of a wetland.

The preceding changes were mandated by the Maine Department of Environmental Protection following review of the ordinance approved by the Lamoine Town Meeting on March 7, 2007 to meet the minimum standards required by the State of Maine. The changes are proposed to the Lamoine Town Meeting to officially add them to the Ordinance as required by State Statute.