



DEPARTMENT ORDER

IN THE MATTER OF

TOWN OF CRANBERRY ISLES) MANDATORY SHORELAND ZONING ACT
HANCOCK COUNTY)
SHORELAND ZONING ORDINANCE)
ORDER #10-2017) APPROVAL WITH CONDITIONS

Pursuant to the provisions of 38 M.R.S.A. §§ 435-448, the *Mandatory Shoreland Zoning Act* (“Act”), and the Maine Department of Environmental Protection’s *Guidelines for Municipal Shoreland Zoning Ordinances*, 06-096 C.M.R. Chapter 1000 (amended January 26, 2015) (“Guidelines”), the Department of Environmental Protection has considered the request for approval of the Town of Cranberry Isles Shoreland Zoning Ordinance (Ordinance), as amended on March 11, 2017, and FINDS THE FOLLOWING FACTS:

1. The Act requires municipalities to establish zoning controls in areas within 250 feet of the normal high-water line of great ponds and rivers; within 250 feet of the upland edge of freshwater and coastal wetlands; and within 75 feet of the normal high-water line of streams. Such zoning standards must be consistent with or no less restrictive than those in the Guidelines. 38 M.R.S.A. §§435 & 438-A.
2. The Act specifies that before a locally adopted shoreland zoning ordinance, or amendment to that ordinance, is effective, it must be approved by the Commissioner of the Department of Environmental Protection (“Commissioner”). The Commissioner may approve, approve with conditions, or deny the ordinance or amendment. If denied, or approved with conditions, such action must be preceded by notice to the municipality. If the Commissioner fails to act within 45 days of receipt of the ordinance or amendment, then the ordinance or amendment is automatically approved. 38 M.R.S.A. § 438-A.
3. On April 4, 2017, the Town of Cranberry Isles submitted its amended Shoreland Zoning Ordinance as adopted on March 11, 2017 to the Department for review.
4. The submitted amendments, received by the Department on April 4, 2017, make numerous revisions throughout the Ordinance, including minor corrections and clarifications, as well as substantive changes in standards including, but not limited to: expansion of nonconforming structures, lot coverage, revegetation requirements, and associated definitions. The submitted amendments purport to update the Ordinance to bring it into compliance with the Guidelines as amended on January 26, 2015.

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5. The Department's review of the amended Ordinance has revealed the following significant deficiencies:
- A. Table of Contents: fails to reflect the correct page numbers with the correct corresponding sections.
 - B. Section 3 Applicability: fails to include all freshwater wetland, not only wetland rated by Maine Department of Inland Fisheries and Wildlife as having moderate or high value.
 - C. Section 9(A) Districts and Zoning Map: The word hereby was omitted.
 - D. Section 12 Non-Conformance (E)(3) fails to include an effective date of the Ordinance.
 - E. Section 13 Establishment of Districts (F) Commercial Fisheries/Maritime Activities District. The definition reads incorrectly: it includes Low density residential development is allowed in recognition of existing mixed pattern of development in those areas of Commercial Fisheries and Maritime Activities. This should be removed from the Commercial Fisheries/Maritime Activities District definition. In the Commercial Fisheries/Maritime Activities District Principal structures and uses; one and two family residential, including driveways are prohibited
 - F. Section 14 Table of Land Uses (15)(A) under Commercial Fisheries/Maritime Activities (CFMA) should be changed to NO.
 - G. Section 14 Table of Land Uses: the spaces on the table need to be expanded to completely show information within the table.
 - H. Section 15(K) Septic Waste Disposal: Language concerning vegetation was omitted.
 - I. Section 16 Administration (D), first sentence “as indicated in Section 14 was omitted.

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J. Section 19 Definitions: Cranberry Isle has repealed Timber Harvesting. The following definitions should be removed from Section 19. Cross-sectional area, Disruption of shoreline integrity, Forest management activities, Forest Stand, Harvest area, Land Management road, Residual basal area, Residual stand, Skid road or skid trail, Slash, Timber harvesting and related activities, and Wind firm.

4. On April 27, 2017, the Town of Cranberry Isles was notified by the Department of the above deficiencies, and the proposed conditional approval of the Ordinance.

BASED on the above Findings of Fact, the Commissioner makes the following CONCLUSION:

1. The deficiencies noted in paragraph 5 above can be addressed by the Commissioner approving the Ordinance with conditions. This will result in the Ordinance being substantially consistent with the requirements of the Mandatory Shoreland Zoning Act, 38 M.S.R.A., Section 438-A, and the minimum Guidelines.

THEREFORE, the Commissioner APPROVES the Ordinance, as amended on March 11, 2017, SUBJECT TO THE ATTACHED CONDITIONS:

1. Table of contents: Typos to be corrected to have page numbers to correspond with each section.
2. Section 3 Applicability, shall be amended as follows: This Ordinance applies to all land areas within 250 feet, horizontal distance, of the
 - normal high-water line of any great pond or river,
 - upland edge of a coastal wetland, including all areas affected by tidal action, or
 - upland edge of a freshwater wetland,

and all land areas within 75 feet, horizontal distance, of the normal high-water line of a stream.

This Ordinance also applies to any structure built on, over or abutting a dock, wharf or pier, or other structure extending or located below the normal high-water line of a water body or within a wetland.

