

**Town of St. George, Maine**

**LAND USE ORDINANCE**

Enacted: May 8, 2023

A true copy

Attest: \_\_\_\_\_

A handwritten signature in black ink, appearing to read 'R. Erb', written over a horizontal line.

Richard A. Erb,  
Town Clerk

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# **TOWN OF ST. GEORGE, MAINE**

## **LAND USE ORDINANCE**

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# **TOWN OF ST. GEORGE, MAINE LAND USE ORDINANCE**

## **CHAPTER 1**

### **GENERAL PROVISIONS**

**SECTION 101. TITLE.** This ordinance shall be known and may be cited as the "Land Use Ordinance" of the Town.

**SECTION 102. DEFINITIONS AND RULES OF INTERPRETATION.** Certain terms used in this ordinance are defined in chapter 31. Rules for interpreting this ordinance are also found in that chapter. Chapters 17 (Signs), 23 (Wellhead Protection), 25 (Floodplain Management), and 27 (Manufactured Housing and Mobile Home Parks) contain additional definitions of terms used in those chapters.

**SECTION 103. AUTHORITY.** This Ordinance is adopted pursuant to the enabling provisions of article VIII, part 2, section 1 of the Maine Constitution (Home Rule); 30-A M.R.S. chapters 111 (Home Rule), 141 (Ordinances), and 187 (Planning and Land Use Regulation); 38 M.R.S. chapter 3, article 2-B (Mandatory Shoreland Zoning); and various other provisions of law.

**SECTION 104. APPLICABILITY OF ORDINANCE.** This ordinance applies to all land within the Town. All principal and accessory structures hereafter erected, reconstructed, altered, enlarged, or moved shall be in conformity with this ordinance. This ordinance also applies to any structure built on, over, abutting, extending, or located below the normal high-water line of a water body or within a wetland, such as a dock, wharf, pier, or other similar structure. Nothing in this ordinance shall prevent the strengthening or restoring to safe condition any part of any building or structure declared unsafe by the Code Enforcement Officer.

**SECTION 105. PURPOSES.** The purposes of this ordinance are to preserve the rural and residential character of the Town, as recognized in the Comprehensive Plan; to further the maintenance of safe and healthful conditions; to prevent and control water pollution; to protect existing residential development; to protect fish spawning grounds, aquatic life, and bird and other wildlife habitat; to protect buildings and lands from flooding and accelerated erosion; to protect archaeological and historic resources; to protect, preserve, and promote commercial fishing and maritime industries; to protect freshwater and coastal wetlands; to control building sites, placement of structures and land uses; to conserve shore cover and visual as well as actual points of access to inland and coastal waters; to conserve natural beauty and open spaces; to anticipate and respond to the effects of development in shoreland areas; and to encourage commercial activities consistent with the purposes stated above.



**SECTION 106. AVAILABILITY.** A certified copy of this ordinance shall be filed with the Town Clerk and shall be accessible to any member of the public. Copies shall be made available to the public at reasonable cost at the expense of the person making the request. Notice of the availability of this ordinance, and its text, shall be posted on the Town's web site.

**SECTION 107. CONFLICTS WITHIN THIS ORDINANCE AND WITH OTHER LAWS.** If a provision of this ordinance conflicts with, or is inconsistent with, another provision of this ordinance or of any other law, the more restrictive provision shall control unless expressly provided otherwise in this ordinance or the other law. For purposes of this section a provision that applies only outside the shoreland zone shall not be treated as being in conflict with, or inconsistent with, a more-restrictive provision on the same subject that applies within the shoreland zone.

**SECTION 108. VALIDITY AND SEVERABILITY.** If any provision of this ordinance is held or becomes invalid or void, by virtue of any decision of any court of competent jurisdiction, or by virtue of any controlling federal, state, or other law, then only the provision specifically held to be invalid or void in such decision of the court, or specifically controlled by such law, shall be affected, and the remaining portions of this ordinance shall remain in full force and effect.

**SECTION 109. EFFECTIVE DATE.**

(a) Except as provided in subsection (b), this ordinance shall take effect when it is approved by a majority of the votes cast by the registered voters of the Town present at a regular or special town meeting.

(b) Chapter 13 (Shoreland Zoning), definitions of terms used in that chapter, and any other provision of this ordinance that modifies any provision of the Town's Shoreland Zoning Ordinance in effect prior to the adoption of this ordinance shall take effect as follows: A copy of this ordinance, attested and signed by the Town Clerk, shall be submitted to the Commissioner of the Maine Department of Environmental Protection following adoption by the registered voters of the Town as described in subsection (a). Any such modification shall not be effective unless approved by the Commissioner. If the Commissioner fails to act on any modification within 45 days after the Commissioner's receipt of this ordinance, the modification is automatically approved.

(c) Any application for a permit submitted to the Town within the 45-day period specified in subsection (b) shall be governed by this ordinance if the modified provision is approved by the Commissioner or automatically.

## **SECTION 110. AMENDMENT.**

(a) This ordinance may be amended in part or in whole by majority of the votes cast by the registered voters of the Town present at a regular or special town meeting. Except as provided in subsection (b), any amendment shall take effect as of the date of the town meeting.

(b) Any amendment to chapter 13 (Shoreland Zoning) or the definitions of terms used in that chapter, and any other modification of a provision of this ordinance, including without limitation chapter 15 or 17, or of the Board of Appeals Ordinance, that, in any such case, affects shoreland zoning or property or development in the shoreland zone, shall take effect as follows: A copy of the amendment, attested and signed by the Town Clerk, shall be submitted to the Commissioner of the Maine Department of Environmental Protection following adoption by the registered voters of the Town as described in subsection (a). The amendment shall not be effective unless approved by the Commissioner. If the Commissioner fails to act on the amendment within 45 days after the Commissioner's receipt of the amendment, the amendment is automatically approved. Any application for a permit submitted to the Town within the 45-day period shall be governed by the amendment, if the amendment is approved by the Commissioner.

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## **CHAPTER 3**

### **ADMINISTRATION; WHEN PERMITS ARE REQUIRED**

#### **SECTION 301. ADMINISTERING BODIES AND AGENTS.**

- (a) A Code Enforcement Officer shall be appointed or reappointed annually by July 1 in accordance with the Town Charter.
- (b) A Local Plumbing Inspector shall be appointed in accordance with the Town Charter.
- (c) The Planning Board previously created shall continue in existence, and its members shall be appointed in accordance with the Town Charter.
- (d) All persons holding an office referred to in this section on the effective date of this ordinance shall continue in their positions for the term to which they were appointed, subject to earlier removal as permitted by law.

#### **SECTION 302. PERMITS REQUIRED.**

- (a) Except as provided in section 303, without first obtaining a permit in accordance with this ordinance, no person shall, on or after the effective date of this ordinance—
  - (1) begin to engage in a use of any structure or land;
  - (2) expand, change, or replace an existing use of any structure or land;
  - (3) build, erect, demolish, construct, reconstruct, set, install, expand, or relocate any principal or accessory structure;
  - (4) occupy a recreational vehicle or similar structure as a residence for more than 90 days (whether or not consecutive) during any period of 365 consecutive days;
  - (5) expand an existing structure;
  - (6) alter or improve an existing structure in a way that involves the addition or removal of an interior wall, the addition or sealing up of any door opening, or any change to plumbing (other than the replacement of fixtures) or electrical wiring; or

(7) fill, move, remove, or otherwise disturb more than 100 cubic yards of soil over any 12-month period.

(b) A person who is issued a permit pursuant to this ordinance shall have a copy of the permit on site while the work authorized by the permit is performed.

(c) The Code Enforcement Officer or Local Plumbing Inspector is authorized to issue a permit only after an application has been reviewed and approved in accordance with this ordinance.

(d) The requirements and procedures for permit applications under this ordinance are stated in chapters 5, 7, and 11.

(e) Any permit required by this ordinance shall be in addition to any other permit required by other law or ordinance. The applicant shall be responsible for obtaining all other applicable local, state, and federal permits.

### **SECTION 303. PERMITS NOT REQUIRED.**

(a) A permit is not required for nonstructural maintenance and repairs (defined in section 3101 to include work such as painting, roofing, the replacement of interior and exterior doors or windows that does not change their openings, the repair, replacement, or refurbishing of flooring and tiling, and the like, but to exclude work that changes the footprint or floor area of a structure or involves the addition or removal of an interior wall, the addition or sealing up of a door opening, or any change to plumbing (other than the replacement of fixtures) or electrical wiring).

(b) A permit is not required for an alteration or improvement of an existing structure in a way that does not involve the addition or removal of an interior wall, the addition or sealing up of any door opening, or any change to plumbing (other than the replacement of fixtures) or electrical wiring.

(c) A permit is not required for the replacement of an existing road culvert as long as the replacement culvert is not more than 25 percent longer than the culvert being replaced, the replacement culvert is not longer than 75 feet, adequate erosion control measures are taken to prevent sedimentation of the water, and the crossing does not block fish passage in a water course.

(d) A permit is not required for an archaeological excavation as long as the excavation is conducted by an archaeologist listed on the Maine Historic Preservation Officer's level 1 or level 2 approval list, and unreasonable erosion and sedimentation is

prevented by means of adequate and timely temporary and permanent stabilization measures.

(e) A permit is not required for agricultural land management practices or forest management activities.

(f) A permit is not required to commence or expand an agricultural use or an aquacultural use, but is required to build, erect, demolish, construct, reconstruct, set, install, expand, or relocate any principal or accessory structure for such a use.

(g) A permit is not required for a home occupation, but is required to build, erect, demolish, construct, reconstruct, set, install, expand, or relocate any principal or accessory structure for such a use.

**SECTION 304. APPROVING AUTHORITIES.** The “approving authority” for permit applications under this ordinance is—

(1) the Local Plumbing Inspector, under section 1310, in the case of (A) conversions of seasonal residences in the shoreland zone to year-round residences and (B) private sewage disposal systems in the shoreland zone, under section 1310;

(2) the Planning Board for applications that require site plan review under chapter 11;

(3) the Planning Board or Code Enforcement for applications specified in section 1310;

(4) the Planning Board for applications for alterations and improvements described in section 302(a)(6), the cost of which exceeds \$50,000;

(5) the Planning Board for applications for alterations and improvements referred to the Planning Board by the Code Enforcement Officer under paragraph (7);

(6) the Planning Board for applications that require Planning Board approval under any other provision of this ordinance; and

(7) the Code Enforcement Officer in all other cases, including (A) applications for alterations and improvements that are described in section 302(a)(6) and do not change the footprint of floor area of a structure, the cost of which does not exceed \$50,000, unless the Code Enforcement Officer elects to

refer such application to the Planning Board, and (B) the installation of equipment or the construction of structures necessary for access to or egress from the dwelling of the person with a disability.

**SECTION 305. ISSUING AUTHORITIES.** The “issuing authority” for permits under this ordinance is (1) the Local Plumbing Inspector in the case of conversions of seasonal residences in the shoreland zone to year-round residences and private sewage disposal systems in the shoreland zone, under section 1310, and (2) the Code Enforcement Officer in all other cases.

**SECTION 306. CODE ENFORCEMENT OFFICER POWERS AND DUTIES.**

(a) The Code Enforcement Officer shall have the powers set forth in this ordinance and in Maine state law, including 30-A M.R.S. § 4452.

