

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

SECOND REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

NO. 2474

H.P. 1808 House of Representatives, March 8, 1988
Approved for introduction by a majority of the
Legislative Council pursuant to Joint Rule 26.
Reference to the Committee on Energy and Natural
Resources suggested and ordered printed.

EDWIN H. PERT, Clerk

Presented by Representative SIMPSON of Casco.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-EIGHT

1 AN ACT to Regulate Development Along the
2 Shoreland Zone and to Protect
3 Lake Water Quality.
4

5 Be it enacted by the People of the State of Maine as
6 follows:

7 38 MRSA c. 3, sub-c. I, art. 3-A is enacted to
8 read:

1 Article 3-A

2 LAND USE CONTROLS

3 §456. Definitions

4 As used in this article, unless the context
5 otherwise indicates, the following terms have the
6 following meanings.

7 1. Accessory structure. "Accessory structure"
8 means a structure of a nature customarily incidental
9 or subordinate to that of the principal structure for
10 the primary use to which the premises are devoted.

11 2. Aggrieved party. "Aggrieved party" means a
12 person whose land is directly or indirectly affected
13 by the grant or denial of a permit or variance under
14 this article, a person whose land abuts land for which
15 a permit or variance has been granted or a group of 5
16 or more citizens of the municipality which represents
17 an interest adverse to the grant or denial of a permit
18 or variance in that municipality. The term "aggrieved
19 party" also includes the municipality where the land
20 is located and the Board of Environmental Protection.

21 3. Basal area. "Basal area" means the area, in
22 2-dimensional measurement, of a tree trunk at ground
23 level.

24 4. Bushes, shrubs or ground cover. "Bushes,
25 shrubs or ground cover" means any vegetation other
26 than trees.

27 5. Dock. "Dock" means a structure placed in and
28 over the water for recreational access extending from
29 a point of attachment at or slightly above the normal
30 high water mark into the water body. Docks shall not
31 include those structures or parts of a structure
32 located above the normal high water mark except for
33 the point of attachment to the ground necessary for
34 structural support. Decks located above the normal
35 high water mark shall not be considered as docks even
36 though they may be attached to one. Access stairs to
37 a dock of 4 feet in width or less shall be considered

1 as part of a dock.

2 6. Emergency operations. "Emergency operations"
3 shall include operations conducted for the public
4 health, safety or general welfare, such as protection
5 of resources from immediate destruction or loss, law
6 enforcement and operations to rescue human beings and
7 livestock from the threat of destruction or injury.

8 7. Essential services. "Essential services"
9 means gas, electrical, communication facilities,
10 steam, fuel or water supply, transmission or
11 distribution systems.

12 8. Forest management activities. "Forest
13 management activities" means timber cruising and other
14 forest resources evaluation activities, management
15 planning activities, insect and disease control,
16 timber stand improvement, regeneration of forest
17 stands and other similar associated activities, but
18 not the construction or creation of roads.

19 9. Inland wetlands. "Inland wetlands" means
20 areas enclosed by the normal high water mark of inland
21 waters and areas otherwise identified on the basis of
22 soils, vegetation or other criteria as inland
23 wetlands, including, but not limited to, swamps,
24 marshes or bogs.

25 10. Intermittent waterway. "Intermittent
26 waterway" means flowing water, resulting from surface
27 runoff or the position of the ground water table,
28 which occurs for a period of more than 3 consecutive
29 months during the year.

30 11. Lake or pond. "Lake or pond" means any
31 inland body of water which has a surface area in
32 excess of 10 acres, except where that body of water is
33 man-made and is completely surrounded by land held by
34 a single owner, and except those privately owned ponds
35 which are held primarily as waterfowl and fish
36 breeding areas or for hunting and fishing.

37 12. Normal high water mark of inland waters.
38 "Normal high water mark of inland waters" means that

1 line on the shore and banks of nontidal waters which
2 is apparent because of the contiguous different
3 character of the soil or the vegetation due to the
4 prolonged action of the water. Relative to
5 vegetation, it is that line where the vegetation
6 changes from predominantly aquatic to predominantly
7 terrestrial. In places where the shore or bank is of
8 such character that the high water mark cannot be
9 easily determined, the normal high water mark shall be
10 estimated from places where it can be determined
11 according to this subsection.

12 13. Perennial river or stream. "Perennial river
13 or stream" means any river or stream with flowing
14 water, resulting from surface runoff or the position
15 of the ground water table, which occurs for a period
16 of 6 consecutive months or more during the year.

17 14. Perimeter drain. "Perimeter drain" means a
18 trench filled with crushed rock used to catch and
19 absorb runoff.

20 15. Permanent piers, docks, breakwaters,
21 causeways, marinas and uses projecting into water
22 bodies or bridges. "Permanent piers, docks,
23 breakwaters, causeways, marinas and uses projecting
24 into water bodies or bridges" means any structure
25 which remains in the water for 7 months or more in any
26 period of 12 consecutive months.

27 16. Principal structure. "Principal structure"
28 means the structure in which the primary use of the
29 lot is conducted.

30 17. Privy. "Privy" means a pit in the ground
31 into which human excrement is placed.

32 18. Public or private parking facilities.
33 "Public or private parking facilities" means any area
34 used for parking of motor vehicles.

35 19. Recent flood plain soils. "Recent flood
36 plain soils" includes the following soils as described
37 and identified by the National Cooperative Soil
38 Survey: Alluvial Land, Hadley Silt Loam, Limberick

1 Silt Loam, Ondawa Fine Sandy Loam, Podunk Fine Sandy
2 Loam, Rumney Fine Sandy Loam, Saco Silt Loam, Suncock
3 Loamy Sand and Winooski Silt Loam.

