STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

JOHN ELIAS BALDACCI
GOVERNOR

DAVID P. LITTELL
COMMISSIONER

MEMORANDUM

TO: Board of Environmental Protection

FROM: Mike Morse, Assistant Shoreland Zoning Coordinator, Southern Maine Regional Office

RE: Appeal of Mandatory Shoreland Zoning Act, Department Order #13-09, issued to Town of Georgetown

DATE: November 5, 2009

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Statutory and Regulatory References: Mandatory Shoreland Zoning Act, 38 M.R.S. Sections 435 through 449

Location: Town of Georgetown

Description: On March 16, 2009, the Town of Georgetown submitted a copy of its amended Shoreland Zoning Ordinance (Ordinance), including its zoning map, as adopted on March 11, 2009. The amendments primarily included changes that are required in order to be consistent with the Chapter 1000, *State of Maine Guidelines for Municipal Shoreland Zoning Ordinances* (Guidelines), last amended by the Board on May 1, 2006.

The amended Ordinance retains a definition for a specific term, "Developed Areas", that provides an exemption to certain parcels of land from being zoned with a Resource Protection District, when otherwise required. This definition is inconsistent with the minimum requirements within the Guidelines.

The Guidelines require that land areas adjacent to moderate and high value waterfowl & wading bird habitat be zoned with a Resource Protection District. The amendments also re-zoned a number of shoreline areas as shown on the Town zoning map, from a Resource Protection District to a Limited Residential District. At least fourteen parcels on which such amendments occurred were either undeveloped or were developed, but in areas of shoreline that are sparsely developed, and the amendments affecting these parcels are inconsistent with the minimum requirements.

In a letter dated April 7, 2009, the Town of Georgetown was notified of these deficiencies.

On April 28, 2009, the Department issued Department Order #13-09, a Conditional Approval and Partial Denial of the Town's Ordinance. The Order included two conditions: one requiring that the term "developed area" be deleted from the definitions section of the Ordinance, and the other denying an amendment to remove the fourteen subject parcels from the Resource Protection District.

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On June 3, 2009, the Town of Georgetown filed a timely appeal to the Board of Environmental Protection.

Environmental Issues: The appellant objects to the conditional approval and partial denial of its ordinance, including Condition #1 and Condition #2 set forth in the Department's decision. The areas affected by the Department's decision are adjacent to moderate and high value waterfowl & wading bird salt marsh and salt meadow habitat as identified by the Department of Inland Fisheries & Wildlife.

Department Recommendation: The Department recommends that the Board deny the appeal related to Department Order #13-09, condition 1.

The Department recommends that the Board vacate condition 2 of Department Order #13-09. The basis for this recommendation is that the Department has recently discovered that it erred procedurally in placing this condition in the Order. Considering *Moger v. Georgetown* (Superior Court, Sagadahoc County, Docket No. AP-06-08, August 6, 2007), it could be argued that the court effectively removed the existing Resource Protection District from the fourteen subject parcels. In order to regulate "new" areas with a Resource Protection District affected property owners must first be provided written notification. The Department did not anticipate this legal interpretation and therefore did not notify the affected property owners. To be clear, the Department is not suggesting that the fourteen subject parcels should not be shoreland zone protected with a Resource Protection District, rather it is recommending that the Board vacate this condition due strictly to a procedural error. The Department intends to further examine the existing condition of these lots and pursue any required zoning clarifications or changes with appropriate notice to the affected landowners.

Estimated Time of Presentation: 1 hour