(b) Unless otherwise provided in this ordinance, the Code Enforcement Officer shall administer and enforce this ordinance. No permit or certificate of occupancy shall be issued by the Code Enforcement Officer except in compliance with the provisions of this ordinance. The Code Enforcement Officer shall have the following duties, among others, in enforcing this ordinance:

(1) Collect application fees and act upon or refer applications as follows:

(A) act upon building, construction, use, and other applications for which the Code Enforcement Officer is the approving authority;

(B) conduct an initial review of applications for which the Planning Board is the approving authority and refer them to the Planning Board when the Code Enforcement Officer determines that they are ready for Planning Board review; and

(C) refer administrative appeals and variance applications to the Board of Appeals.

(2) Exercise the enforcement powers described in part 4 (Enforcement) of chapter 7 (Review Procedures and Permit Administration).

(3) Conduct on-site inspections to insure compliance with all applicable laws and conditions attached to permit approvals

(4) Investigate complaints and reported violations.

(5) Keep written inspection reports and thorough records.

(6) Keep a complete record of all essential transactions involving this ordinance, including applications submitted, permits granted or denied, variances granted or denied, inspection reports, revocation actions, revocation of permits, appeals, court actions, violations investigated, violations found, and fees collected.

(7) Participate in appeal and variance proceedings under the Board of Appeals Ordinance.

(8) Process or act on consent agreements involving violations of this ordinance or appear in court when necessary.

(9) Prepare agendas, comments, and recommendations for mailing before each meeting of the Board of Appeals and the Planning Board, attend their meetings, and provide advice and comments to them.

(10) Perform duties imposed by Maine law or any Town ordinance, and additional duties as assigned by the Town Manager.

(c) When there is a question concerning the interpretation of this ordinance, the Code Enforcement Officer may refer the matter to the Board of Appeals or the Planning Board for interpretation.

### **SECTION 307. Local Plumbing Inspector Duties.**

(a) The Local Plumbing Inspector's duties under this ordinance are limited to—

(1) reviewing and approving or disapproving applications described in section 304(1), and

(2) reviewing and approving or disapproving sewage disposal plans for campgrounds under sections 1106(a)(23) and 1323 and private campsites under sections 1106(a)(24) and 1324.

(b) In addition, the Local Plumbing Inspector shall perform the duties specified in 30-A M.R.S. § 4221 or otherwise imposed by Maine law or any Town ordinance, and additional duties as assigned by the Town Manager.



**SECTION 308. FEES.** Application and permit fees shall be established by the Select Board and may be modified by the Select Board from time to time.

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## **CHAPTER 5**

### **APPLICATION CONTENT AND OTHER REQUIREMENTS**

#### **PART 1. APPLICABILITY**

**SECTION 501. APPLICABILITY OF CHAPTER.** This chapter applies to all applications required by section 302 except applications for subdivisions, which are subject to the Subdivision Ordinance. It also applies to applications to the Local Plumbing Inspector described in section 307(a), but not to applications to the Local Plumbing Inspector under any other law. It does not apply to applications to the Code Enforcement Officer under any other ordinance of the Town or any other law.

#### **PART 2. APPLICATION CONTENT**

##### **SECTION 502. REQUIREMENTS FOR ALL APPLICATIONS.**

(a) Every applicant for a permit shall submit a written application, including a scaled site plan, on a form provided by the Town, to the approving authority specified in section 304. The person identified in the application as the “applicant” shall be the person or legal entity occupying or proposing to occupy the premises or engaging in or proposing to engage in the use described in the application (and not any agent acting for that person or entity). The application shall be signed by or on behalf of the applicant. In addition, if the applicant is not the owner of the premises, the owner shall sign either the application or a separate document (in a form furnished by the Town) authorizing the applicant to sign the application on the owner’s behalf and granting permission for the Planning Board and Code Enforcement Officer to enter the premises for site visits and inspections. The applicant or the owner, or both, may give written authorization for a contractor, engineer, architect, lawyer, or other agent to sign any application or other document on behalf of the applicant or owner, in which case a copy of each authorization shall be filed with the application. By signing an application, in person or by an agent, the applicant certifies that the information in the application is complete and correct. All applications shall be dated, and the Code Enforcement Officer or Planning Board, as appropriate, shall note upon each application the date and time of its receipt.

(b) The application shall include the following information in the body of the form or on attachments as necessary, except to the extent waived under section 505:

(1) The name, mailing address, e-mail address, and telephone number of the applicant, the owner of the property (if other than the applicant), any agent for the applicant or owner, and the general contractor if determined (but not subcontractors).

(2) The property location, map and lot number, and a copy of the tax map showing the property and surrounding location.

(3) Evidence of the applicant's right, title, and interest in the property, such as a deed, lease, purchase agreement, or option agreement.

(4) A written description of the proposed project.

(5) Unless a formal site plan is required by chapter 11, a sketch map of the property showing (A) lot boundaries; (B) required setbacks; (C) the locations, dimensions and footprints of all existing and proposed buildings and other structures and of all roads, driveways, parking lots, and other non-vegetated surfaces; (D) the square footage and the percentage of the lot to be covered by all items mentioned in clause (C); and (E) if any part of the property is located in the shoreland zone, the locations of all wetlands and water bodies, including ponds, rivers, and streams.

(6) The estimated cost of the proposed project.

(7) A proposed construction schedule, including beginning and completion dates, and, if the proposed project is to be carried out in phases, a description of the phases.

(8) A list of all other local, state, and federal permits and approvals required for the proposed project, together with complete, signed copies of each such permit and approval or of the filed application for each such permit and approval.

(9) If required by the approving authority under section 504, a boundary survey described in that section.

(10) If the property is in whole or part within the shoreland zone, an indication of the zoning district in which it is located.

(11) If section 507 applies, the name and certification number of the erosion control supervisor required by that section.

(12) If any part of the proposed project is located in the shoreland zone, preconstruction photographs and, not later than 20 days after completion of the development, post-construction photographs of the shoreline vegetation and development site.

(13) Any other information necessary to show compliance with the approval requirements and other requirements of this ordinance.

(c) If the property is not served by a public sewer, and if the proposed structure or use would require the installation of a subsurface sewage disposal system, the application shall be accompanied by either a valid subsurface wastewater permit, including the site evaluation approved by the Local Plumbing Inspector, or a completed application for a subsurface wastewater permit.

(d) Each application shall be accompanied by payment of the fees required pursuant to section 308, including the fee for any subsurface wastewater permit submitted under subsection (b).

**SECTION 503. ADDITIONAL REQUIREMENTS FOR APPLICATIONS REQUIRING SITE PLAN APPROVAL.** In addition to the requirements of section 502, an application requiring site plan approval under chapter 11 shall contain the additional materials required by that chapter.

**SECTION 504. BOUNDARY SURVEY.** The approving authority may require the applicant to submit a survey of the perimeter of the tract whenever the approving authority finds that a survey is necessary to show compliance with requirements of this ordinance relating to lot size, lot coverage, and setback requirements. The survey shall be made and certified by a registered land surveyor and shall show complete descriptive data by bearings and distances.

**SECTION 505. WAIVERS.** An applicant may submit a written request for a waiver of one or more submission requirements if it can be shown that the submission is inapplicable, unnecessary, or inappropriate for the review. If the request is approved, the applicable submission requirement will not be required for the application to be considered complete. If an application does not include a required item and the approving authority decides the application without requiring it, the requirement is deemed to be waived.

### **PART 3. OTHER REQUIREMENTS**

**SECTION 506. CONSTRUCTION.** All construction shall conform to Maine state law, applicable building, plumbing, and fire codes, this ordinance, other applicable Town

ordinances, the applicable permit (including any conditions), and the description of the project contained in the permit application.

**SECTION 507. EROSION CONTROL SUPERVISOR.** When an excavation contractor will perform an activity that requires or results in soil disturbance of more than one cubic yard in the shoreland zone or 100 cubic yards elsewhere, the person responsible for management of erosion and sedimentation control practices at the site, must be certified in erosion control practices by the Maine Department of Environmental Protection. This person must be present at the site each day earthmoving activity occurs for a duration that is sufficient to ensure that proper erosion and sedimentation control practices are followed. This is required until erosion and sedimentation control measures have been installed, which will stay in place permanently or until the area is sufficiently covered with vegetation necessary to prevent soil erosion. The name and certification number of the person who will oversee the activity causing or resulting in soil disturbance shall be included on the permit application. This requirement does not apply to a person or firm engaged in agriculture or timber harvesting, or to municipal, state, and federal employees engaged in projects associated with that employment. A project described in this section shall be carried out in accordance with requirements of the Maine Erosion and Sediment Control for Construction: Best Management Practices.

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## **CHAPTER 7**

### **REVIEW PROCEDURES AND PERMIT ADMINISTRATION**

#### **PART 1. PREAPPLICATION**

**SECTION 701. IN GENERAL.** Before submitting a formal application the applicant may request a preapplication conference with the approving authority. A preapplication conference is strongly advised for a complex project or one recognized by the applicant to involve uncertain issues of interpretation under this ordinance. The preapplication conference shall be informal and informational in nature. There shall be no fee for a preapplication review, and such review shall not cause the plan to be a pending application for purposes of 1 M.R.S. § 302. No decision on the substance of the proposal shall be made at the preapplication conference.

#### **SECTION 702. PURPOSES.**

(a) The purposes of a preapplication conference are to—

(1) allow the Planning Board or Code Enforcement Officer to understand the nature of the proposed use and the issues involved in the proposal;

(2) allow the applicant to understand the review process and required submissions;

(3) identify issues that need to be addressed in future submissions; and

(4) make the applicant aware of any opportunities for coordinating the development with community policies, programs, or facilities.

(b) In addition, the Planning Board may schedule a site visit at the applicant's request if it decides it would be useful. A preapplication site visit shall not require notice by mail under section 706(b)(2), but a notice thereof shall be posted on the Town's web site and distributed to the Town's public e-mail distribution list.

**SECTION 703. INFORMATION REQUIRED.** There are no formal submission requirements for a preapplication conference. However, the applicant should be prepared to discuss with the Planning Board or the Code Enforcement Officer—

(1) the proposed site, including its location, size, and general characteristics;

- (2) the nature of the proposed use and potential development;
- (3) any issues or questions about existing municipal regulations and their applicability to the project; and
- (4) any requests for waivers from the submission requirements.

## **PART 2. APPLICATION REVIEW PROCEDURES**

### **SECTION 704. FILING OF APPLICATIONS.**

(a) Eight copies of each application for which the Planning Board is the approving authority (including all documents filed with the application) shall be filed with the Code Enforcement Officer, who shall see to the distribution of copies to members of the Planning Board.

(b) One copy of each application (including all documents filed with the application) for which Code Enforcement Officer is the approving authority shall be filed with the Code Enforcement Officer.

(c) Three copies of each application (including all documents filed with the application) for which the Local Plumbing Inspector is the approving authority shall be filed with the Local Plumbing Inspector.

