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September 11, 2020

Gerald D. Reid, Commissioner
Maine Department of Environmental Protection
17 State House Station
Augusta, ME 04333-0017

Re: Town of Freeport Request for Commissioner's Approval of Proposed Amendments to Freeport Shoreland Zoning Ordinances Based on Special Local Conditions

Dear Commissioner Reid:

I am writing on behalf of the Town of Freeport to request your approval, as Commissioner of the Maine Department of Environmental Protection ("DEP"), of the proposed amendments to the Town of Freeport's Shoreland Zoning Ordinance attached to this correspondence as **Exhibit A** ("the Proposed Amendments").

Such an approval by the DEP Commissioner based on special local conditions is expressly contemplated in the third paragraph of the Preamble to Chapter 1000 of the DEP's rules, Guidelines for Municipal Shoreland Zoning Ordinances.

In support of this request, I would submit that the Town of Freeport has special local conditions that support such an approval in that the Town of Freeport contains miles of shoreline that was developed for single family residential and commercial purposes long before the State of Maine adopted its mandatory shoreland zoning law. In addition, the Town has miles of public roads that are located within the 250' shoreland zone and that run roughly parallel to the shore. These roads running parallel to the shore create two types of lots of parcels of land: 1) those on the shore side of the road that have shore frontage on the body of water, and 2) those on the upland side of the road that have road frontage, but no shore frontage, even though they are partially located in the shoreland zone. I have attached to this letter as Exhibit B, a partial list of such lots that has been compiled by the Town of Freeport Code Enforcement Officer.

Under the DEP's current interpretation of the Shoreland Zoning Guidelines, Chapter 1000, Section 12.E(1) entitled "Non-Conforming Lots" parcels of land that are partially located in the Shoreland Zone, but that do not have shore frontage are considered non-conforming lots even if they are located on the upland side of a road and even if most of their area is located outside of the shoreland zone.

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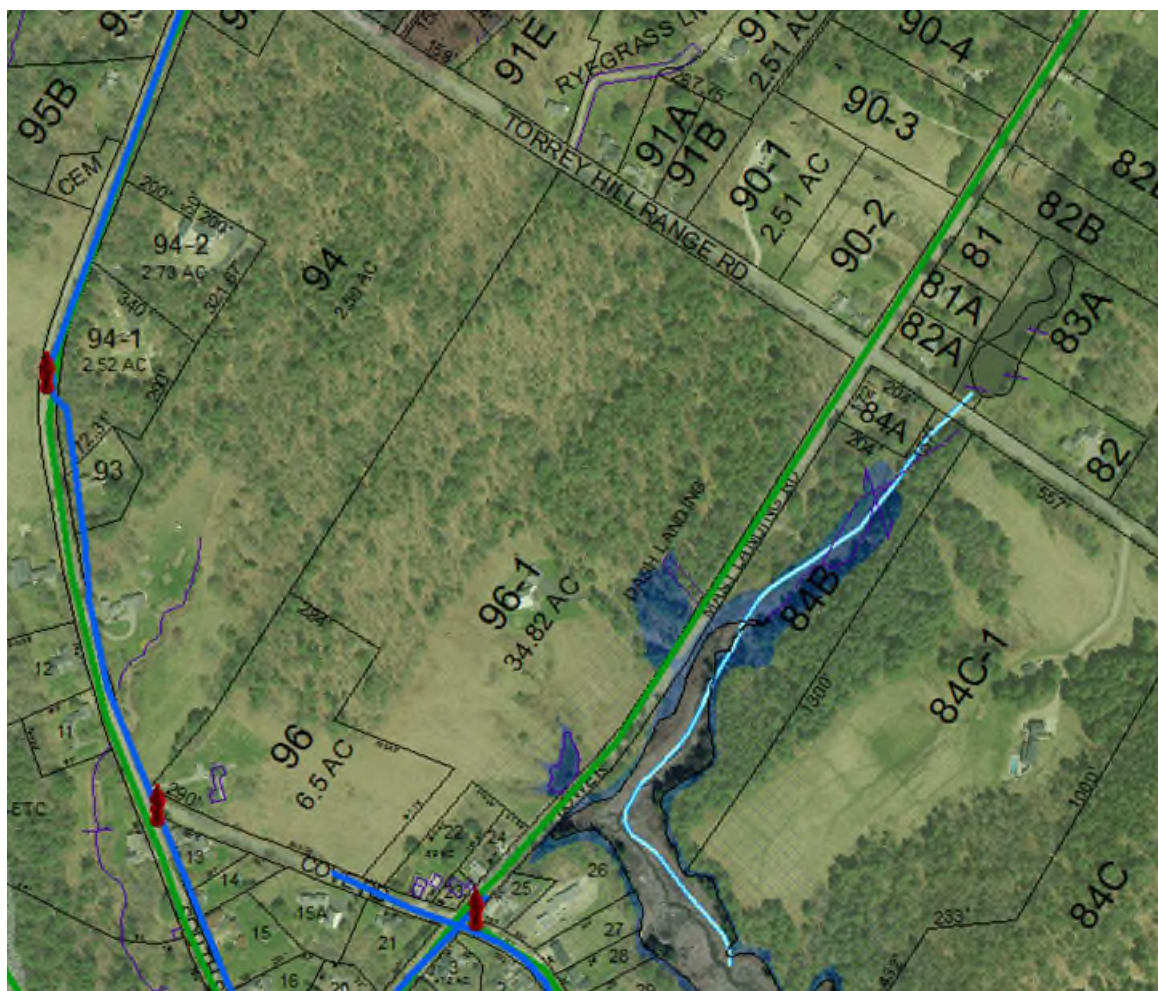
No matter what their size and no matter how much of their area is located outside the shoreland zone, as a result of the DEP's interpretation, these lots may not be divided or subdivided and they may not be developed for more than one single principal use.

