

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 electronic originals
(may include minor formatting differences from printed original)



130th MAINE LEGISLATURE

FIRST REGULAR SESSION-2021

Legislative Document

No. 390

H.P. 274

House of Representatives, February 10, 2021

An Act Regarding the Mapping of Shoreland Zones

Received by the Clerk of the House on February 8, 2021. Referred to the Committee on Environment and Natural Resources pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.

A handwritten signature in cursive script that reads "Robert B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative PERRY of Calais.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 38 MRSA §436-A, sub-§1**, as amended by PL 2005, c. 330, §10, is further
3 amended to read:

4 **1. Coastal wetlands.** "Coastal wetlands" means all tidal and subtidal lands; all lands
5 with vegetation present that is tolerant of salt water and occurs primarily in a salt marine
6 water or estuarine habitat; and any swamp, marsh, bog, beach, flat or other contiguous low
7 land that is subject to tidal action during the highest tide level for the year in which an
8 activity is proposed as identified in tide tables published by the National Ocean Service.
9 ~~Coastal wetlands~~ A coastal wetland may include portions of coastal sand dunes.

10 **Sec. 2. 38 MRSA §436-A, sub-§5**, as amended by PL 1991, c. 346, §2, is further
11 amended to read:

12 **5. Freshwater wetlands wetland.** "Freshwater ~~wetlands wetland~~" means a freshwater
13 ~~swamps swamp, marshes marsh, bogs and bog or similar areas area,~~ other than a forested
14 ~~wetlands wetland, which are that is:~~

15 A. Of 10 or more contiguous acres, or of less than 10 contiguous acres and adjacent to
16 a surface water body, excluding any river, stream or brook, such that, in a natural state,
17 the combined surface area is in excess of 10 acres; and

18 B. ~~Inundated or saturated by surface or ground water at a frequency and for a duration~~
19 ~~sufficient to support, and which under normal circumstances do support, a prevalencee~~
20 ~~of wetland vegetation typically adapted for life in saturated soils.~~

21 C. Depicted on the National Wetlands Inventory maintained by the United States
22 Department of the Interior, United States Fish and Wildlife Service as a Cowardin class
23 palustrine emergent or palustrine scrub-shrub wetland.

24 ~~Freshwater wetlands~~ A freshwater wetland may contain small stream channels or inclusions
25 of land that do not conform to the criteria of this subsection.

26 **Sec. 3. 38 MRSA §436-A, sub-§5-A**, as enacted by PL 1989, c. 838, §1, is
27 amended to read:

28 **5-A. Forested wetland.** "Forested wetland" means a freshwater wetland dominated
29 by woody vegetation that is 6 meters tall or taller and is depicted on the National Wetlands
30 Inventory maintained by the United States Department of the Interior, United States Fish
31 and Wildlife Service as a Cowardin class palustrine forested wetland.

32 **Sec. 4. 38 MRSA §436-A, sub-§9-A**, as amended by PL 2013, c. 320, §4, is further
33 amended to read:

34 **9-A. Outlet stream.** "Outlet stream" means any perennial or intermittent stream, as
35 shown on the most recent, highest resolution version of the national hydrography dataset
36 plus available from the United States Geological Survey on the website of the United States
37 Geological Survey or the national map, that flows from a freshwater wetland.

38 **Sec. 5. 38 MRSA §436-A, sub-§11-A**, as amended by PL 2013, c. 320, §5, is
39 further amended to read:

40 **11-A. Stream.** "Stream" means a free-flowing body of water ~~from the outlet of a great~~
41 ~~pond or the confluence of 2 perennial streams~~ that is a perennial, modified Strahler 2nd-

1 order stream as depicted on the most recent, highest resolution version of the national
2 hydrography dataset plus available from the United States Geological Survey on the
3 website of the United States Geological Survey or the national map to the point where the
4 stream becomes a river or where the stream meets the shoreland zone of another water body
5 or wetland. When a stream meets the shoreland zone of a water body or wetland and a
6 channel forms downstream of the water body or wetland as an outlet, that channel is also a
7 stream.

8 **Sec. 6. 38 MRSA §436-A, sub-§14** is enacted to read:

9 **14. Tributary stream.** "Tributary stream" means any perennial or intermittent
10 modified Strahler first-order stream as depicted on the most recent, highest resolution
11 version of the national hydrography dataset plus available from the United States
12 Geological Survey.

13 **Sec. 7. 38 MRSA §436-A, sub-§15** is enacted to read:

14 **15. Wetland.** "Wetland" means lands inundated or saturated by surface or ground
15 water at a frequency and for a duration sufficient to support, and which under normal
16 circumstances do support, a prevalence of wetland vegetation typically adapted for life in
17 saturated soils. "Wetland" includes any coastal, freshwater and forested wetland.

18 **Sec. 8. 38 MRSA §438-A, sub-§1**, as amended by PL 1993, c. 315, §1, is repealed
19 and the following enacted in its place:

20 **1. Land use guidelines.** In accordance with Title 5, chapter 375, subchapter 2-A, the
21 Board of Environmental Protection shall adopt rules establishing minimum guidelines for
22 municipal zoning and land use controls that are designed to carry out the legislative
23 purposes described in section 435 and the provisions of this article. Minimum guidelines
24 established by the board must:

25 A. Include an exemption from the requirement for a municipal permit for the repair
26 and maintenance of an existing road culvert or for the replacement of an existing road
27 culvert, as long as the replacement culvert is not more than 25% longer than the culvert
28 being replaced, and not longer than 75 feet. Ancillary culverting activities, including
29 excavation and filling, are included in this exemption. A person repairing, replacing or
30 maintaining an existing culvert under this paragraph shall ensure that erosion control
31 measures are taken to prevent sedimentation of the water and that the crossing does not
32 block fish passage in the water course;

33 B. Include provisions governing building and structure size, setback and location and
34 establishment of resource protection, general development, limited residential,
35 commercial fisheries and maritime activity zones and other zones;

36 C. Prescribe uses that may be allowed in each zone with or without conditions;

37 D. Establish criteria for the issuance of permits and nonconforming uses, land use
38 standards and administrative and enforcement procedures;

39 E. Include a requirement for a person issued a permit pursuant to this article in a great
40 pond watershed to have a copy of the permit on site while work authorized by the
41 permit is being conducted;

1 F. Include clear and operable language that references widely available and best
2 available datasets and is designed to facilitate modeling in a geographic information
3 system and for enforcement purposes by municipal officials;

4 G. Define terms necessary for geographic information system modeling, including
5 "contiguous," "adjacent," "surficially connected" and other similar operational terms;

6 H. Include selection distances for use in a geographic information system and field
7 surveys; and

8 I. Exclude from the resource protection zone lots where less than 2,500 square feet of
9 the lot would be zoned as resource protection.

10 The board shall comprehensively review and update its rules adopted pursuant to this
11 subsection and shall reevaluate and update the rules at least once every 4 years. Rules
12 adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter
13 375, subchapter 2-A.

14 **SUMMARY**

15 This bill amends existing definitions and adds additional definitions related to the
16 zoning of shoreland areas. It also adds further requirements for minimum guidelines for
17 municipal zoning and land use controls adopted by the Board of Environmental Protection
18 including: the use of clear and operable language that references widely available and best
19 available datasets, specifically for modeling in a geographic information system and for
20 enforcement purposes by municipal officials; the addition of defined terms "contiguous,"
21 "adjacent," "surficially connected" and other similar operational terms; the selection
22 distances for use in geographic information systems and field surveys; and the exclusion
23 from the resource protection zone lots where less than 2,500 square feet of the lot would
24 be zoned as resource protection.