### **SECTION 705. REVIEW PROCEDURES.**

(a) Within 35 days after the date or receipt of a written application (or 90 days in the case of an application for associated facilities of an offshore energy project), the approving authority shall notify the applicant in writing (or, in the case of the Planning Board, at a meeting and documented in the minutes of the meeting) either that the application is a complete application, or, if the application is incomplete, that specified additional material is needed to make the application complete. The Code Enforcement Officer or Local Plumbing Inspector, for applications for which such officer is the approving authority, shall make a determination of the completeness of the application within 15 days after receipt of additional material; and the Planning Board, for applications for which it is the approving authority, shall make a determination of the completeness of the application at the next meeting after the additional material is distributed to its members. Additional requests may be made from time to time if the application remains incomplete after the submission of additional material or to address issues raised at any public hearing on the application.

(b) The approving authority may obtain professional services from such service providers as it may select, to advise it in connection with its review of an application, including but not limited to legal, financial, engineering, environmental, traffic, scientific, and land-use services. Such services may address the same subjects covered in connection with the application by the applicant or its advisers. The application shall not be deemed to be complete until the approving authority has received reports from all such service providers. The applicant shall pay or reimburse the Town for the cost obtaining such services, and, if required by the Town, shall deposit with the Town from time to time funds in an amount determined by the Town to be necessary to cover the likely cost thereof. The Town shall not be required to segregate those funds in a separate deposit account or otherwise, or to pay interest thereon, and shall refund any unspent balance of those funds promptly after the decision on the application.

(c) If an application is filed before the applicant has received all other required local, state, and federal permits and approvals, and if the approving authority believes that findings of other permitting bodies will assist the approving authority in deciding the application, the approving authority may treat the application as incomplete until all such permits and approvals are obtained and filed with the application. In the alternative, the approving authority may deem the application to be complete, in which case the approving authority may approve the application conditioned on the receipt of such other permits and approvals.

#### **SECTION 706. PUBLIC HEARINGS.**

(a) The Planning Board, in its discretion, may hold a public hearing on an application for which it is the approving authority within 35 days after the determination that the application is complete, at which time public comments will be heard.

(b) Notice of the public hearing, stating its purpose, time, date, and place shall be given by—

(1) posting the notice on the Town's web site and distributing it to the Town's public e-mail distribution list at least seven days before the hearing; and

(2) sending the notice by first-class mail or e-mail at least ten days before the hearing to the abutting landowners and other owners of land within 300 feet from any property line of the subject property.

The persons entitled to notice under paragraph (2) and their addresses shall be determined on the basis of the tax maps and related records kept by the Town. If the Town's records are out of date because of a failure or delay by the Register of Deeds in notifying it of a change in ownership, the Town shall not be responsible for any failure to notify the current owner.



(c) Failure of an abutter or other owner specified in paragraph (b)(2) to receive the notice shall not invalidate the public hearing or require the Planning Board to schedule a new public hearing.

(d) The Planning Board may continue a public hearing by announcement at the hearing of the date, time, and place to which it is continued. No other notice of the continued hearing need be given.

**SECTION 707. ON-SITE INSPECTIONS.** In any application for which it is the approving authority, the Planning Board, in its discretion, may hold an on-site inspection of the site to review the existing conditions, verify the information submitted and investigate the development proposal. The Planning Board may schedule an on-site inspection either before or after the determination that the application is complete. If an application is pending during a period when there is snow cover, the deadline by which the Planning Board shall take final action on the application as specified in section 708(b) may be extended to a date not later than 30 days after the Planning Board is able to conduct an on-site inspection. The Planning Board shall give public notice of an on-site inspection in the same manner as provided in section 706(b) for a public hearing, and section 706(c) and (d) shall apply to an on-site inspection.

**SECTION 708. DECISION.**

(a) The Code Enforcement Officer or the Local Plumbing Inspector shall decide an application for which such officer is the approving authority not later than 30 days after the determination that the application is complete.

(b) The Planning Board shall decide an application for which it is the approving authority not later than—

(1) 35 days (or 90 days in the case of an application for associated facilities of an offshore energy project) after the completion of the public hearing if one has been held; or

(2) 35 days (or 90 days in the case of an application for associated facilities of an offshore energy project) after the determination that the application is complete if no public hearing is held;

but if a public hearing is held, and if the Planning Board requests the applicant to provide additional information to address any issue raised at the hearing, the time for decision shall be extended to be 35 days after the applicant has provided the additional information.

(c) Each decision shall be based on a determination whether the application meets the applicable approval standards in this ordinance. A decision may be to approve or disapprove the application or to approve it subject to reasonable conditions to insure conformity with the purposes of this ordinance. Any approval shall, in any event, be subject to the condition that all required local, state, and federal approvals will be obtained. If a permit is denied or approved with conditions, or approved over the objection of a party to the proceeding other than the applicant, the reasons for the action shall be stated in writing.

(d) Within seven days after the approving authority reaches a decision, the issuing authority shall notify the applicant of the decision in writing. A copy of all permits, conditions, and denials shall be maintained as a permanent record by the issuing authority.

(e) If any of the time periods specified in this chapter are inconsistent with applicable Maine state law (such as, for example, 38 M.R.S. § 480-HH(14), relating to offshore wind energy demonstration projects), the time periods provided by state law shall govern.

**SECTION 709. ISSUANCE OF PERMIT.** Upon approval of an application by the approving authority, the issuing authority shall promptly issue the related permit.

### **PART 3. POST-DECISION MATTERS**

**SECTION 710. EXPIRATION OF PERMIT.** A permit shall expire one year after the date of issuance if a substantial start is not made in construction or in the use of the property during that period. If a substantial start is made within one year after the issuance of the permit, the applicant shall have one additional year to complete the project, at which time the permit shall expire.

**SECTION 711. APPEAL.** An appeal to the Board of Appeals from an approval, approval with conditions, or denial of a permit may be taken, as provided in the Board of Appeals Ordinance.

### **PART 4. ENFORCEMENT**

**SECTION 712. NUISANCES.** Any violation of this ordinance shall be deemed to be a nuisance.

**SECTION 713. VIOLATIONS AND ENFORCEMENT.** It shall be the duty of the Code Enforcement Officer to enforce the provisions of this ordinance. If the Code Enforcement Officer finds that any provision of this ordinance is being violated, he or she shall notify in writing the person responsible for such violation, indicating the nature of the violation and ordering the action necessary to correct it, including discontinuance of illegal use of land, buildings, or structures, and abatement of nuisance conditions. A copy of such notices shall be submitted to the town's Select Board and the Planning Board and be maintained as a permanent record.

**SECTION 714. LEGAL ACTION.** When action by the Code Enforcement Officer under section 713 does not result in the correction or abatement of a violation or nuisance condition, the Select Board, upon notice from the Code Enforcement Officer, shall have the power to institute in the name of the Town any and all actions and proceedings, either legal or equitable, including seeking injunctions of violations and the imposition of fines, that may be appropriate or necessary to enforce the provisions of this ordinance. The Select Board, or its authorized agents, are hereby authorized to enter into administrative consent agreements for the purpose of eliminating violations of this ordinance and recovering fines without court action. Such agreements shall not allow an illegal structure or use to continue unless there is clear and convincing evidence that the illegal structure or use was constructed or conducted as a direct result of erroneous advice given by an authorized municipal official and there is no evidence that the owner acted in bad faith, or unless the removal of the structure or use will result in a threat or hazard to public health and safety or will result in substantial environmental damage.

**SECTION 715. PENALTIES.** Any person who continues to violate any provision of this ordinance after receiving written notice to correct the violation shall be subject to penalties prescribed by 30-A M.R.S. § 4452.

## **PART 6. MISCELLANEOUS PROVISIONS**

**SECTION 716. QUORUM OF AND ACTION BY PLANNING BOARD.** The number of members of the Planning Board constituting a quorum for the purpose of taking any action and the vote required to decide any matter shall be as provided in the Town Charter.

**SECTION 717. RIGHTS NOT VESTED.** Neither the submission of an application for review nor the review of an application to determine whether it is complete shall constitute the start of the review process for the purpose of bringing an application under the provisions of 1 M.R.S. § 302. The formal review process for that purpose shall

commence upon notification to an applicant that a complete application has been submitted.

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## CHAPTER 9

### DIMENSIONAL STANDARDS AND OTHER REQUIREMENTS

#### SECTION 901. LOT AREA AND DENSITY.

(a) **IN GENERAL.** Except as otherwise provided in this section or in chapter 13 (Shoreland Zoning), a lot shall have a lot area of at least one acre.

(b) **TWO-FAMILY RESIDENTIAL USES.** Except as provided in chapter 13 (Shoreland Zoning), a lot on which there are exactly two residential dwelling units shall have a lot area of at least two acres.

(c) **MULTI-UNIT RESIDENTIAL USES.** A lot used for multi-unit residential purposes shall have a lot area of one acre for each residential dwelling unit but not less than five acres. Each building on such a lot shall be not less than 25 feet from each other building, but residential dwelling units that are considered to be separate buildings under the definition of “building” in section 3101 solely because they are separated by a party wall need not comply with this sentence with respect to other residential dwelling units located in the same structure.

(d) **DETERMINATION OF AREA.** For purposes of calculating lot area under this section, lots located on opposite sides of a public or private road shall each be considered a separate lot.

(e) **SHORELAND ZONE.** Lots located in the shoreland zone shall comply with the lot-area requirements in chapter 13.

#### SECTION 902. LOT COVERAGE.

(a) The portion of a lot covered by non-vegetated surfaces shall not exceed—

(1) 70 percent of lot area in a commercial fisheries/maritime activities district in the shoreland zone;

(2) 50 percent of lot area in a limited commercial district in the shoreland zone; or

(3) 20 percent of lot area elsewhere.

(b) For purposes of calculating lot coverage under this section, non-vegetated surfaces include but are not limited to structures, driveways, parking areas, and other

areas from which vegetation has been removed or in which the soil has been compacted due to use. Naturally occurring ledge and rock outcroppings are not counted as non-vegetated surfaces when calculating lot coverage.

### **SECTION 903. SETBACK REQUIREMENTS FOR ROAD RIGHTS-OF-WAY.**

(a) Except as provided in subsection (b), all new principal and accessory structures shall be set back at least 25 feet from the edge of any road right-of-way.

(b) Notwithstanding subsection (a), where a structure is proposed for a lot that is abutted on both sides by lots having structures whose setback from the right-of-way is less than that required, or for a lot on which there are one or more existing structures whose setback from the right-of-way is less than that required, the Planning Board may reduce the setback requirement to that of the abutting structure with the least setback, but in no case less than ten feet from the edge of the right-of-way. The right-of-way setback shall be required for each yard abutting the right-of-way.

### **SECTION 904. SETBACK REQUIREMENTS FOR SIDE AND REAR LOT BOUNDARIES.**

(a) Except as provided in subsection (b) or in chapter 13 (Shoreland Zoning), all new principal and accessory structures shall be set back from each side and rear lot boundary at least as follows:

<b>Structure or use</b>	<b>Minimum setback</b>
One or two residential dwelling units	10 feet
Three or more residential dwelling units	25 feet
Non-residential	20 feet

(b) The requirements of subsection (a) shall not apply to electrical cable that is part of associated facilities of an offshore energy project, but other such associated facilities are subject to those requirements.

**SECTION 905. ROAD FRONTAGE.** Each lot shall have frontage along a public or private road right-of-way. The length of the frontage shall be not less than 50 feet in a commercial fisheries/maritime activities district or limited commercial district in the shoreland zone, or 100 feet elsewhere.

## **SECTION 906. STRUCTURE HEIGHT.**

(a) The height of any structure shall not exceed 35 feet, except that structures such as transmission towers, wind energy systems, antennas, and similar structures having no floor area are not subject to this section but shall meet the requirements of chapter 19 (Towers).