4 20. Reconstruction. "Reconstruction" means
5 enlargement of a structure or replacement of walls,
6 roofs or floors. Reconstruction does not include
7 repairs to existing portions of a structure that do
8 not expand those portions or the structure itself.

9 21. Residential dwelling unit. "Residential
10 dwelling unit" means a room or group of rooms designed
11 and equipped exclusively for use as permanent,
12 seasonal or temporary living quarters for only one
13 family. The term shall include mobile homes and
14 travel trailers.

15 22. River. "River" means any free flowing body
16 of water from the point at which it provides drainage
17 for a watershed of 10 square miles to its mouth.

18 23. Road. "Road" means a route or track
19 consisting of a bed of exposed mineral soil, gravel,
20 asphalt or other surfacing material constructed for or
21 created by the repeated passage of motorized vehicles.

22 24. Shorefront common area. "Shorefront common
23 area" means any land area having shoreline frontage on
24 any water body regulated by this article and intended
25 for use by more than one residential dwelling unit or
26 family, excluding visitors and guests. This
27 definition shall also include areas for which
28 easements, rights-of-way or other use rights are
29 granted or sold.

30 25. Stream. "Stream" means any free flowing body
31 of water appearing on the United States Geological
32 Survey 7.5 minute series topographical map of the area.

33 26. Structure. "Structure" means anything,
34 whether permanent or temporary, built for the support,
35 shelter or enclosure of persons, animals, goods or
36 property of any kind, exclusive of fences less than 6
37 feet in height. Notwithstanding any provisions in a
38 local ordinance to the contrary, all structures shall

1 meet the set-back requirements from the normal high
2 water mark of any water body, except structures which
3 require direct access to the water as an operational
4 necessity, such as piers, docks and retaining walls.
5 Satellite dishes, decks and patios shall be considered
6 as structures.

7 27. Temporary piers, docks, breakwaters,
8 causeways, marinas, bridges and uses projecting into
9 water bodies. "Temporary piers, docks, breakwaters,
10 causeways, marinas, bridges and uses projecting into
11 water bodies" means any structure which remains in the
12 water for less than 7 months in any period of 12
13 consecutive months.

14 28. Timber harvesting. "Timber harvesting" means
15 the cutting and removal of trees from their growing
16 site and the attendant operation of cutting and
17 skidding machinery, but not the construction or
18 creation of roads.

19 29. Trees. "Trees" means any species of
20 vegetation with a trunk in excess of 6 inches in
21 diameter at a height of 4 feet from ground level.

22 30. Variance. "Variance" means a grant of relief
23 from the requirements of this article which permits
24 land use or construction in a manner which would
25 otherwise be prohibited by this article.

26 31. Water body. "Water body" means any lake,
27 pond, river or stream.

28 §457. Applicability

29 This article applies to all land areas within 330
30 feet, horizontal distance, of the normal high water
31 mark of any lake, pond, river or stream as defined and
32 also to any structure built on, over or abutting a
33 dock, pier or other structures extending beyond the
34 normal high water mark of any water body. This
35 article shall apply to the following:

36 1. Rivers and streams. For all rivers and
37 streams appearing on the United States Geological

1 Survey 7.5 minute series topographical map of an area,
2 all land areas within 100 feet, horizontal distance,
3 of the normal high water mark;

4 2. Shoreland zone. All land uses including, but
5 not limited to, development, construction, erection,
6 placement, conversion or uses of premises, structures,
7 dwelling, commercial, retail and industrial
8 establishments in the shoreland zone;

9 3. Alterations. Enlargement, alteration,
10 expansion or relocation of the structures, dwellings,
11 establishments and developments; and

12 4. Districts. The following districts as shown
13 on the Official Shoreland Zoning Map:

14 A. Resource Protection District (RP);

15 B. General Development District (GD); and

16 C. Limited Residential-Recreational District
17 (LRR).

18 §457-A. Interpretation of district boundaries

19 Unless otherwise set forth in the Official
20 Shoreland Zoning Map, district boundaries are property
21 lines, the center lines of streets, roads and
22 rights-of-way, and the boundaries of the shoreland
23 area. Where uncertainty exists as to the exact
24 location of district boundaries or buffer-area
25 boundaries, the board shall be the final authority as
26 to location.

27 §457-B. Nonconforming uses

28 The use of any building, structure or land which
29 is made nonconforming by reason of the enactment of
30 this article, or which shall be made nonconforming by
31 reason of a subsequent amendment, may be continued,
32 subject to the following provisions.

33 1. After destruction. Nonconforming uses totally
34 destroyed by fire or natural disaster may be

1 reestablished if construction is started within 12
2 months and completed within 12 months after the start
3 of construction. Nonconforming structures destroyed
4 by fire or natural disaster, of which more than 50% of
5 the floor area has been reconstructed or placed on a
6 new or rebuilt foundation, shall be set back at least
7 100 horizontal feet from the normal high water mark of
8 any water body regulated by this article, or as far
9 back, up to 100 horizontal feet, as rear and side
10 set-back restrictions allow. This set-back provision
11 shall not apply to structures in the General
12 Development District.

13 2. Abandonment. A nonconforming use may not be
14 reestablished if abandoned for more than 12 months or
15 if superseded by a conforming use.

