



## TOWN OF CAPE ELIZABETH

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March 5, 2013

Michael McGovern  
Cape Elizabeth Town Manager

Dear Michael,

During my first five weeks as Code Enforcement Officer, the biggest question for me has been: how will I interpret the definition of *Normal High Water Line of Coastal Waters*? On one hand it could be interpreted as the top of bank, but this is a subjective measure and it could sometimes cause a line that is 50 to 80 feet landward of where the highest tide of the year actually goes. On the other hand it could be interpreted as the limit of staining on rocks. This measure could create a line that is seaward of where the highest tide of the year actually goes. In my opinion, it is not in the Town's best interests to have a definition in the zoning ordinance that could cause 80 feet of variability in a zoning line. The past practice of the Code Enforcement Officer making this subjective determination on a case by case basis exposes the Town to litigation. I would recommend that the Town have a definition that enables land use professionals to determine the line based on objective and scientifically sound criteria.

For these reasons, it is my recommendation that the Town Council authorize the drafting of a zoning amendment to the definition of *Normal High Water Line of Coastal Waters* in order to make clear what the existing definition intends. I further recommend that we consider using the Maine Department of Environmental Protection definition for *coastal wetland*. It is a clear definition with objective criteria for determining an accurate and consistent zoning boundary. If the Town chooses to keep *top of the bank* in the definition, then the phrase should be further explained. The intent of this request is not to change Town policy, but rather to clarify it. Please let me know if I can be of further assistance in this matter.

Sincerely,

Benjamin McDougal  
Code Enforcement Officer

Cc: Maureen O'Meara