(b) For the purpose of determining height of a structure, a cupola, dome, widow's walk, or similar feature that is included in a new structure or added to an existing structure is exempt if—

(1) the structure without the feature conforms to the height limitations of this ordinance;

(2) the structure is not located in a resource protection district or stream protection district in the shoreland zone; and

(3) the cupola, dome, widow's walk or other similar feature—

(A) does not extend beyond the exterior walls of the existing structure;

(B) has a floor area of 53 square feet or less; and

(C) does not increase the height of the existing structure by more than seven feet.

**SECTION 907. ACCESSORY USES AND STRUCTURES.** Accessory uses, when aggregated, shall not subordinate the principal use of a lot.

**SECTION 908. SOLAR ENERGY SYSTEMS.** A solar energy system shall not be subject to site plan review under chapter 11 if it is an accessory structure located on a single lot used for residential purposes, and used to supply energy only to a principal use or structure located on the same lot, or an adjacent lot in the case of a common system serving not more than two principal uses or structure.

**SECTION 909. WIND ENERGY SYSTEMS.** A wind energy system shall not be subject to site plan review under chapter 11 if it has an aggregate rated capacity of not more than 100 kilowatts, is an accessory structure located on a single lot used for residential purposes, and is used to supply energy only to the same lot or an adjacent lot in the case of a common system serving not more than two principal residential structures.



**SECTION 910. PARKING.** There shall be at least two off-street parking spaces for each residential dwelling unit.

**SECTION 911. INDIVIDUAL PRIVATE CAMPSITES.** Individual private campsites not associated with campgrounds are allowed with a permit from the Code Enforcement Officer, provided the following conditions are met:

(1) One campsite per lot existing on the effective date of this ordinance, or 30,000 square feet of lot area, whichever is less, may be permitted.

(2) When an individual private campsite is proposed on a lot that contains another principal use or structure, the lot must contain the minimum lot dimensional requirements for the principal structure or use, and the individual private campsite separately.

(3) Only one recreational vehicle shall be allowed on a campsite. A recreational vehicle shall not be located on any type of permanent foundation except for a gravel pad, and no structure except a canopy shall be attached to the recreational vehicle.

(4) The clearing of vegetation for the siting of the recreational vehicle, tent or similar shelter in a resource protection district shall be limited to 1,000 square feet.

(5) A written sewage disposal plan describing the proposed method and location of sewage disposal shall be required for each campsite and shall be approved by the Local Plumbing Inspector. Where disposal is off-site, written authorization from the receiving facility or land owner is required.

(6) When a recreational vehicle, tent, or similar shelter is placed on-site in an individual private campsite for more than 90 days (whether or not consecutive and whether or not occupied) during any period of 365 consecutive days, all requirements for residential structures shall be met, including the installation, with a permit from the Local Plumbing Inspector obtained before the placement thereof, of a subsurface sewage disposal system in compliance with the Maine Subsurface Wastewater Disposal Rules, unless served by public sewage facilities. If such a structure is in place on the effective date of this ordinance, the requirements of this paragraph shall be met within one year after such effective date.

**SECTION 912. OCCUPANCY OF RECREATIONAL VEHICLE.** (a) When a recreational vehicle or similar shelter located other than on an individual private campsite is occupied as a residence for more than 90 days (whether or not consecutive) during any period of 365 consecutive days, all requirements for residential structures shall be met, including the installation, with a permit from the Local Plumbing Inspector, of a subsurface sewage disposal system in compliance with the Maine Subsurface Wastewater Disposal Rules (taking into account each bedroom in the recreational vehicle to determine the system's required capacity), unless served by public sewage facilities.

(b) The requirements of subsection (a) shall be met—

(1) before the 90th day of an occupancy that commences on or after the effective date of this ordinance specified in section 109(a), or

(2) not later than one year after the effective date of this ordinance specified in subsection 109(a) in the case of an occupancy that commenced before that date.

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## **CHAPTER 11**

### **SITE PLAN REVIEW**

#### **PART 1. PURPOSE AND APPLICABILITY OF CHAPTER**

**SECTION 1101. PURPOSE.** The substantial development of, or major changes in, the use of land can cause profound effects upon the cost and efficiency of municipal services and facilities and upon the environment of the Town. Such effects can affect municipal schools, recreation facilities, public utilities, solid-waste programs, police services, fire department, open space, road systems, transportation systems, and the general health, safety, and welfare of the Town. It is the purpose of this chapter to avoid such effects when they are unreasonable and are potentially caused by developments of the kind described in section 1102, which include commercial, retail, industrial, institutional, and nonprofit developments, and multi-family residential dwelling uses consisting of three or more dwelling units.

#### **SECTION 1102. WHEN SITE PLAN APPROVAL IS REQUIRED.**

(a) Except as provided in subsection (b), approval of a site plan is required for any of the following:

(1) The construction or placement of any new structure for nonresidential use, including an accessory structure.

(2) The expansion or increase in floor area of an existing nonresidential structure, including an accessory structure.

(3) The conversion of an existing structure, in whole or in part, from a residential use to a nonresidential use.

(4) The establishment of a new nonresidential use even if no buildings or other structures are proposed, including without limitation mineral extraction, gravel pits, cemeteries, golf courses, and other nonstructural nonresidential uses.

(5) The conversion of an existing nonresidential use, in whole or in part, to another nonresidential use if the new use changes the basic nature of the existing use in a way that increases the intensity of any on-site or off-site effect that is subject to the review standards in section 1106.

(6) The expansion of a nonresidential use if the expansion increases the intensity of any on-site or off-site effect that is subject to the review standards in section 1106.

(7) The construction of three or more residential dwelling units on a single lot, whether or not more than one such unit is located in a single building.

(8) The creation of a multi-unit residential use by the modification or expansion of an existing residential building or the construction of an additional residential building.

(9) An increase in the number of residential dwelling units at an existing multi-unit residential use by the modification or expansion of an existing residential building or the construction of an additional residential building.

(10) The alteration or improvement of an existing structure, at a cost that exceeds \$50,000, in a way that involves the addition or removal of an interior wall, the addition or sealing up of any door opening or any change to plumbing (other than the replacement of fixtures) or electrical wiring.

(11) The establishment or enlargement of a campground.

(12) The establishment or enlargement of a mobile home park.

(13) The construction of a solar energy system or wind energy system other than one described in section 908 or 909.

(14) Mineral extraction exceeding 100 cubic yards.

(15) The construction or expansion of paved areas or other impervious surfaces, including walkways, access drives, and parking lots, by more than 2,500 square feet in any five-year period.

(16) The placement of associated facilities of an offshore energy project.

(b) Notwithstanding subsection (a), the following are exempt from site plan approval (but not from other applicable requirements of this ordinance and other law):

(1) The construction, alteration, or enlargement of a building containing one or two dwelling units.

(2) The construction of a residential dwelling unit on a lot that contains one residential dwelling unit.

(3) The construction, alteration, or enlargement of accessory structures on a lot that contains one or two residential dwelling units.

(4) The placement, alteration, or enlargement of a single manufactured housing unit, including accessory structures.

(5) Agricultural or aquacultural uses, but not buildings used for agricultural or aquacultural purposes.

(6) Timber harvesting and forest management activities.

(7) The establishment or modification of a home occupation that does not result in changes to the site or exterior of any building other than the placement of signage that complies with chapter 17.

(8) The alteration or improvement of an existing structure, at a cost that does not exceed \$50,000, in a way that involves the addition or removal of an interior wall, the addition or sealing up of any door opening, or any change to plumbing (other than the replacement of fixtures) or electrical wiring and does not change the footprint or floor area of a structure.

(9) Nonstructural maintenance and repairs.

#### **SECTION 1103. APPLICABILITY OF OTHER ORDINANCE PROVISIONS.**

Applications for site plan review are subject to all other applicable provisions of this ordinance.

### **PART 2. APPLICATION CONTENT**

**SECTION 1104. BASIC APPLICATION REQUIREMENTS.** An application for site plan review shall contain the information required by section 502.

#### **SECTION 1105. ADDITIONAL REQUIREMENTS FOR SITE PLAN REVIEW.**

(a) **SITE PLAN.** In addition to the requirements of section 502, an application for site plan review shall be accompanied by a site plan prepared by a surveyor, architect, engineer, or other qualified professional. The site plan shall include the following, to the extent applicable to the proposed development, unless waived under section 505:

(1) The plan's graphic scale, which shall not be less than one inch to 50 feet, true north indicator, total lot area, and topography showing contours at two-foot intervals or as specified by the Planning Board.

(2) Boundaries, including dimensions and area, of the subject lot and all contiguous lots under the control of the applicant or affiliates of the applicant, whether or not all or any part thereof is being developed at the same time.

(3) Elevations of existing and proposed structures.

(4) Setbacks, buffers, and other dimensional requirements.

(5) Locations of existing and proposed rights-of-way, easements, restrictions, and covenants.

(6) The locations and dimensions of existing and proposed buildings, structures, other non-vegetated areas, and other significant physical features, both within the lot and outside the lot but within 300 feet of any lot line.

(7) Locations of existing and proposed utilities, such as sewer, water, gas, and telecommunication lines.

(8) Locations of existing and proposed subsurface wastewater disposal systems.

(9) Locations of open drainage courses, wetlands, water bodies, stone walls, graveyards, fences, stands of trees, and other important or unique natural areas and site features.

(10) Locations of all existing and proposed wells, both within the lot and outside the lot but within 300 feet of any lot line.

(11) Locations of existing or proposed fire hydrants, fire ponds, and similar features, both within the lot and outside the lot but within 300 feet of any lot line.

(12) Existing and proposed culverts, drains, and stormwater features, including the existing and proposed flow pattern of all storm drainage, both within the lot and outside the lot but within 300 feet of any lot line.

(13) Locations of wetlands and water bodies, including ponds, rivers, and streams, both within the lot and outside the lot but within 300 feet of any lot line.

(14) Locations of any archeological or historic resources as identified on the maps or data contained in the Comprehensive Plan.

(15) Locations and layout of existing and proposed streets, parking areas, sidewalks, trails, and similar features.

(16) Locations and dimensions of existing and proposed on-site pedestrian and vehicular access ways, parking areas, loading and unloading facilities (including the materials to be used in their construction), design of ingress and egress of vehicles to and from the site onto public streets, and curb and sidewalk lines.

(17) Locations, descriptions, dimensions, and front views of all proposed signs.

(18) Locations, descriptions, types, and intensity of all existing and proposed lighting, whether on signs or otherwise.

(19) A landscape plan showing location, type, and approximate size of existing and proposed plantings, indicating areas proposed to be cleared of vegetation, and the location and dimensions of all existing and proposed fencing and screening.

(20) Locations of all hazardous and radioactive materials described in section 1106(a)(20) proposed to be handled, stored, or used on the premises, including quantities and locations.

(21) Locations of noise emitters, noise controls, and any sound measurement locations.

(22) Location of the 100-year floodplain, if applicable.

(23) Locations of shoreland zone boundaries and of shoreland zone district boundaries, if applicable.

(24) Locations of any lands under conservation easement and areas where development is, or is proposed to be, limited, or prohibited.