16 3. Expansion. Any nonconforming use may continue
17 and may be maintained, repaired and improved. No such
18 nonconforming use may be expanded without a permit
19 from the board in accordance with section 458,
20 subsection 1.

21 4. Structures within setback. No structure which
22 is less than the required setback from the normal high
23 water mark may be expanded within the set-back area.
24 This provision shall include porches, decks, additions
25 and patios.

26 5. Floor area. Expansions of floor area of that
27 part of a structure which is located within the
28 set-back area shall not exceed 25% of the existing
29 floor area located within the set-back area. Approval
30 is required for such expansions, using the standards
31 set forth in section 458, subsection 1, which shall
32 include the enclosure of decks and other structures or
33 parts of structures without roofs or walls.

34 6. Pending construction; exception. Nothing
35 contained in this article may require any change in
36 plans, construction or structure, the construction of
37 which was diligently prosecuted previous to the date
38 of enactment or amendment of this article.

39 7. Nonconforming lots of record; exception. A

1 nonconforming lot of record not meeting the
2 dimensional requirements of this article, existing at
3 the time of adoption or amendment of this article, may
4 be used, providing the proposed use is in conformance
5 with sections 457-D and 457-E.

6 8. Contiguous nonconforming lots of record.
7 Contiguous nonconforming lots of record in the same
8 ownership at the time of adoption of this article
9 shall be considered as one lot.

10 §457-C. Criteria for establishing districts

11 1. Resource Protection District. The Resource
12 Protection District includes all flood plain areas, as
13 required by section 440, and areas in which
14 development would adversely affect water quality,
15 productive habitat, biotic systems or scenic and
16 natural values. This district shall include:

17 A. Inland wetlands as defined in section 456 and,
18 specifically, areas rated as moderate to
19 high-value waterfowl areas by the Department of
20 Inland Fisheries and Wildlife as of January 1973;

21 B. Flood plains as defined by the 100-year flood
22 or the flood of record or, in the absence of
23 these, by soil types identifiable as recent flood
24 plain soils;

25 C. Areas having sustained slopes greater than 20%
26 or unstable soil subject to slumping, mass
27 movement or severe erosion, when these areas are 2
28 acres or more in size;

29 D. Areas having other significant wildlife
30 habitat;

31 E. Natural sites of significant scenic or
32 aesthetic value;

33 F. Areas designated by federal, state or
34 municipal governments as natural areas of
35 significance to be protected from development; and

1 G. Other significant areas which should be
2 included in this district to fulfill the purposes
3 of this article.

4 2. General Development District. The General
5 Development District includes the following types of
6 areas:

7 A. Areas of 2 acres or more devoted to intensive
8 residential, recreational, commercial or
9 industrial activities or combinations of such
10 activities, including: transportation
11 rights-of-way; utility and communication
12 rights-of-way; areas devoted to intensive
13 commercial activities; areas devoted to retail
14 trade and service activities; areas devoted to
15 intensive recreational development and activities;
16 areas devoted to residential dwelling units at a
17 density of 3 or more per 2 acres; and

18 B. Areas otherwise discernable as having patterns
19 of intensive residential, recreational, commercial
20 or industrial use.

21 3. Limited Residential-Recreational District.
22 The Limited Residential-Recreational District includes
23 areas other than those included in the Resource
24 Protection and General Development Districts and which
25 are used less intensively than those included in the
26 General Development District.

27 §457-D. Permitted land uses

28 Land uses permitted in each district, in
29 conformance with the land use standards of this
30 article, are as follows.

31 1. Resource Protection Districts. The following
32 provisions govern land use in Resource Protection
33 Districts.

34 A. The following uses are allowed without a
35 permit:

36 (1) Nonintensive recreational uses not
37 requiring structures, such as hunting,
38 fishing and hiking;

- 1 (2) Motorized vehicular traffic and
- 2 snowmobiling on roads and trails;
- 3 (3) Fire prevention activities;
- 4 (4) Wildlife management practices;
- 5 (5) Soil and water conservation practices;
- 6 (6) Mineral exploration;
- 7 (7) Surveying and resource analysis;
- 8 (8) Emergency operations;
- 9 (9) Harvesting of wild crops; and
- 10 (10) Essential services accessory to
- 11 permitted uses.

12 B. The following uses require a permit from the

13 board:

- 14 (1) Forest management activities, including
- 15 timber harvesting;
- 16 (2) Agriculture;
- 17 (3) Expansion of a conforming structure or
- 18 use;
- 19 (4) Structures accessory to permitted uses;
- 20 (5) Road construction;
- 21 (6) Small nonresidential facilities for
- 22 educational, scientific, or nature
- 23 interpretation purposes;
- 24 (7) Public and private parks and recreation
- 25 areas involving minimal structural
- 26 development;
- 27 (8) Temporary piers, docks, breakwaters,

1 causeways, marinas and uses projecting into
2 water bodies;

3 (9) Clearing for construction, whether
4 approved or not approved;

5 (10) Filling and earth moving;

6 (11) Public utilities, including sewage
7 systems; and

8 (12) Uses similar to permitted uses.

9 C. The following uses are prohibited:

10 (1) Residential dwelling units;

11 (2) Commercial structures;

12 (3) Industrial structures;

13 (4) Governmental structures;

14 (5) Institutional structures;

15 (6) Expansion of nonconforming structures or
16 use;

17 (7) Campgrounds;

18 (8) Permanent piers, docks, breakwaters,
19 marinas, bridges and uses projecting into
20 water bodies;

21 (9) Other structures located beyond or below
22 the normal high water mark; and

23 (10) Private sewage disposal systems.

