**MEMORANDUM**

TO: Cape Elizabeth Town Council

FROM: Ordinance Committee

DATE: June 27, 2014

SUBJECT: Normal High Water Line Zoning Amendment

At the June 26, 2014 meeting, the Ordinance Committee recommended acceptance of the Planning Board recommendation of HAst +3’ to the Town Council by a vote of 3-0.

The Ordinance Committee also recommends preparation of a communication plan where public notices would be mailed to property owners in impacted Shoreland Zoning areas and also a presentation at a Town Council meeting showing how the proposed changes relate to existing town regulations

**Zoning Ordinance**

Normal High Water Line Zoning Amendments

**SEC. 19-1-3. DEFINITIONS**

**Highest Astronomical Tide:** The elevation of the highest predicted astronomical tide, referenced to Mean Lower Low Water (MLLW) at Portland Head Light tide prediction station. This prediction is based on an adjustment from the Portland tidal station. The highest astronomical tide is based on the most recent National Tidal Datum Epoch (NTDE) as determined from time to time by the National Ocean Service, an office within the U.S. Department of Commerce, National Oceanic and Atmospheric Administration.

**Normal High Water Line :** Adjacent to inland waters, the normal high water line shall be that line which is apparent from visible markings, changes in the character of soils due to prolonged action of the water or changes in vegetation, and which distinguishes between predominantly aquatic and predominantly terrestrial land. Areas contiguous with rivers and great ponds that support non-forested wetland vegetation and hydric soils and that are at the same or lower elevation as the water level of the river or great pond during the period of normal high-water are considered part of the river or great pond. Adjacent to tidal waters, the normal high water line shall be the topographic line located at the Highest Astronomical Tide, plus three (3) vertical feet upland.

**SEC. 19-6-11. SHORELAND PERFORMANCE OVERLAY DISTRICT**

**A. Purpose**

In order to maintain safe and healthful conditions; to prevent and control water pollution; to protect spawning grounds of fish, aquatic life, bird and other wildlife habitat; to protect archaeological and historic resources; to protect freshwater and coastal wetlands; to control building sites, placement of structures and land uses; to conserve shore cover; to protect visual, as well as actual, points of access to inland and coastal waters; to conserve natural beauty and open space; and to anticipate and respond to the impact of development in Shoreland areas, all land use activities within the Shoreland Performance Overlay District shall conform to the applicable land use standards in Sec. 19-8-2, Shoreland Performance Standards. This district is established in accordance with the provisions of 38 M.R.S.A. §435 et seq.

The Shoreland Performance Overlay District applies to all land within two hundred fifty (250) feet, horizontal distance, of the:

• normal high-water line of any great pond and the Spurwink River

• normal high water line of tidal waters; ;

• upland edge of a freshwater wetland

and all land areas within seventy-five (75) feet, horizontal distance, of the normal high-water line of a stream. This district 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. **(Effective October 15, 2009)** The Town has prepared a zoning map showing the Shoreland Performance Overlay District based on the best available information at a town wide scale. The actual boundaries of this district, however, shall be determined from a field engineering determination of the topographic line as defined above.