(b) **ADDITIONAL INFORMATION.** In addition to the requirements of subsection (a), an application for site plan approval shall include the following, unless waived under section 505:



(1) A general description of the proposed activity and other aspects of the project.

(2) An estimate of the peak-hour and daily traffic to be generated by the proposed use.

(3) Proposed hours of operation, including days of weeks, hours per day, whether seasonal or not, and if seasonal the approximate beginning and ending days of the operating season.

(4) Municipal tax maps and lot numbers and names and addresses of landowners within 300 feet from the property lines.

(5) If the site is not served by a public sewer line, an on-site soils investigation report by a site evaluator licensed by the Maine Department of Health and Human Services containing the types of soil, location of the test pits, and proposed locations and design of the best practical subsurface disposal system for the site.

(6) A summary description of existing and proposed rights-of-way, easements, restrictions, and covenants placed on the property.

(7) A description of the method of solid and sewage waste disposal, and an estimate of the amount of solid waste expected to be generated in the construction and operation of the development and to be disposed of in the Town's solid-waste facility.

(8) If the development will generate toxic or odoriferous substances, a detailed plan to minimize emissions of such substances.

(9) Descriptions of any features shown on the site plan and described in paragraph (a)(9).

(10) The applicant's evaluation of the availability and suitability of off-site public facilities, including sewer, water, and streets. If the development will be supplied by the Tenants Harbor Water District or the Port Clyde Water District, the applicant's estimate of its daily water usage and a written statement from the water district that the development will not impose an unreasonable burden on the water district.

(11) If the project requires a stormwater permit from the Maine Department of Environmental Protection, or if the Planning Board determines such information is necessary based upon the scale of the project or the existing

conditions in the vicinity of the project, stormwater calculations, erosion and sedimentation control measures, and water-quality and phosphorous-management provisions.

(12) If the project involves filling, grading, excavation, mineral extraction, or other similar activities that result in unstabilized soil conditions, and that require a permit shall also require a written soil erosion and sedimentation control plan. The plan shall be submitted to the approving authority for approval, shall meet the requirements of the Maine Erosion and Sediment Control Handbook for Construction: Best Management Practices, and shall include, where applicable, provisions for—

(A) mulch and revegetation of disturbed soil;

(B) temporary runoff control features such as hay bales, silt fencing, or diversion ditches; and

(C) permanent stabilization structures such as retaining walls or riprap.

(13) Photographs of the existing conditions at the proposed site and a set of the same photographs with the proposed improvements overlaid.

(14) Any additional information requested by the Planning Board to determine whether the requirements of this ordinance are satisfied.

(c) **FINANCIAL INFORMATION.** An application for site plan approval shall include the following to the extent requested by the Planning Board:

(1) A statement of financial capacity, which may include, to the extent the Planning Board so requires, financial statements and other information of the applicant and of such affiliates of the applicant as the applicant wishes the Planning Board to consider in making its determination of financial capacity under section 1106(a)(25). Such financial statements need not be audited unless the applicant and relevant affiliates have otherwise caused them to be audited.

(2) A description of the applicant's legal structure and a corporate organizational chart of the applicants and its affiliates.

(d) **OFFSHORE ENERGY PROJECTS.** In addition to the requirements in subsections (a) through (c), an application for site plan review relating to associated facilities of an offshore energy project shall include the following, unless waived under section 505:

(1) a listing of all licenses, permits, and other approvals required for the development of the offshore energy project from any federal, state, or local agency; at the time the application is filed, a copy of each such license, permit, and approval or application therefor that has been obtained or filed at that time; and during the pendency of the site plan application, a copy of each such license, permit, approval, and application therefor, promptly after it is obtained or filed.

(2) A plan for the removal of the associated facilities in accordance with section 2105 and an estimate of the cost thereof, all in reasonable detail.

(3) Such other relevant professional studies, reports, certifications, and approvals as the Planning Board reasonably requests to establish compliance with this ordinance.

### **PART 3. REVIEW STANDARDS**

#### **SECTION 1106. REVIEW STANDARDS.**

(a) **IN GENERAL.** Except as provided in subsection (b), the Planning Board shall use the following standards in judging an application for site plan review, which shall serve as minimum requirements for approval of the site plan. The site plan shall be approved, unless in the judgment of the Planning Board, the applicant has not met one or more of these requirements. In all instances the burden of proof shall be on the applicant and such burden of proof shall include the production of evidence necessary for the Planning Board to review the application.

(1) **EFFECT ON THE EXISTING LANDSCAPE.** The landscape shall be preserved in its natural state insofar as practical by minimizing tree removal and disturbance of soil, and by retaining existing vegetation during construction. After construction is completed, landscaping shall be designed and planted that will define, soften, or screen the appearance of off-street parking areas from the public right-of-way and abutting properties and structures in order to enhance the physical design of the site or any buildings thereon, and to minimize the encroachment of the proposed use on neighboring land use.

(2) **RELATIONSHIP OF THE PROPOSED DEVELOPMENT TO THE ENVIRONMENT.** The proposed development shall reflect the natural capabilities of the site to support development. Each proposed structure shall be related harmoniously to the terrain and to existing buildings in the vicinity which have a visual relationship to the proposed structures. Special attention shall be paid to the bulk, location and height of the proposed structures and such natural features as

slope, soil type, and drainage ways. Environmentally sensitive areas, including but not limited to wetlands, steep slopes, floodplains, significant wildlife habitats, fisheries, scenic areas, habitats for rare and endangered plants and animals, unique natural communities and natural areas, sand and gravel aquifers, and areas identified or listed in the Comprehensive Plan shall be maintained and preserved to the maximum extent.

(3) **VEHICULAR ACCESS.** The proposed site layout shall provide for safe access and egress from public and private roads by providing adequate location, numbers and controls of access points including sight distances (as specified in Maine Department of Transportation standards), turning lanes, and traffic signalization, when required by existing and projected traffic flow on the municipal road system. Vehicular access to the site shall be on roads which have adequate capacity to accommodate the additional traffic generated by the development.

(4) **EMERGENCY ACCESS.** Provisions shall be made for maintaining convenient and safe access for emergency vehicles and personnel to all buildings and structures at all times.

(5) **PARKING AND PEDESTRIAN CIRCULATION.**

(A) The proposed site layout shall include parking adequate for the proposed use, determined as follows:

Use	Requirement
Dwellings	2 parking spaces per residential dwelling unit
Automobile, truck and tractor repair, and filling station	1 parking space for each regular employee plus 1 space for each 200 sq. ft. of floor area used for service work
Motels, hotels, tourist homes, rooming houses, bed and breakfasts, campgrounds	2 parking spaces plus 1 parking space for each rental unit
Nursery schools and day-care facilities	1 parking space for every 100 sq. ft.

<b>Use</b>	<b>Requirement</b>
Elementary and junior high schools	1 parking space for each adult employee plus 15 parking spaces for each 100 students or major fraction thereof of total enrollment
Marinas and other water-oriented recreational facilities with launching facilities	3 parking spaces for every 2 slips or moorings, arranged for trailers
Marinas and other water-oriented recreational facilities without launching facilities	1 parking space for each slip or mooring
Churches and other gathering spaces	1 parking space for each 4 seats or for each 100 sq. ft. or major fraction thereof of assemblage space if no fixed seats
Retail stores and financial institutions	1 parking space for each 175 sq. ft. of gross floor area
Drive-in restaurants, snack bars, and fast-food outlets	15 parking spaces, plus 1 space for each 3 seats. Seating is calculated by dividing the total floor area with customer access by 15.
Restaurants	1 parking space for each 3 seats. Seating is calculated by dividing the total floor area with customer access by 15.
Offices, professional, and public buildings	2 parking spaces for each office unit plus 1 parking space for each 250 sq. ft. of gross floor area
Convenience stores and neighborhood grocery facilities	6 parking spaces

<b>Use</b>	<b>Requirement</b>
Warehouse and storage (non-retail)	1 parking space for each 500 sq. ft. of floor area, or major fraction thereof

(B) The layout and design of all means of vehicular and pedestrian circulation, including walkways, interior drives, and parking areas, shall provide for safe general interior circulation, separation of pedestrian and vehicular traffic, service traffic, loading areas, and arrangement and use of parking areas.

(C) Parking stalls and aisle layout shall conform to the following standards.

<b>Parking angle</b>	<b>Stall width</b>	<b>Skew width</b>	<b>Stall depth</b>	<b>Aisle width</b>	<b>Aisle direction</b>
90°	9' 0"	—	18' 0"	24' 0"	two-way
60°	8' 6"	10' 6"	18' 0"	16' 0"	one-way
45°	8' 6"	12' 9"	17' 6"	12' 0"	one-way
30°	8' 6"	17' 0"	17' 0"	12' 0"	one-way

(D) In lots utilizing diagonal parking, the direction of proper traffic flow shall be indicated by signs, pavement markings or other permanent indications which shall be maintained as necessary.

(E) Parking areas for nonresidential uses shall be designed to permit each motor vehicle to proceed to and from the parking space provided for it without requiring the moving of any other motor vehicles. Double-stack parking is allowed for resident parking in conjunction with residential uses if both spaces in the stack are assigned to occupants of the same residential dwelling unit.

(F) Provisions shall be made to restrict the “overhang” of parked vehicles when it might restrict traffic flow on adjacent roads, restrict pedestrian or bicycle movement on adjacent walkways, or damage landscape materials.

(6) **EXISTING UTILITIES.** The development shall not impose an unreasonable burden on sewers, sanitary and storm drains, or facilities and other infrastructures Tenants Harbor Water District and the Port Clyde Water District.

(7) **MUNICIPAL SERVICES.** The development will not have an unreasonable adverse effect on municipal services, including municipal road systems, public safety functions, solid waste program, sewage treatment plant, schools, open spaces, recreational programs and facilities, and other municipal services and facilities.

(8) **SOIL SUITABILITY.** All land uses shall be located on soils in or upon which the proposed uses or structures can be established and maintained without causing adverse environmental effects, including severe erosion, mass soil movement, improper drainage, and water pollution, whether during or after construction. Proposed uses requiring subsurface waste disposal, and commercial or industrial development and other similar intensive land uses shall require a soils report based on an on-site investigation and be prepared by state-certified professionals. Certified persons may include Maine certified soil scientists, Maine registered professional engineers, Maine state certified geologists, and other persons who have training and experience in the recognition and evaluation of soil properties. The report shall be based upon the analysis of the characteristics of the soil and surrounding land and water areas, maximum ground water elevation, presence of ledge, drainage conditions, and other pertinent data which the evaluator deems appropriate. The soils report shall include recommendations for a proposed use to counteract soil limitations where they exist.

(9) **AIR QUALITY PROTECTION.** The development will comply with federal, state, and local requirements relating to air pollution and will not generate emissions that create a public nuisance at common law or are injurious or dangerous to public health, comfort, or property.

(10) **WATER SUPPLY.** The development will have sufficient water available for its reasonably foreseeable needs and will not cause an unreasonable burden on an existing water supply, if one is to be utilized.

(11) **WATER QUALITY.** No activity shall deposit on or into the ground or discharge to Maine waters any pollutant that, by itself or in combination with other activities or substances, will impair designated uses or the water classification of the water body, tributary stream, or wetland.

(12) **SEWAGE WASTE DISPOSAL.** The development will provide for adequate sewage waste disposal according to the Maine Subsurface Wastewater Disposal Rules.