24 2. Limited Residential-Recreational District.
25 The following provisions govern land use in Limited
26 Residential-Recreational Districts.

27 A. The following uses are allowed without a
28 permit:

- 1 (1) Nonintensive recreational uses not
2 requiring structures, such as hunting,
3 fishing and hiking;
- 4 (2) Motorized vehicular traffic and
5 snowmobiling on roads and trails;
- 6 (3) Fire prevention activities;
- 7 (4) Wildlife management practices;
- 8 (5) Soil and water conservation practices;
- 9 (6) Mineral exploration;
- 10 (7) Surveying and resource analysis;
- 11 (8) Emergency operations;
- 12 (9) Harvesting of wild crops;
- 13 (10) Filling and earth moving of less than
14 10 cubic yards; and
- 15 (11) Essential services accessory to
16 permitted uses.

17 B. The following uses require a permit from the
18 board:

- 19 (1) Forest management activities, including
20 timber harvesting;
- 21 (2) Agriculture, subject to section 457-E;
- 22 (3) Residential dwelling units;
- 23 (4) Governmental structures;
- 24 (5) Expansion of a conforming or
25 nonconforming structure or use;
- 26 (6) Structures accessory to permitted uses;

1 (7) Road construction;

2 (8) Small, nonresidential facilities for
3 educational, scientific or nature
4 interpretation purposes;

5 (9) Public and private parks and recreation
6 areas involving minimal structural
7 development;

8 (10) Campgrounds;

9 (11) Any piers, docks, breakwaters,
10 causeways, marinas and uses projecting into
11 water bodies;

12 (12) Clearing for construction, whether
13 approved or not approved, subject to section
14 457-E;

15 (13) Filling and earth moving of 10 cubic
16 yards or more;

17 (14) Public utilities, including sewage
18 systems;

19 (15) Private sewage disposal systems; and

20 (16) Uses similar to permitted uses.

21 C. The following uses are prohibited:

22 (1) Commercial structures;

23 (2) Industrial structures;

24 (3) Institutional structures; and

25 (4) Structures located beyond or below the
26 normal high water mark.

27 3. General Development Districts. The following
28 provisions govern land use in General Development
29 Districts.

1 A. The following uses are allowed without a
2 permit:

3 (1) Nonintensive recreational uses not
4 requiring structures, such as hunting,
5 fishing and hiking;

6 (2) Motorized vehicular traffic and
7 snowmobiling on roads and trails;

8 (3) Forest management activities, including
9 timber harvesting;

10 (4) Fire prevention activities;

11 (5) Wildlife management practices;

12 (6) Soil and water conservation practices;

13 (7) Mineral exploration;

14 (8) Surveying and resource analysis;

15 (9) Emergency operations;

16 (10) Harvesting of wild crops;

17 (11) Agriculture;

18 (12) Small nonresidential facilities for
19 educational, scientific or nature
20 interpretation purposes;

21 (13) Public and private parks and recreation
22 areas involving minimal structural
23 development;

24 (14) Filling and earth moving of less than
25 10 cubic yards; and

26 (15) Essential services accessory to
27 permitted uses.

28 B. The following uses require a permit from the
29 board:

- 1 (1) Residential dwelling units;
- 2 (2) Commercial, industrial, governmental and
3 institutional structures;
- 4 (3) Expansion of conforming and
5 nonconforming structures or uses;
- 6 (4) Structures accessory to permitted uses;
- 7 (5) Road construction;
- 8 (6) Campgrounds;
- 9 (7) Any piers, docks, breakwaters,
10 causeways, marinas, bridges and uses
11 projecting into water bodies;
- 12 (8) Clearing for construction, whether
13 approved or not approved;
- 14 (9) Filling and earth moving of 10 cubic
15 yards or more;
- 16 (10) Private sewage disposal systems;
- 17 (11) Public utilities, including sewage
18 systems; and
- 19 (12) Uses similar to permitted uses.

20 C. The following uses are prohibited:

- 21 (1) Structures located below and beyond the
22 normal high water mark.

23 §457-E. Land use standards

24 All land use activities shall conform to the
25 following applicable land use standards.

26 1. Agriculture. All spreading or disposal of
27 manure shall be accomplished in conformance with a
28 conservation plan approved by the local soil and water

1 conservation district. There shall be no tilling of
2 soil within 100 feet of the normal high water mark of
3 any water body whose shorelands are regulated by this
4 article.

5 2. Beach construction. Beach construction on any
6 water body shall require a permit from the board.

7 3. Campgrounds. New campgrounds and expansions
8 of existing campgrounds shall conform to the following
9 minimum requirements:

10 A. Camping areas shall contain a minimum of 5,000
11 square feet of suitable land, not including roads
12 and driveways, for each site.

13 B. A minimum of 50 feet of shoreline frontage
14 shall be provided on any lake or pond abutting a
15 campground for each campsite located wholly or
16 partially within the shoreland zone. A minimum of
17 25 feet of shoreline frontage shall be provided
18 for each campsite located beyond the shoreland
19 zone and utilizing shoreland areas of the
20 campground.

21 C. The area intended for placement of any tent,
22 recreational vehicle, shelter, utility and service
23 buildings shall be set back a minimum of 100 feet
24 from the normal high water mark of any water body
25 regulated by this article.