As applied to the unique land use patterns and road configurations in the Town of Freeport, the DEP's interpretation of Section 12.E(1) has resulted in unwarranted hardship on affected property owners in Freeport and significant problems for the Town in the areas of zoning, land use and code enforcement, with no commensurate, or even negligible, resulting protection for the natural resources located in the Town's shoreland zone areas. The unwarranted restrictions on land uses located outside of the shoreland zone have become a significant public issue in the Town of Freeport and are undermining the public respect and support to the Town's diligent efforts to protect its important natural resources.

We have provided a number of illustrative examples of the special local conditions in the Town of Freeport in the pages that follow:

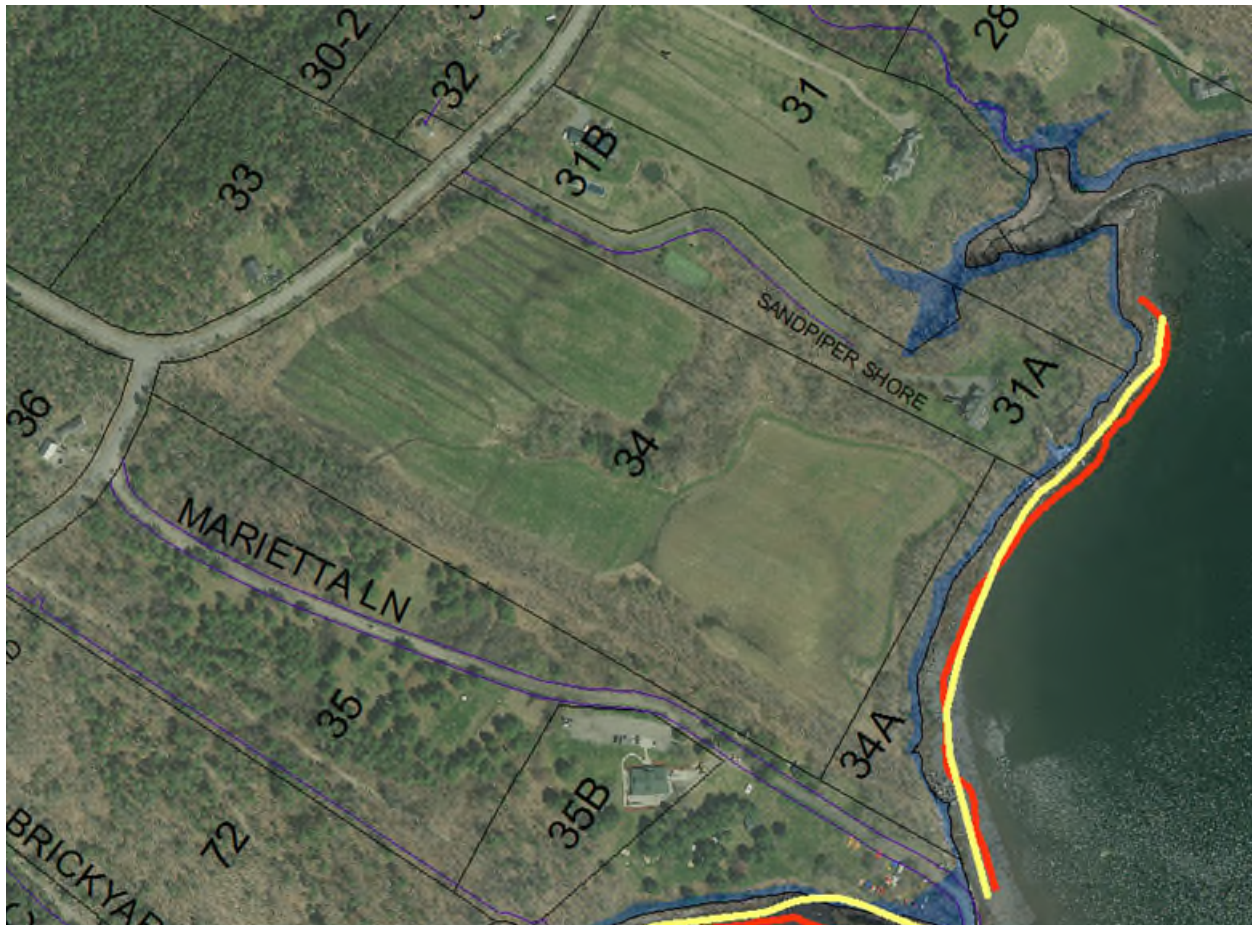
1) Tax Map 20, Lot 96-1:

This property is located on the upland side of the Lower Mast Landing Road, has a total area of 34.82 acres, only four (4) of which is located in the Shoreland Zone. This parcel has no shore frontage but 30 acres of the parcel are located outside the Shoreland Zone in the Rural Residential – 1 District under Freeport’s Zoning Ordinance. Under normal circumstances, the portion of this property located outside the shoreland zone could be subdivided into 12 lots, each of which could be used for a single family residence. Under the DEP’s interpretation of Section 12.E(1), however, this parcel of land may not be divided and it can only be used for one single family house.



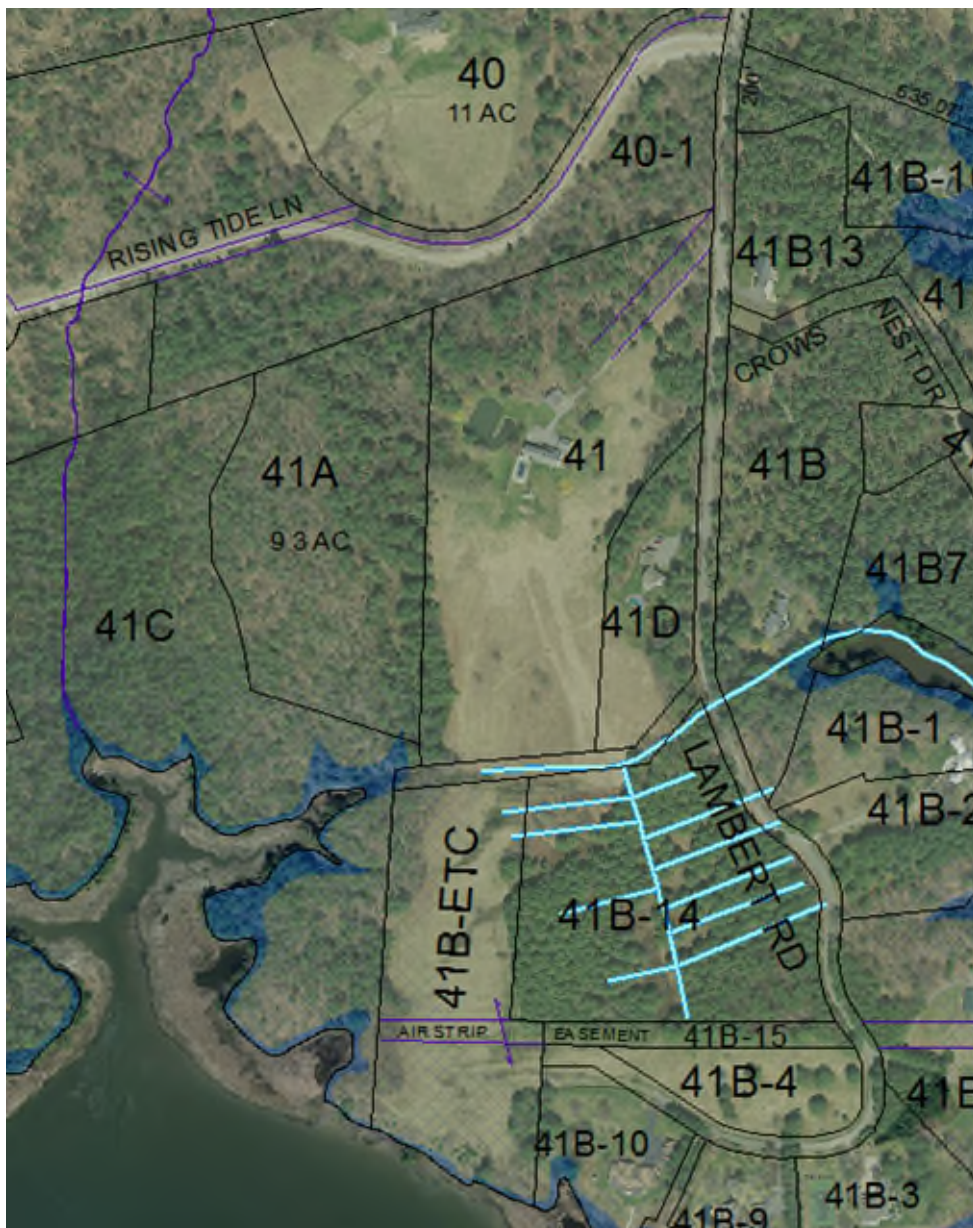
2) Tax Map 19, Lot 34:

This property is located on the upland side of Flying Point Road, has a total area of 34 acres, only three (3) of which is located in the Shoreland Zone. This parcel has no shore frontage but 31 acres of the parcel are located outside the Shoreland Zone in the Rural Residential – 1 District under Freeport’s Zoning Ordinance. Under normal circumstances, the portion of this property located outside the shoreland zone could be subdivided into 12 lots, each of which could be used for a single family residence. Under the DEP’s interpretation of Section 12.E(1), however, this parcel of land may not be divided and it can only be used for one single family house



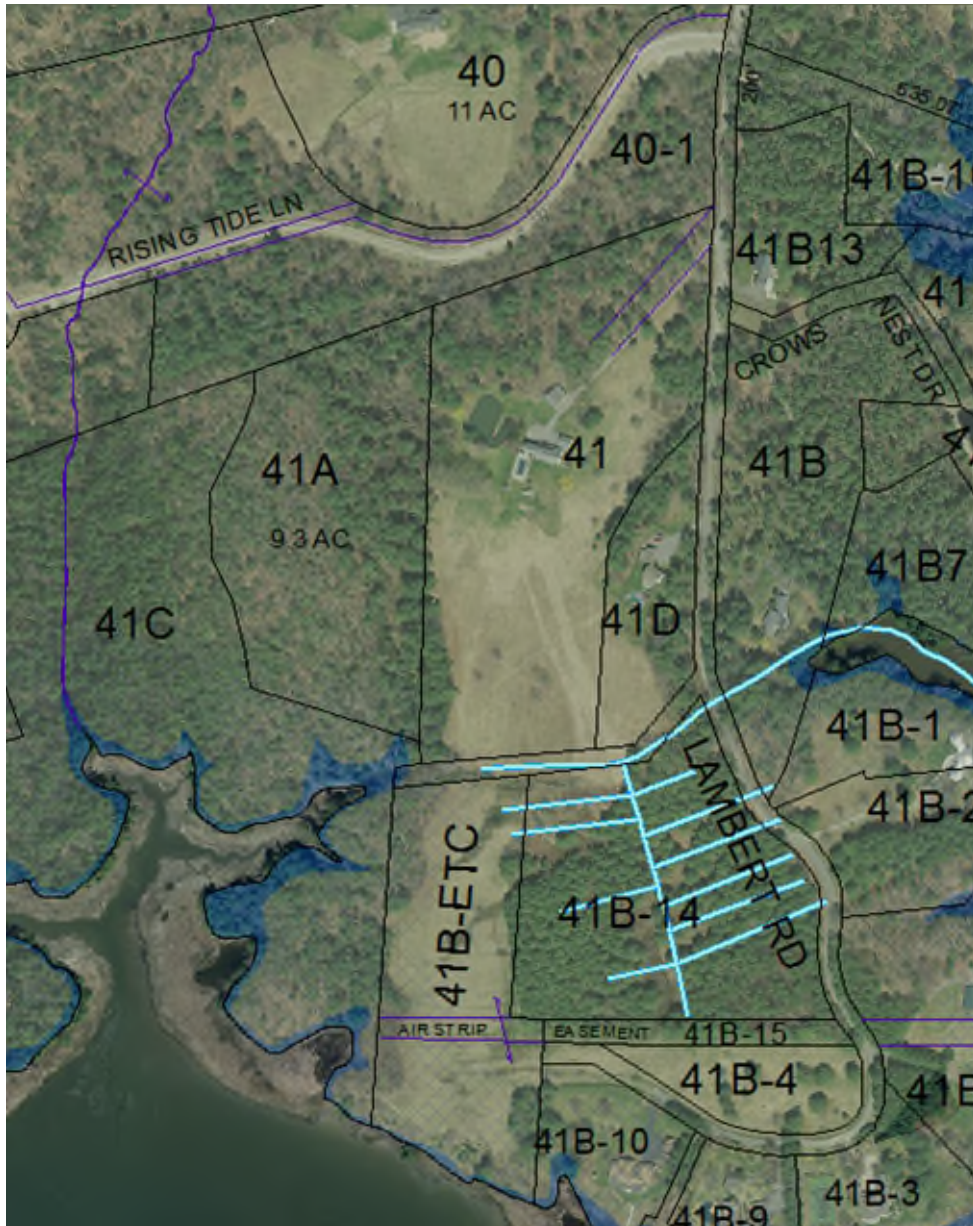
3) Tax Map 25, Lot 41:

This property is located on the upland side of Lambert Road, has a total area of 17.5 acres, only 0.25 of which is located in the Shoreland Zone. This parcel has no shore frontage but 17.25 acres of the parcel are located outside the Shoreland Zone in the Rural Residential – 1 District under Freeport’s Zoning Ordinance. Under normal circumstances, the portion of this property located outside the shoreland zone could be subdivided into 6 lots, each of which could be used for a single family residence. Under the DEP’s interpretation of Section 12.E(1), however, this parcel of land may not be divided and it can only be used for one single family house.



4) Tax Map 25, Lot 41A:

This property is located on the upland side of Lambert Road, has a total area of 9.5 acres, only 0.70 of which is located in the Shoreland Zone. This parcel has no shore frontage but 8.8 acres of the parcel are located outside the Shoreland Zone in the Rural Residential – 1 District under Freeport’s Zoning Ordinance. Under normal circumstances, the portion of this property located outside the shoreland zone could be subdivided into 4 lots, each of which could be used for a single family residence. Under the DEP’s interpretation of Section 12.E(1), however, this parcel of land may not be divided and it can only be used for one single family house.



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The Proposed Amendments (attached as Exhibit A) are designed to address this problem in a practical, common sense manner while still providing the full measure of protection to the natural resources intended to be protected by shoreland zoning. Your approval of the Proposed Amendments based on the special local conditions described in this letter would relieve the unnecessary hardship being experienced by Freeport residents and the Town and would go a long way toward restoring public confidence in the administration of the State's shoreland zoning laws.

If you have any questions about this request, or if we can be of further assistance, please contact me or Nick Adams, the Town's Code Enforcement Officer.

We hope that you will look favorably upon this request.

Sincerely,



Amy K. Tchao

Richard A. Spencer

Town Attorneys for Town of Freeport

Cc: Nick Adams, Freeport Codes Enforcement Officer
Peter Joseph, Freeport Town Manager
Colin Clark, Maine Department of Environmental Protection
Kate Tierney, Maine Attorney General's Office

EXHIBIT A

Amend Section 201 of the Town of Freeport Ordinance by adding thereto a new paragraph L as follows:

L. Notwithstanding any other provision of this Ordinance, an Oversized Lot that is partially located in a RR-1, RR-2, or V-2 District and partially located in a district within the Shoreland Zone, but that does not have sufficient shore frontage or lot width under Section 507(I)(1), may be divided into two or more lots provided that the following conditions are met with respect to each lot created by the division:

1. The majority of the area of the lot is located in the RR-1, RR-2 or V-2 District outside a district located within the Shoreland Zone;
2. The portion of the lot located in a district within the Shoreland Zone is not used for a residential dwelling unit, for a use requiring a permit from the Project Review Board or the Codes Enforcement Officer, or for any principal or accessory building;
3. The lot meets the minimum road frontage, minimum lot width, and minimum lot size requirements for the RR-1, RR-2 or V-2 District;
4. The driveway and utilities on the lot are not located within the minimum shore setback;
5. The driveway and utilities on the lot are not located within the portion of the lot in a district within the Shoreland Zone unless the Project Review Board makes a determination that there is no other reasonable alternative for access to the lot from a public way; and
6. Notwithstanding the provisions of 1 M.R.S. section 302, the division of the Oversized Lot is or was accomplished on or after January 1, 1990, by deed, plan or other similar legal document recorded in the Cumberland County Registry of Deeds. The lots, once so created, are not required to be held in separate ownership.

Amend Section 104 of the Town of Freeport Zoning Ordinance by adding the following definition of “Lot, Oversized” after the definition of “Lot of Record”:

Lot, Oversized: a lot with total area more than twice the minimum size required in the district in which the majority of the area of the lot is located.