(13) **GROUNDWATER PROTECTION.** The proposed development shall not adversely affect either the quality or quantity of groundwater available to properties in the vicinity or to public water-supply systems. If the project involves on-site water supply or sewage disposal systems with a capacity of 2,000 gallons per day or greater, the applicant shall demonstrate that the groundwater at the property line will comply, following development, with the standards for drinking water established by the State of Maine. No activity shall deposit on or into the ground or discharge to any water body, tributary stream, or wetland of any pollutant that, by itself or in combination with other activities or substances, will impair designated uses or the water classification of the water body, tributary stream, or wetland. There shall be no storage of materials on the property that, as a result of their volume, toxicity, temperature, obnoxiousness, or location, will run off from or percolate into the soils and pollute surface or ground waters.

(14) **SURFACE WATER AND STORMWATER DRAINAGE.** Adequate provisions shall be made for surface drainage so that removal of surface waters will not adversely affect neighboring properties, downstream properties, public or private streets, or existing storm drainage systems. On-site absorption and detention or retention of run-off waters shall be utilized to minimize discharges from the site. All natural drainage ways shall be preserved at their natural gradients and shall not be filled or converted to a closed system unless approved as part of the site plan review. The design of the stormwater drainage system shall provide for the disposal of stormwater without damage to adjacent properties, downstream, soils, and vegetation. The design of the storm drainage systems shall be fully cognizant of upstream runoff which shall pass over or through the site to be developed and provide for this movement.

(15) **EROSION AND SEDIMENTATION CONTROL.** If the project involves filling, grading, excavation, or other similar activities that result in unstabilized soil conditions, the following requirements shall be met.

(A) The Planning Board shall have approved the soil erosion and sedimentation control plan submitted pursuant to section 1105(b)(12).

(B) In order to create the least potential for erosion, development shall be designed to fit with the topography and soils of the site. Areas of steep slopes where high cuts and fills may be required shall be avoided wherever possible, and natural contours shall be followed as closely as possible.

(C) Erosion and sedimentation control measures shall apply to all aspects of the proposed project involving land disturbance and shall be in



operation during all stages of the activity. The amount of exposed soil at every phase of construction shall be minimized to reduce the potential for erosion.

(D) Any exposed ground area shall be temporarily or permanently stabilized within one week from the time it was last actively worked, by use of riprap, sod, seed, mulch, or other effective measures. In all cases permanent stabilization shall occur within nine months of the initial date of exposure. In addition:

(1) Where mulch is used, it shall be applied at a rate of at least one bale per 500 square feet and shall be maintained until a catch of vegetation is established.

(2) Anchoring the mulch with netting, peg and twine or other suitable method may be required to maintain the mulch cover.

(3) Additional measures shall be taken where necessary to avoid siltation into the water. Such measures may include the use of staked hay bales or silt fences.

(E) Natural and fabricated drainage ways and drainage outlets shall be protected from erosion from water flowing through them. Drainageways shall be designed and constructed to carry water from a 25-year storm or greater and shall be stabilized with vegetation or lined with riprap.

(16) **SPECIAL FEATURES OF THE DEVELOPMENT.** Exposed storage areas, exposed machinery installations, service areas, truck-loading areas, utility buildings, and similar structures shall have sufficient setbacks and screening to provide noise and visual buffers sufficient to minimize their adverse effect on other land uses within the development area and surrounding properties.

(17) **HOURS OF OPERATION.** The hours of operation, as proposed under section 1105(b)(3), shall not significantly interfere with other land uses in the vicinity, taking into account traffic, noise, odors, and other relevant factors.

(18) **ADVERTISING FEATURES.** Signs and other advertising features shall conform to chapter 17 (Signs).

(19) **EXTERIOR LIGHTING.** All exterior lighting shall be down-shielded and otherwise designed and shielded to minimize adverse effect on neighboring properties and rights-of-way.

(20) **HAZARDOUS AND RADIOACTIVE MATERIALS.** The handling, storage, and use of all materials identified by the standards of a federal or state agency as hazardous or special waste shall be done in accordance with the standards of these agencies. No flammable or explosive liquids, solids, or gases shall be stored in bulk (meaning in a container with a capacity of 1,000 gallons or more) unless they are located at least 75 feet (if stored above ground) or 40 feet (if stored underground) from any lot line. All materials shall be stored in a manner and location which is in compliance with appropriate rules and regulations of the Maine Department of Public Safety and other appropriate federal, state, and local regulations.

(21) **ACCOMMODATIONS FOR PERSONS WITH DISABILITIES.** The development shall comply with the following requirements.

(A) Curb ramps shall be installed as necessary.

(B) Where necessary, wheelchair ramps shall be provided, with a slope not exceeding one foot of rise per 12 feet of run, and a width as required by Americans with Disabilities Act of 1990.

(C) All sites shall provide wheelchair-accessible parking spaces and accompanying access aisles in accordance with Americans with Disabilities Act of 1990 and the regulations thereunder.

(22) **MINERAL EXTRACTION.** If the project involves mineral extraction, the applicant shall comply with section 507, and the following requirements shall be met.

(A) A reclamation plan shall be filed with and approved by the Planning Board before a permit is granted. Such plan shall describe in detail procedures to be undertaken to fulfill requirements of subparagraph (C).

(B) No part of any extraction operation, including drainage and runoff control features, shall be permitted within 100 feet, horizontal distance, of the normal high-water line of a great pond, or within 75 feet, horizontal distance, of the normal high-water line of any other water body, a tributary stream, or the upland edge of a wetland. Extraction operations shall not be permitted within 75 feet, horizontal distance, of any property line, without written permission of the owner of such adjacent property.

(C) Within 12 months following the completion of extraction operations at any extraction site, which operations shall be deemed complete when less than 100 cubic yards of materials are removed in any consecutive 12-month period, ground levels and grades shall be established in accordance with the following:

(i) All debris, stumps, and similar material shall be removed for disposal in an approved location or shall be buried on-site. Only materials generated on-site may be buried or covered on-site.

(ii) The final graded slope shall be 2.5 to one or flatter.

(iii) Topsoil or loam shall be retained to cover all disturbed land areas, which shall be reseeded and stabilized with vegetation native to the area. Additional topsoil or loam shall be obtained from off-site sources if necessary to complete the stabilization project.

(iv) No excavation within 100 feet from an adjacent street shall be extended below the grade of the street unless provision has been made and approved by the Select Board for reconstruction of the street at a different level.

(d) In keeping with the purposes of this ordinance, the Planning Board may impose such conditions as are necessary to minimize the adverse effects associated with mineral extraction operations on surrounding uses and resources.

(23) **CAMPGROUNDS.** Campgrounds shall comply with the Rules Relating to Campgrounds of the Maine Department of Health and Human Services, 10-144 C.M.R. chapter 205, whether or not the campground is required to be licensed by that department under those rules; shall be placed on a lot with a minimum lot area of five acres; and shall contain a minimum of 5,000 square feet of land, not including roads and driveways, for each site. Land supporting wetland vegetation, and land below the normal high-water line of a water body or tributary stream or the upland edge of a wetland shall not be included in calculating the minimum lot area or the land area per site. Campgrounds are subject to the setback requirements of chapter 9 (Dimensional Standards and Other Requirements) and section 1323, if applicable.

(24) **MOBILE HOME PARKS.** A motor home park and motor homes located thereon shall comply with the requirements of chapter 27 (Manufactured Housing and Mobile Home Parks).

(25) **FINANCIAL AND TECHNICAL CAPACITY.** The applicant may be required to demonstrate that the applicant has the financial and technical capacity to carry out the project in accordance with this ordinance and the approved plan.

(26) **SHORELAND ZONE.** If any part of the development is situated within the shoreland zone, the development will comply with chapter 13 and will not adversely affect the quality of any relevant water body, stream, or wetland or unreasonably affect the shoreline of such water body, stream, or wetland.

(27) **FLOOD PLAIN.** The development will meet the standards required by chapter 27 (Floodplain Management), if applicable.

(28) **LOT STANDARDS.** The development shall meet the applicable lot-related, building-height, and setback requirements of chapters 9 and 13.

(b) **EXCEPTION FOR CERTAIN ALTERATIONS AND IMPROVEMENTS.** Notwithstanding subsection (a), only the review standards in paragraphs (a) (25) through (28) shall apply to an application for alterations and improvements described in section 1102(a)(10).

(c) **POST-COMPLETION COMPLIANCE.** Failure to maintain compliance with the site plan approval following completion of the project shall constitute a violation of this ordinance, which may be enforced as provided in part 4 (Enforcement) of chapter 7 (Review Procedures and Permit Administration).

**SECTION 1107. WAIVER OF REVIEW STANDARDS.** If the Planning Board makes written findings of fact that the applicant has demonstrated the existence of special circumstances of a particular site proposed to be developed, it may waive portions of the review standards (other than dimensional standards for which the Board of Appeals has sole jurisdiction to grant variances), provided the public health, safety and welfare are protected. In granting any such waiver, the Planning Board shall require such conditions as will assure the purpose and objectives of this Ordinance are met.

#### **PART 4. PERFORMANCE GUARANTEES AND CONDITIONAL AGREEMENTS**

**SECTION 1108. WHEN PERFORMANCE GUARANTEE OR CONDITIONAL AGREEMENT REQUIRED.** As a condition of approval of any application that requires site plan approval, the Planning Board shall require a performance guarantee or a conditional agreement unless it determines that such a guarantee or agreement is not necessary in view of the scope and cost of the project, the financial resources of the applicant, and such other factors as the Planning Board considers relevant.

## **SECTION 1109. TYPES AND TERMS OF PERFORMANCE GUARANTEES.**

(a) A performance guarantee shall secure (1) the completion of the project and the completion of all road grading, paving, storm drainage, utilities, and other improvements for the public benefit, as described in the site plan, and (2) the restoration of the property to its original condition if the project is not completed.

(b) The following types of performance guarantees are acceptable:

(1) A certified or treasurer's check payable to the Town or a savings account or certificate of deposit naming the Town as owner, drawn on or issued by a bank licensed to do business in the State of Maine and having a long-term credit rating of A or better from a nationally recognized rating service.

(2) A performance bond payable to the Town and issued by an insurance company licensed to do business in the State of Maine and having an A. M. Best financial strength rating of A or better.

(3) An irrevocable letter of credit in favor of the Town, issued by a bank described in paragraph (1).

(c) The amount of a performance guarantee shall be 125 percent of the estimated cost of the project, or a lesser amount satisfactory to the Planning Board in light of the scope and nature of the project, and its other terms shall be reasonably satisfactory to the Planning Board.

(c) The performance guarantee shall contain a construction schedule, cost estimates for each phase of construction, provisions for inspection of each phase of construction, provisions for the release of part or all of the performance guarantee to the applicant, and a date after which the applicant will be in default and the Town shall have access to the funds to finish construction.

**SECTION 1110. TERMS OF CONDITIONAL AGREEMENTS.** A conditional agreement shall be in form and substance satisfactory to the Planning Board and shall provide that no occupancy of the property may take place until the completion of all road construction and grading, paving, storm drainage, utilities, and other improvements for the public benefit, as described in the site plan.

## **SECTION 1111. ADMINISTRATION OF PERFORMANCE GUARANTEES AND CONDITIONAL AGREEMENTS.**

(a) If the Code Enforcement Officer determines that the applicant has met all of its obligations under the performance guarantee or conditional agreement, the Code Enforcement Officer shall promptly certify that determination to the Planning Board.