26 4. Erosion and sedimentation control. Filling,
27 grading, lagooning, dredging, earth-moving activities
28 and other land use activities shall be conducted in
29 such a manner as to prevent erosion and sedimentation
30 of surface waters. All construction shall be
31 accomplished in conformance with the erosion
32 prevention provisions of the March 1986 revised
33 edition of the "Environmental Quality Handbook Erosion
34 and Sediment Control," published by the State Soil and
35 Water Conservation Commission. Perimeter drains with
36 sufficient capacity to absorb the runoff from a 2-inch
37 rainfall shall be required for all new or expanded
38 public or private parking facilities falling wholly or
39 partially within the shoreland zone.

1 5. Mineral exploration. Mineral exploration to
2 determine the nature or extent of mineral resources
3 shall be accomplished by hand sampling, test boring or
4 other methods which create minimal disturbance. A
5 permit from the board shall be required for mineral
6 exploration which exceeds these limitations.

7 6. Piers, docks, breakwaters, causeways, marinas,
8 bridges and uses projecting into water bodies. In
9 addition to federal or state permits which may be
10 required for such structures and uses, piers, docks,
11 breakwaters, causeways, marinas, bridges and uses
12 projecting into water bodies shall conform to the
13 following provisions.

14 A. Access from shore shall be developed on soils
15 appropriate for such use and constructed to
16 control erosion.

17 B. The location shall not interfere with
18 developed beach areas.

19 C. The facility shall be located to minimize
20 adverse effects on fisheries.

21 D. The facility shall be no larger in dimension
22 than necessary to carry on the activity and be
23 consistent with existing conditions, use and
24 character of the area.

25 E. No additional lease, sale or conveyance of
26 docks, dock space or moorings shall be made
27 without review and approval by the board in
28 accordance with section 458, subsection 1.

29 F. When boats are being used for habitation at a
30 dock or mooring facility, adequate waste disposal
31 facilities shall be provided on shore for sewage,
32 wash water and solid wastes.

33 7. Residential lot standards. All residential
34 development with shoreline frontage or with rights of
35 access to shoreline frontage on a lake or pond shall
36 meet the following minimum requirements.

1 A. A lot abutting a lake, pond, river or stream
2 shall have a minimum shore frontage of 150 feet,
3 measured in a straight line between the points of
4 intersection of the side lot lines with the
5 shoreline at normal high water elevation.

6 B. All residential lots shall contain a minimum
7 of 60,000 square feet.

8 C. Shorefront common areas shall meet the
9 following criteria.

10 (1) The shorefront common area shall contain
11 a minimum of 2 acres and at least 4,000
12 square feet for each unit having access or
13 use of it.

14 (2) The shorefront common area shall have a
15 minimum of 50 feet of shoreline frontage for
16 each residential dwelling unit which has
17 access to the common area and for each
18 right-of-use granted to the common area.

19 (3) Accommodations for motorized watercraft
20 shall be limited to one watercraft for each
21 75 feet of shoreline frontage. This limit
22 shall not apply to motorized watercraft of
23 transient visitors which remain at the common
24 area for less than 24 hours.

25 D. If more than one residential dwelling unit is
26 constructed on a single parcel, all dimensional
27 requirements shall be met for each dwelling unit.
28 Residential dwelling units in a new subdivision
29 may be constructed on lots not meeting the minimum
30 dimensional requirements if land area and
31 shoreline frontage, not including areas zoned as
32 Resource Protection Districts, sufficient to equal
33 or exceed the net densities required in paragraphs
34 A and B, are set aside in common areas or open
35 space contiguous to some or all of the lots.

36 8. Nonresidential lot standards. The following
37 minimum requirements shall apply to nonresidential

1 lots.

2 A. Nonresidential lots in the General Development
3 District shall contain a minimum of 40,000 square
4 feet. Other nonresidential lots shall contain a
5 minimum of 60,000 square feet.

6 B. Nonresidential lots abutting a lake, pond,
7 river or stream shall have a minimum shoreline
8 frontage of 150 feet, measured in a straight line
9 between the points of intersection of the side lot
10 lines with the shoreline at normal high water
11 elevation.

12 C. All provisions of subsection 7, paragraph C,
13 shall apply to nonresidential lots.

14 9. Structures and setbacks. The following
15 minimum set-back requirements and structure
16 restrictions shall apply to shoreline areas.

17 A. No building or structure may be erected or
18 located on a lot for more than 30 days per year,
19 unless it is set back at least 25 feet from the
20 right-of-way line of any public road, or 50 feet
21 from the center line of the traveled way,
22 whichever is greater.

23 B. All structures in the Resource Protection
24 District and the Limited Residential-Recreational
25 District shall be set back at least 100 feet,
26 horizontal distance, from the normal high water
27 mark of any water body. Structures in the General
28 Development District shall be set back at least 50
29 feet, horizontal distance, from the normal high
30 water mark of any water body. Tents, motor
31 vehicles and recreational vehicles shall comply
32 with these set-back requirements except for those
33 vehicles using public and private parking
34 facilities or commercial campsites existing prior
35 to the adoption of this article.

36 C. All structures in the Resource Protection
37 District and the Limited Residential-Recreational
38 District shall be set back at least 20 feet from

1 all lot lines.

2 D. Structures shall not cover more than 20% of
3 any lot or exceed 30 feet in height except in the
4 General Development District.

5 E. Perimeter drains with sufficient capacity to
6 absorb runoff from a 2-inch rainfall shall be
7 required for all new structures or expansions of
8 existing structures.

9 10. Road construction. The following provisions
10 shall apply to construction of roads.