3. Section 9(A) Districts and Zoning Map, shall be amended as follows:
 The areas to which this Ordinance is applicable are hereby divided into the following districts as shown on the Official Shoreland Zoning Map(s) which is (are) made a part of this Ordinance:
4. Section 12 Non-Conformance (E)(3), shall be amended as follows:
 This provision shall not apply to 2 or more contiguous lots, at least one of which is non-conforming, owned by the same person or persons on March 9, 1992, and recorded in the

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registry of deeds if the lot is served by a public sewer or can accommodate a subsurface sewage disposal system in conformance with the State of Maine Subsurface Wastewater Disposal Rules; and

- (a) Each lot contains at least 100 feet of shore frontage and at least 20,000 square feet of lot area; or
 - (b) Any lots that do not meet the frontage and lot size requirements of Section 12(E)(3)(a) are reconfigured or combined so that each new lot contains at least 100 feet of shore frontage and 20,000 square feet of lot area.
5. Section 13 Establishment of Districts (F), shall be amended as follows: The Commercial Fisheries/Maritime Activities District includes areas where the existing predominant pattern of development is consistent with the allowed uses for this district as indicated in the Table of Land Uses, Section 14, and other areas which are suitable for functionally water-dependent uses, taking into consideration such factors as:
- (1) Shelter from prevailing winds and waves;
 - (2) Slope of the land within 250 feet, horizontal distance, of the shoreline;
 - (3) Depth of the water within 150 feet, horizontal distance, of the shoreline;
 - (4) Available support facilities including utilities and transportation facilities; and
 - (5) Compatibility with adjacent upland uses.
6. Section 14 Table of Land Uses (15)(A) under CFMA heading shall be amended as follows:
NO
7. Section 14 Table of Land Uses shall be amended as follows: expand the spaces to allow all wording to a size allowable for reading.
8. Section 15(K) Septic Waste Disposal shall be amended as follows: 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.
9. Section 16 Administration (D) first paragraph shall be amended as follows: Within 35 days of the date of receiving a written application, the Planning Board or Code Enforcement Officer, as indicated in Section 14, shall notify the applicant in writing either that the application is a complete application, or, if the application is incomplete, that specified additional material is needed to make the application complete. The Planning Board or the Code Enforcement Officer, as appropriate, shall approve, approve with conditions, or deny all permit applications in writing within 35 days of receiving a completed application. However, if the Planning Board has a waiting list of applications, a

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decision on the application shall occur within 35 days after the first available date on the Planning Board's agenda following receipt of the completed application, or within 35 days of the public hearing, if the proposed use or structure is found to be in conformance with the purposes and provisions of this Ordinance.

10. Section 18 Definitions shall be amended to exclude the following definitions:

- a. **Cross-sectional area** – the cross-sectional area of a stream or tributary stream channel is determined by multiplying the stream or tributary stream channel width by the average stream or tributary stream channel depth. The stream or tributary stream channel width is the straight line distance from the normal high-water line on one side of the channel to the normal high-water line on the opposite side of the channel. The average stream or tributary stream channel depth is the average of the vertical distances from a straight line between the normal high-water lines of the stream or tributary stream channel to the bottom of the channel.
- b. **Disruption of shoreline integrity** - the alteration of the physical shape, properties, or condition of a shoreline at any location by timber harvesting and related activities. A shoreline where shoreline integrity has been disrupted is recognized by compacted, scarified and/or rutted soil, an abnormal channel or shoreline cross-section, and in the case of flowing waters, a profile and character altered from natural conditions.
- c. **Forest management activities** - timber cruising and other forest resource evaluation activities, pesticide or fertilizer application, management planning activities, timber stand improvement, pruning, regeneration of forest stands, and other similar or associated activities, exclusive of timber harvesting and the construction, creation or maintenance of roads.
- d. **Forest Stand** - a contiguous group of trees sufficiently uniform in age class distribution, composition, and structure, and growing on a site of sufficiently uniform quality, to be a distinguishable unit.
- e. **Harvest Area** - the area where timber harvesting and related activities, including the cutting of trees, skidding, yarding, and associated road construction take place. The area affected by a harvest encompasses the area within the outer boundaries of these activities, excepting unharvested areas greater than 10 acres within the area affected by a harvest.
- f. **Land Management Road** - a route or track consisting of a bed of exposed mineral soil, gravel, or other surfacing materials constructed for, or created by, the passage of motorized vehicles and used primarily for timber harvesting and related activities, including associated log yards, but not including skid trails or skid roads.
- g. **Residual basal area** - the average of the basal area of trees remaining on a harvested site.
- h. **Residual Stand** - a stand of trees remaining in the forest following timber harvesting and related activities
- i. **Skid Road or Skid Trail** - a route repeatedly used by forwarding machinery or animal to haul or drag forest products from the stump to the yard or landing, the construction of which requires minimal excavation.
- j. **Slash** - the residue, e.g., treetops and branches, left on the ground after a timber harvest.
- k. **Timber harvesting and related activities** - timber harvesting, the construction and maintenance of roads used primarily for timber harvesting and other activities conducted to facilitate timber harvesting.
- l. **Windfirm** - the ability of a forest stand to withstand strong winds and resist windthrow, wind rocking, and major breakage.

THEREFORE, the Commissioner APPROVES the Ordinance, as amended on April 4, 2017.

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DONE AND DATED AT AUGUSTA, MAINE, THIS _____ DAY OF _____, 2017.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: _____

For: Paul Mercer, Commissioner

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES.

DRAFT