(b) The Planning Board may require a professional engineer to inspect the project and certify that all required improvements have been completed, all at the applicant's expense.

(c) The performance guarantee or conditional agreement shall be released only after the Planning Board has received the Code Enforcement Officer's certification under subsection (a) and, if applicable, the engineer's certification described in subsection (b).

## **PART 5. POST-APPROVAL CHANGES**

**SECTION 1112. MINOR CHANGES TO APPROVED PLANS.** Minor changes to an approved site plan necessary to address field conditions may be approved by the Code Enforcement Officer, provided that any such change does not result in noncompliance with any review standard in section 1106 or alter the essential nature of the project. Any such change shall be endorsed in writing on the approved plan by the Code Enforcement Officer.

**SECTION 1113. AMENDMENTS TO APPROVED SITE PLANS.** Approval of a site plan is dependent upon and limited to the proposals and plans contained in the application and supporting documents submitted and affirmed by the applicant. Any variation from the plans, proposals and supporting documents, except minor changes covered by section 1112, constitutes an amendment to the site plan and is subject to review and approval by the Planning Board. The review standards in section 1106 apply to the Planning Board's approval of any amendment under this section.

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## **CHAPTER 13**

### **SHORELAND ZONING**

#### **PART 1. ZONING DISTRICTS AND OFFICIAL ZONING MAPS**

**SECTION 1301. ZONING DISTRICTS.** The shoreland zone has been divided into the following districts by the predecessor to this ordinance, and the boundaries of those districts as in effect immediately before the effective date of this chapter are hereby confirmed:

- (1) resource protection districts;
- (2) marine residential districts;
- (3) limited commercial districts;
- (4) commercial fisheries/maritime activities districts;
- (5) stream protection districts; and
- (6) recreation districts.

#### **SECTION 1302. OFFICIAL SHORELAND ZONING MAP.**

(a) The Town's Official Shoreland Zoning Map as in effect immediately before the effective date of this chapter shall continue in effect for purposes of this ordinance and shall meet the requirements of this section.

(b) The Official Shoreland Zoning Map shall be drawn at a scale of 1 inch = 1,500 feet. District boundaries shall be clearly delineated and a legend indicating the symbols for each district shall be placed on the map.

(c) The Official Shoreland Zoning Map shall be certified by the attested signature of the Town Clerk of the Town and shall be located in the Town Office and be available for inspection by the public during business hours.

(d) If amendments, in accordance with section 110, are made in the district boundaries or other matter portrayed on the Official Shoreland Zoning Map, such changes shall be made on the Official Shoreland Zoning Map within 30 days after the amendment has been approved by the Commissioner of the Maine Department of Environmental Protection.



### **SECTION 1303. INTERPRETATION OF DISTRICT BOUNDARIES.**

(a) Unless otherwise set forth on the Official Shoreland Zoning Map, district boundary lines are property lines, the center lines of streets, roads or rights of way, and the boundaries of the shoreland zone. The boundaries of the resource protection districts and the stream protection districts as shown on the Official Shoreland Zoning Map are approximate. Exact boundary determinations by a professional trained in wetlands identification may be requested from any applicant by the Planning Board or the Code Enforcement Officer or may be provided by an applicant on the applicant's own initiative. Where uncertainty exists as to the exact location of district boundary lines, the Board of Appeals shall be the final local authority as to location.

(b) The Official Shoreland Zoning Map is the primary tool to which to refer in determining district boundaries under ordinances that are not more explicit in their district descriptions than the language of the Guidelines. Where there is inconsistency between the Map and these general text descriptions of the shoreland districts as provided in the minimum guidelines, the Map prevails.

## **PART 2. DESCRIPTION OF DISTRICTS**

### **SECTION 1304. RESOURCE PROTECTION DISTRICTS.**

(a) Resource protection districts include areas in which development would adversely affect water quality, productive habitat, biological ecosystems, or scenic and natural values. Those districts shall include the following areas when they occur within the limits of the shoreland zone, exclusive of a stream protection district, except that areas that are currently developed and areas that meet the criteria for limited commercial or commercial fisheries/maritime activities districts need not be included within a resource protection district.

(1) Flood plains along rivers and flood plains along artificially formed great ponds along rivers, defined by the 100-year flood plain as designated on the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps or Flood Hazard Boundary Maps, or the flood of record, or in the absence of these, by soil types identified as recent flood plain soils. Such a district shall also include 100-year flood plains adjacent to tidal waters as shown on FEMA's Flood Insurance Rate Maps or Flood Hazard Boundary Maps.

(2) Areas of two or more contiguous acres with sustained slopes of 20 percent or greater.

(3) Areas of two or more contiguous acres supporting wetlands vegetation and hydric soils, which are not part of a freshwater or coastal wetland, and which are not surficially connected to a water body during the period of normal high water.

(4) Land areas along rivers subject to severe bank erosion, undercutting, or river-bed movement and lands adjacent to tidal waters that are subject to severe erosion or mass movement, such as steep coastal bluffs.

(5) Areas that have been recommended for protection in the Comprehensive Plan of the Town, such as—

(A) important wildlife habitat;

(B) natural sites of significant scenic or esthetic value;

(C) areas designated by federal, state, or municipal governments as natural areas of significance to be protected from development;

(D) other significant areas that should be included in a resource protection district to fulfill the purpose of this chapter, such as, but not limited to, existing public access areas and certain significant archaeological and historic sites deserving of long-term protection, as determined by the Town after consultation with the Maine Historic Preservation Commission; and

(E) areas within 250 feet, horizontal distance, of the upland edge of freshwater or coastal wetlands, salt marshes and salt meadows, and wetlands associated with great ponds and rivers, which are rated “moderate” or “high” value waterfowl and wading bird habitat, including nesting and feeding areas, by the Maine Department of Inland Fisheries and Wildlife (which are generally depicted on a Geographic Information System (GIS) data layer). For purposes of this paragraph “wetlands associated with great ponds and rivers” means areas characterized by non-forested wetland vegetation and hydric soils that are contiguous with a great pond or river and that have a surface elevation at or below water level of the great pond or river during the period of normal high water. “Wetlands associated with great ponds or rivers” are part of that great pond or river.

(b) In addition to the notice required by 30-A M.R.S. § 4352, subsection 9, the Town shall provide written notification to any landowner whose property is being considered by the Town for placement in a resource protection district. Notification to

landowners must be made by first-class mail to the last known addresses of the persons against whom property tax on each parcel is assessed. The municipal officers shall prepare and file with the Town Clerk a sworn, notarized certificate indicating those persons to whom notice was mailed and at what addresses, and when, by whom, and from what location notice was mailed. This certificate constitutes prima facie evidence that notice was sent to those persons named in the certificate. The Town must send notice no later than 14 days before it holds a public hearing on adoption or amendment of a zoning ordinance or map that places the landowner's property in a resource protection district. Once a landowner's property has been placed in a resource protection district, individual notice is not required to be sent to the landowner when the zoning ordinance or map is later amended in a way that does not affect the inclusion of the landowner's property in the resource protection district.

**SECTION 1305. MARINE RESIDENTIAL DISTRICTS.** Marine residential districts include those areas suitable for residential and recreational development. They include areas other than those in a resource protection district or a stream protection district, and areas that are used less intensively than those in a limited commercial district or a commercial fisheries/maritime activities district.

**SECTION 1306. LIMITED COMMERCIAL DISTRICTS.** Limited commercial districts include areas of mixed, light commercial and residential uses, exclusive of the stream protection districts. These districts include areas of two or more contiguous acres in size devoted to a mix of residential and low intensity business and commercial uses. Industrial uses are prohibited in limited commercial districts.

**SECTION 1307. COMMERCIAL FISHERIES/MARITIME ACTIVITIES DISTRICTS.** Commercial fisheries/maritime activities districts include areas where the existing predominant pattern of development is consistent with the allowed uses for this district as indicated in the Table of Land Uses (section 1310), and other areas that are suitable for functionally water-dependent uses, taking into consideration such factors as—

- (1) shelter from prevailing winds and waves;
- (2) slope of the land within 250 feet, horizontal distance, of the shoreline;
- (3) depth of the water within 150 feet, horizontal distance, of the shoreline;
- (4) available support facilities, including utilities and transportation facilities; and
- (5) compatibility with adjacent upland uses.

**SECTION 1308. STREAM PROTECTION DISTRICTS.** Stream protection districts include all land areas within 75 feet, horizontal distance, of the normal high-water line of a stream, exclusive of those areas within 250 feet, horizontal distance, of the normal high-water line of a great pond or river, or within 250 feet, horizontal distance, of the upland edge of a freshwater or coastal wetland. Where a stream and its associated shoreland area are located within 250 feet, horizontal distance, of the above water bodies or wetlands, that land area shall be regulated under the terms of the shoreland district associated with that water body or wetland.

**SECTION 1309. RECREATION DISTRICTS.** Recreation districts include areas so designated by the Town to provide and encourage the development of public recreational facilities.

### **PART 3. ALLOWED AND PROHIBITED LAND USES**

#### **SECTION 1310. TABLE OF LAND USES.**

(a) The Table of Land Uses in subsection (c) reflects the land-use activities allowed without a permit, allowed with a permit (and the relevant approving authority), and prohibited in the shoreland zone. All allowed land-use activities shall conform with all of the applicable land-use standards in this chapter. The district designation for a particular site shall be determined from the Official Shoreland Zoning Map.

(b) In the Table of Land Uses, the following words and abbreviations have the following meanings:

Y:	Allowed without permit, but the use shall comply with all applicable land-use standards.
N:	Prohibited.
PB:	Allowed with a permit approved by the Planning Board and issued by the Code Enforcement Officer.
CEO:	Allowed with a permit approved and issued by the Code Enforcement Officer.
LPI:	Allowed with permit approved and issued by the Local Plumbing Inspector.
RP:	Resource protection district.
MR:	Marine residential district.

CFMA: Commercial fisheries/maritime activities district.

SP: Stream protection district.

LC: Limited commercial district.

RC: Recreation district.

(c) The following is the Table of Land Uses. The notes following the Table of Land Uses are an integral part thereof.