11 A. Permanent roads shall be located, constructed
12 and maintained in such a manner that minimal
13 erosion hazards result. Adequate provision shall
14 be made to prevent soil erosion and sedimentation
15 of surface waters.

16 B. Road crossings of watercourses shall be kept
17 to the minimum number necessary.

18 C. Bottoms of culverts shall be installed at
19 stream bed elevation.

20 D. All cut or fill banks and areas of exposed
21 mineral soil shall be revegetated or otherwise
22 stabilized immediately.

23 E. Bridges or culverts of adequate size and
24 design shall be provided for all road crossings of
25 watercourses which are to be used when surface
26 waters are unfrozen.

27 11. Sanitary standards. Subsurface sewage
28 disposal shall be installed in conformance with the
29 Maine State Plumbing Code and the following
30 requirements.

31 A. All subsurface sewage disposal systems shall
32 be located in areas of suitable soil of at least
33 1,000 square feet in size. The determination of
34 soil suitability shall be based on a soils report
35 prepared by a state-certified soil scientist or

1 geologist, based on an on-site investigation and
2 soil observation to a minimum depth of 4 feet.
3 Suitability considerations shall be based
4 primarily on criteria employed in the National
5 Cooperative Soil Survey as modified by on-site
6 factors such as depth to water table and refusal.

7 B. Placement of underground sewage disposal
8 facilities shall comply with the following
9 provisions.

10 (1) The minimum setback for underground
11 sewage disposal leaching areas shall be no
12 less than 200 horizontal feet from the normal
13 high water mark of any lake, pond or
14 perennial river or stream. The minimum
15 setback for septic tanks shall be 100
16 horizontal feet. This requirement shall not
17 be reduced except for replacement systems
18 which must maximize set-back requirements as
19 explained in subparagraph (4).

20 (2) Leaching areas shall not be located
21 within 100 horizontal feet of an intermittent
22 waterway.

23 (3) The minimum separation between the
24 bottom of the leaching area and the high
25 water table or refusal shall be 2 feet.

26 (4) No provision of this subsection may
27 prohibit the placement of sewage disposal
28 facilities upon a lot of record existing
29 before 1987, providing the lot meets the full
30 requirements of the Maine State Plumbing Code
31 without variance. Set-back and separation
32 distances shall be maximized to the limits
33 designated in subparagraphs (1) and (2)
34 allowing for a 20-foot minimum disposal bed
35 width and normal setbacks as required by the
36 Maine State Plumbing Code for setbacks from
37 property lines, wells and buildings.

38 C. Privies are not allowed in areas regulated by
39 this article. When a new disposal system is

1 located on a property served by a privy, the privy
2 must be discontinued and removed.

3 D. Other systems of sanitary waste disposal may
4 be permitted after approval by the Department of
5 Human Services, and after a permit has been issued
6 by the board following a finding that the system
7 is in compliance with the purposes of this article.

8 E. Any person shall, prior to converting a
9 seasonal dwelling to a year-round dwelling, obtain
10 a conversion permit from the board. Conversion of
11 a seasonal dwelling to a year-round dwelling means
12 a change of occupancy from seasonal to year-round
13 or principal dwelling. No permit for conversion
14 may be issued unless one of the following is met:

15 (1) Available records show the dwelling's
16 sewage disposal system meets the full
17 requirements of the Maine State Plumbing Code
18 without variance;

19 (2) Site evaluation demonstrates that site
20 conditions will permit installation of a
21 sewage system meeting the full requirements
22 of the Maine State Plumbing Code without
23 variance in the event of future system
24 malfunctions; or

25 (3) The dwelling is connected to an approved
26 public sewer.

27 12. Soils. All land uses shall be located on
28 soils in or upon which the proposed uses or structures
29 can be established or maintained without causing
30 adverse environmental impacts, including severe
31 erosion, mass soil movement and water pollution,
32 whether during or after construction. Proposed uses
33 requiring subsurface waste disposal and commercial or
34 industrial development and other similar intensive
35 land uses shall require a soils report, prepared by a
36 state-certified soil scientist or geologist based on
37 an on-site investigation. Suitability considerations
38 shall be based primarily on criteria employed in the
39 National Cooperative Soil Survey as modified by

1 on-site factors such as depth to water table and depth
2 to refusal.

3 13. Signs. The following provisions shall govern
4 the use of signs in the Resource Protection District
5 and the Limited Residential-Recreational District.

6 A. Name signs shall be permitted, provided that
7 these signs do not exceed 2 signs per premises,
8 each sign not larger than 1 square foot.

9 B. Residential users may display a single sign
10 not over 3 square feet in area relating to the
11 sale, rental or lease of the premises.

12 C. Signs relating to trespassing and hunting
13 shall be permitted without restriction to number,
14 provided that these signs do not exceed 2 square
15 feet in area.

16 D. No sign may extend higher than 10 feet above
17 the ground.

18 E. Signs may be illuminated only by shielded,
19 nonflashing lights.

20 F. Signs and billboards relating to goods and
21 services sold on the premises shall be permitted,
22 provided that these signs do not exceed 6 square
23 feet in area and do not exceed 2 signs per
24 premises. Billboards and signs relating to goods
25 and services not rendered on the premises shall be
26 prohibited.

27 14. Water quality protection. In order to
28 protect the quality of surface and ground waters, the
29 following provisions shall apply.

30 A. No activity may locate, store, discharge or
31 permit the discharge of any treated, untreated or
32 inadequately treated liquid, gaseous or solid
33 materials of a nature, quantity, obnoxiousness,
34 toxicity or temperature that run off, seep,
35 percolate or wash into surface or ground waters to
36 contaminate, pollute or harm these waters or cause

1 nuisances, such as objectionable shore deposits,
2 floating or submerged debris, oil or scum, color,
3 odor, taste or unsightliness or be harmful to
4 human, animal, plant or aquatic life.

5 B. The washing, bathing or cleaning of humans,
6 animals or objects with soaps, detergents or
7 cleaning agents shall be prohibited in surface
8 waters or in areas adjacent to surface waters if
9 wash water can immediately enter the surface water
10 without absorption into the soils.

11 C. The application for each proposed subdivision
12 or multifamily housing development falling
13 partially or completing within the shoreland zone
14 shall contain information indicating the projected
15 water quality impact of the project relative to
16 its proportional area and shoreline frontage
17 within the watershed of any lake or pond. The
18 board shall consider the information, particularly
19 how projected phosphorous loading relates to
20 existing phosphorous levels and the ability of the
21 water body to support additional phosphorus, when
22 reviewing the proposed development. Any increases
23 of one part per billion of phosphorus in any lake
24 or pond, from levels existing at the time of
25 adoption of this article, shall be considered to
26 constitute a significant deterioration of water
27 quality and shall be prohibited.

28 15. Buffer areas; timber harvesting. The
29 following provisions shall apply to shoreline areas:

30 A. Within 100 feet, horizontal distance, of the
31 normal high water mark of all water bodies
32 regulated by this article:

33 (1) No new structures may be constructed or
34 located except for temporary docks which
35 comply with other provisions of this article;

36 (2) No alteration to the existing
37 topography, soils or vegetation may be
38 allowed, except as provided for in
39 subparagraphs (3) to (7);

1 (3) Vegetation may be removed as needed for
2 one access footpath of no more than 6 feet in
3 width for each 150 feet of shoreline
4 frontage. The footpath shall be constructed
5 to prevent erosion and retain runoff;

6 (4) Twenty percent of the total basal area
7 of trees may be removed in any 10-year
8 period, providing that a well-distributed
9 forest canopy is maintained and that no
10 alterations are made to the original
11 topography and ground cover. Slash from
12 approved cutting shall be removed from the
13 buffer area;

14 (5) No provision of this section may
15 prohibit the removal of storm-damaged,
16 diseased or dead vegetation or trees or the
17 revegetation of an area, provided that
18 reasonable advance notice is given to the
19 board;

20 (6) A view clearing in the upper vegetation
21 above bushes, shrubs and ground cover may be
22 made. The width of this clearing shall not
23 exceed 25 feet for every 150 feet of
24 shoreline frontage measured in a straight
25 line between the points of intersection of
26 the side lot lines with the shoreline at
27 normal high water elevation. The maximum
28 width of the clearing shall not exceed 35
29 feet. The access footpath shall be located
30 within this cleared area. If such a clearing
31 existed at the time of adoption of this
32 article, no additional clearing may be made
33 except for clearing that does not exceed 25
34 feet for every 150 feet of shoreline frontage
35 measured as above, with the same 35 foot
36 maximum opening as above;

37 (7) Shoreline modifications not to exceed 10
38 feet for each 150 feet of shoreline frontage
39 measured as in subparagraph (6) may be
40 allowed provided that:

1 (a) The modifications to existing
2 topography and ground cover do not
3 exceed 60 square feet for every 150 feet
4 of shoreline frontage measured as in
5 subparagraph (6);

6 (b) Necessary permits are obtained from
7 the board as required in this article;
8 and

9 (c) The modifications are located
10 within the view-clearing area and are
11 conducted to prevent erosion and
12 sedimentation;

13 (8) Buffer areas as defined in this
14 subsection shall be required for all rivers
15 and streams depicted on the United States
16 Geological Survey 7.5 minute series
17 topographical map of the area, except that
18 the board may allow road crossings if it
19 finds that the proposed crossings will not
20 create erosion and sedimentation and are in
21 compliance with other provisions of this
22 article;

23 (9) Lands within the General Development
24 District shall require only a 50-foot buffer
25 area as described in this subsection; and

26 (10) Before any construction is begun
27 adjacent to the buffer area, hay bales,
28 erosion fencing or a similar sedimentation
29 barrier shall be installed at the 100-foot
30 buffer area boundary or between the boundary
31 and the construction. The barrier shall be
32 of sufficient width to protect the buffer
33 area from any erosion or sedimentation
34 resulting from construction; and

35 B. Within the area from 100 to 250 feet,
36 horizontal distance, from the normal high water
37 mark of all lakes and ponds, except for lands
38 within the General Development District;

1 (1) No single opening in excess of 7,500
2 square feet may be created in the forest
3 canopy and these openings shall not extend
4 more than 20 feet beyond the outside
5 perimeter of any structure;

6 (2) No more than 30% of the total basal area
7 of trees may be removed in any 10-year period
8 with the exception of clearing for approved
9 construction;

10 (3) Structures and impermeable surfaces
11 shall not exceed 20% of any entire lot; and

12 (4) A site plan showing original features
13 and proposed vegetative cutting,
14 revegetation, earth moving, roadways,
15 drainage and structures shall be submitted
16 for review by the board prior to any
17 construction to assure compliance with this
18 article.

19 §458. Administration

20 1. Permits. After the effective date of this
21 article, no person may engage in any use of land
22 requiring a permit in the district in which it would
23 occur, expand an existing nonconforming use or renew a
24 discontinued nonconforming use without first obtaining
25 a permit. Permits shall be valid for a period of 18
26 months from the date of issuance.

27 2. Permit application. Application for permits
28 shall be submitted in writing. The board may require
29 the submission of whatever information is necessary to
30 determine conformance with this article.

31 3. Plumbing permit required prior to building
32 permit. No building permit may be issued for any
33 structure or use involving the construction,
34 installation or alteration of plumbing facilities
35 until a plumbing permit has been secured by the
36 applicant or an authorized agent, according to the
37 requirements of this article.

1 4. Procedures for administering permits. Within
2 30 days of the date of receiving a written
3 application, the board shall notify the applicant in
4 writing either that the application is a complete
5 application or, if the application is incomplete, the
6 specific additional material needed to make a complete
7 application. All permits shall either be approved or
8 denied in writing within 30 days of receipt of a
9 complete application, including all information
10 requested. Permits shall not be denied if the
11 proposed use is found to be in conformance with the
12 provisions of this article. Permits may be made
13 subject to reasonable conditions to ensure conformity
14 with the purposes and provisions of this article. If
15 the permit is denied or approved with conditions, the
16 reason for the denial or conditional approval shall be
17 stated in writing. An appeal to the board from an
18 approval or denial of a permit shall be made within 30
19 days of the approval or denial.

20 5. Permits issued by the board. The board shall,
21 after receiving a complete application, approve or
22 deny those applications on which it is empowered to
23 act as stated in this article. The board shall, after
24 the submission of a complete application including all
25 information requested, grant a permit, or a permit
26 with conditions of approval, if it makes a positive
27 finding based on the information presented to it that,
28 except as specifically exempted in this article, the
29 proposed use:

30 A. Will not result in unsafe or unhealthful
31 conditions;

32 B. Will not result in erosion or sedimentation;

33 C. Will not result in water pollution;

34 D. Will not result in damage to spawning grounds,
35 fish, aquatic life, bird and other wildlife
36 habitat;

37 E. Will conserve shoreland vegetation;

1 F. Will conserve visual points of access to
2 waters as viewed from public facilities;

3 G. Will conserve actual points of public access
4 to waters;

5 H. Will conserve natural beauty;

6 I. Will avoid problems associated with floodplain
7 development and use; and

8 J. Is in conformance with section 457-E.

9 The board shall employ standards and criteria
10 contained in the following documents in making their
11 determinations: The National Cooperative Soil Survey;
12 the March 1986 revised edition of the "Environmental
13 Quality Handbook Erosion and Sediment Control;" the
14 Maine State Plumbing Code; and the department rules
15 relating to drinking water. The board may also
16 request review input from state and federal agencies
17 as it determines necessary, including the Department
18 of Human Services, the Department of Conservation, the
19 Department of Inland Fisheries and Wildlife and the
20 State Soil and Water Conservation Commission.

21 §458-A. Appeals

22 1. Variance appeals. The board may, upon written
23 application of the affected landowner, grant a
24 variance from the strict application of this article
25 under the following conditions.

26 A. The strict application of the terms of this
27 article would result in undue hardship to the
28 applicant. The term "undue hardship" means:

29 (1) That the land in question cannot yield a
30 reasonable return unless a variance is
31 granted;

32 (2) That the need for a variance is due to
33 the unique circumstances of the property and
34 not to the general conditions in the

1 neighborhood;

2 (3) That the granting of a variance will not
3 alter the essential character of the
4 locality; and

5 (4) That the hardship is not the result of
6 action taken by the applicant or a prior
7 owner.

8 B. The board, based on clear and convincing
9 evidence presented to it, makes a finding that the
10 proposed use would meet the provisions of section
11 458, subsection 5;

12 C. The variance shall be the minimum necessary;
13 and

14 D. A determination is made by the board that the
15 granting of a variance will not result in
16 increased flood heights, additional threats to
17 public safety or extraordinary public expense or
18 will not create nuisances, cause fraud on or
19 victimization of the public or conflict with
20 existing laws or ordinances.

21 2. Variance restrictions. A variance is
22 authorized only for the following dimensional
23 requirements: lot dimensional requirements, structure
24 setback and structure size. A variance shall not be
25 granted to permit a use or structure otherwise
26 prohibited.

27 3. Administrative appeals. The board may, upon
28 written application of an aggrieved party and after
29 public notice, hear appeals from its determinations.
30 The application must be made within 30 days of the
31 determination. Hearings shall be held in accordance
32 with the Maine Administrative Procedure Act, Title 5,
33 chapter 375. Following hearings, the board may
34 reverse its decision only upon a finding that the
35 decision is clearly contrary to specific provisions of
36 this article.

37 4. Appeal to Superior Court. An appeal may be

1 taken within 30 days after any decision is rendered by
2 the board by any party to the Superior Court in
3 accordance with state law.

4 STATEMENT OF FACT

5 The purposes of this bill are to further the
6 maintenance of safe and healthful conditions; prevent
7 and control water pollution; protect spawning grounds,
8 fish, aquatic life, bird and other wildlife habitat;
9 control building sites, placement of structures and
10 land uses; and conserve shore cover, visual as well as
11 actual points of access to inland waters. This bill
12 will apply to all shoreland property and addresses the
13 problem of runaway development by imposing land use
14 restrictions on all property within 330 feet of any
15 lake, pond, river or stream. The Board of
16 Environmental Protection will administer and enforce
17 this bill.

18

4009022288