LAND USES	RP	MR	CFMA	SP	LC	RC
1. Non-intensive recreational uses not requiring structures, such as hunting, fishing, hiking	Y	Y	Y	Y	Y	Y
2. Motorized vehicular traffic on existing roads and trails	Y	Y	Y	Y	Y	Y
3. Forest management activities except for timber harvesting and land-management roads	PB	Y	Y	PB	Y	PB
4. Land-management roads & timber harvesting	PB	PB	PB	PB	PB	PB
5. Clearing or removal of vegetation for activities other than timber harvesting*	CEO (Note 1)	CEO	CEO	CEO	CEO	CEO
6. Fire prevention activities	Y	Y	Y	Y	Y	Y
7. Wildlife management practices	Y	Y	Y	Y	Y	Y
8. Soil & water conservation practices	Y	Y	Y	Y	Y	Y
9. Mineral exploration	N	Y (Note 2)	Y (Note 2)	N	Y (Note 2)	N
10. Mineral extraction, including soil, sand, and gravel	N (Note 3)	PB	PB	N	PB	PB

<b>LAND USES</b>	<b>RP</b>	<b>MR</b>	<b>CFMA</b>	<b>SP</b>	<b>LC</b>	<b>RC</b>
11. Surveying & resource analysis	Y	Y	Y	Y	Y	Y
12. Emergency operations	Y	Y	Y	Y	Y	Y
13. Agriculture*	PB	Y	N	PB	Y	PB
14. Aquaculture*	PB	PB	Y	PB	Y	PB
15. Principal structures* and uses						
a. One- and two-family residential dwellings, including driveways	PB (Note 9)	CEO	N	PB (Note 4)	CEO	N
b. Multi-unit residential	N	PB	N	N	PB	N
c. Mobile home parks	N	N	N	N	N	N
d. Commercial structures and uses	N (Note 10)	N (Note 10)	PB (Note 5)	N	PB	N
e. Motels/hotels	N	N	N	N	PB	N
f. Bed and breakfasts	N	PB	N	N	PB	N
g. Industrial structures and uses	N	N	PB (Note 5)	N	N	N
h. Governmental & institutional structures	N	PB	PB (Note 5)	N	PB	N
i. Small nonresidential facilities for educational, scientific, or nature interpretation purposes	PB	CEO	PB (Note 5)	PB (Note 4)	CEO	PB
16. Structures accessory to allowed uses*	PB	CEO	Y	PB (Note 4)	CEO	PB

<b>LAND USES</b>	<b>RP</b>	<b>MR</b>	<b>CFMA</b>	<b>SP</b>	<b>LC</b>	<b>RC</b>
17. Piers, docks, wharfs, bridges, and other structures and uses extending over or below the normal high-water line or within a wetland						
a. Permanent	PB	PB	PB	PB	PB	PB
b. Temporary (Note 11)	CEO	CEO	CEO	CEO	CEO	CEO
18. Shoreline stabilization						
a. Above highest annual tide level	(Note13)	(Note13)	(Note13)	(Note13)	(Note13)	(Note13)
b. Below highest annual tide level	PB	PB	PB	PB	PB	PB
19. Conversions of seasonal residences to year-round residences	LPI	LPI	LPI	LPI	LPI	N
20. Home occupations	N	Y	Y	N	Y	N
21. Private sewage disposal systems for allowed uses	LPI	LPI	LPI	LPI	LPI	LPI
22. Essential Services						
a. Roadside distribution lines (34.5kV & lower)	CEO (Note 6)	Y (Note 12)	Y (Note 12)	CEO (Note 6)	Y (Note 12)	PB
b. Non-roadside or cross-country distribution lines involving ten poles or less in the shoreland zone	PB (Note 6)	CEO	CEO	PB (Note 6)	CEO	PB
c. Non-roadside or cross-country distribution lines involving eleven or more poles in the shoreland zone	PB (Note 6)	PB	PB	PB (Note 6)	PB	PB
d. Other essential services	PB (Note 6)	PB	PB	PB (Note 6)	PB	PB
23. Service drops, as defined, to allowed uses	Y	Y	Y	Y	Y	Y

	<b>LAND USES</b>	<b>RP</b>	<b>MR</b>	<b>CFMA</b>	<b>SP</b>	<b>LC</b>	<b>RC</b>
24.	Public & private parks & recreation areas involving minimal structural development	PB	PB	CEO (Note 5)	PB	CEO	CEO
25.	Individual private campsites	CEO	CEO	CEO	CEO	CEO	CEO
26.	Campgrounds*	N (Note 7)	PB	N	N	PB	N
27.	Road construction*	N (Note 8)	PB	PB (Note 5)	PB	PB	PB
28.	Parking facilities	N (Note 7)	PB	PB (Note 5)	N	PB	PB
29.	Marinas	N	PB	PB	N	PB	PB
30.	Filling and earth moving of less than 10 cubic yards	CEO	Y	Y	CEO	Y	Y
31.	Filling and earth moving of 10 cubic yards or more	PB	CEO	CEO	PB	CEO	PB
32.	Signs (see requirements of chapter 17)	CEO	CEO	CEO	CEO	CEO	CEO
33.	Associated facilities of offshore energy projects	PB	PB	PB	PB	PB	PB
34.	Uses similar to uses allowed without permit	CEO	CEO	CEO	CEO	CEO	CEO
35.	Uses similar to uses requiring a CEO permit	CEO	CEO	CEO	CEO	CEO	CEO
36.	Uses similar to uses requiring a PB permit	PB	PB	PB	PB	PB	PB

### **Notes to Table of Land Uses**

\* Subject to specific land-use standards in parts 5 and 6. Site plan approval may be required under chapter 11 for agricultural or aquacultural structures.

Note 1: In RP not allowed within 75 feet horizontal distance of normal high-water line of great ponds, except to remove safety hazards.



- Note 2: Requires permit from CEO if more than 100 square feet of surface area, in total, is disturbed.
- Note 3: In RP not allowed in areas so designated because of wildlife value.
- Note 4: Because the water-body setback required in a stream protection district is 75 feet and a stream protection district extends 75 feet from the stream, a variance from the setback requirement must be obtained from the Board of Appeals before the Planning Board can approve an application under lines 15.a, 15.i, or 16.
- Note 5: Functionally water-dependent uses and uses accessory to such water-dependent uses only.
- Note 6: See further restriction in section 1331(b).
- Note 7: Except when area is zoned for RP due to floodplain criteria, in which case a permit is required from the Planning Board.
- Note 8: Except as provided in section 1327(g).
- Note 9: Single-family residential structures may be allowed by Special Exception only according to the provisions of section 1343 (Special Exceptions). Two-family residential structures are prohibited.
- Note 10: Except for commercial uses otherwise listed in the Table of Land Uses that are allowed in the respective district, such as marinas and campgrounds.
- Note 11: Excluding bridges and other crossings not involving earthwork, in which case no permit is required.
- Note 12: Permit not required but must file a written “notice of intent to construct” with CEO.
- Note 13: PB if vegetation is to be removed in excess of the standards in section 1336; otherwise CEO.

## **PART 4. REVIEW STANDARDS**

### **SECTION 1311. REVIEW STANDARDS.**

(a) An application for a permit under this chapter shall be approved, or approved with conditions, if the approving authority makes a positive finding based on the information presented that the proposed use—

- (1) will maintain safe and healthful conditions;
- (2) will not result in water pollution, erosion, or sedimentation to surface waters;
- (3) will adequately provide for the disposal of all wastewater;
- (4) will not have an adverse effect on spawning grounds, fish, aquatic life, or bird or other wildlife habitat;
- (5) will conserve shore cover and visual, as well as actual, points of access to inland and coastal waters;
- (6) will protect archaeological and historic resources as designated in the comprehensive plan;
- (7) will not adversely affect existing commercial fishing or maritime activities in a commercial fisheries/maritime activities district;
- (8) will avoid problems associated with flood plain development and use; and
- (9) is in conformity with the provisions of part 5 (Land Use Standards in the Shoreland Zone) and part 6 (Timber Harvesting).

(b) No approval shall be granted for an application involving a structure if the structure would be located in an unapproved subdivision or would violate any other ordinance or regulation or statute administered by the Town.

## **PART 5. LAND USE STANDARDS IN THE SHORELAND ZONE**

All land-use activities within the shoreland zone shall conform to the applicable provisions of this part.

### **SECTION 1312. LOT AREA, DIMENSIONS, AND FRONTAGE.**

(a) **LOT AREA AND SHORE FRONTAGE.** Each lot in the shoreland zone shall have a minimum lot area and shore frontage as follows:

<b>Use</b>	<b>Minimum Lot Area</b>	<b>Minimum Shore Frontage</b>
Governmental, institutional, commercial, or industrial uses adjacent to non-tidal areas	60,000 square feet	200 feet
Governmental, institutional, commercial, or industrial uses adjacent to tidal areas, exclusive of those areas zoned for commercial fisheries and maritime activities	50,000 square feet	300 feet
Governmental, institutional, commercial, or industrial uses adjacent to tidal areas zoned for commercial fisheries and maritime activities	None	None
Multi-unit residential uses	1 acre for each residential dwelling unit, but not less than 5 acres	200 feet
Single-family and two-family residential uses	50,000 square feet for each residential dwelling unit	200 feet
Public and private recreational facilities	50,000 square feet	200 feet

(b) **ROAD FRONTAGE.** Each lot in the shoreland zone shall have frontage along a public or private road right-of-way. The frontage shall be not less than 50 feet in a

commercial fisheries/maritime activities district or limited commercial district, or 100 feet elsewhere.

(c) **LOTS SEPARATED BY ROADS.** Lots located on opposite sides of a public or private road shall each be considered a separate lot unless such road was established by the owner of land on both sides thereof after September 22, 1971.

(d) **LOT WIDTH.** The minimum width of any portion of any lot within 100 feet, horizontal distance, from the normal high-water line of a water body or the upland edge of a wetland shall be equal to or greater than the shore-frontage requirement for the lot.

(e) **SPAGHETTI LOTS.** The ratio of depth to shore frontage of any lot shall not exceed five to one, except that this subsection shall not apply to—

(1) utility or transportation rights-of-way;

(2) a parcel of land that is purchased by the federal, state, or local government; or

(3) a lot that the Planning Board finds provides a significant public benefit and that cannot be configured in another way to provide that benefit.

(f) **MULTIPLE USES.** If more than one residential dwelling unit, principal governmental, institutional, commercial, or industrial structure or use, or combination thereof, is constructed on a single parcel, all dimensional requirements, other than road frontage, shall be met for each additional dwelling unit, principal structure, or use.

(g) **MULTI-UNIT RESIDENTIAL BUILDINGS.** A lot with a multi-unit residential use shall meet the building-separation requirements of section 901(c).

### **SECTION 1313. SETBACK REQUIREMENTS FOR WATER BODIES, TRIBUTARY STREAMS, AND WETLANDS.**

(a) All new principal and accessory structures shall be set back at least—

(1) 100 feet, horizontal distance, from the normal high-water line of a great pond, and

(2) 75 feet, horizontal distance, from the normal high-water line of any other water body or tributary stream, or from the upland edge of a wetland.

(b) Notwithstanding subsection (a)—

(1) in a commercial fisheries/maritime activities district there shall be no minimum setback;

(2) in a resource protection district the setback requirement shall be 250 feet, horizontal distance, except for structures, roads, parking spaces, or other regulated objects specifically allowed in that district, in which case the setback requirement specified in subsection (a) shall apply;

(3) in any district, the water body, tributary-stream, and wetland setback requirements shall not apply to structures which require direct access to the water body or wetland as an operational necessity, such as piers, docks, and retaining walls, or to other functionally water-dependent uses;

(4) in any district, the water body, tributary-stream, and wetland setback requirements shall not apply to electrical cable, located in the shoreland zone, that is part of associated facilities of an offshore energy project, but other such associated facilities are subject to that requirement; and

(5) in any district, the water body, tributary-stream, and wetland setback requirement for a sewage drainage field is 100 feet.

(c) For principal structures, water and wetland setback measurements shall be taken from the top of a coastal bluff that has been identified on coastal bluff maps as being “highly unstable” or “unstable” by the Maine Geological Survey pursuant to the “*Classification of Coastal Bluffs*” and published on the most recent coastal bluff map. If the applicant and the approving authority are in disagreement as to the specific location of a “highly unstable” or “unstable” bluff, or where the top of the bluff is located, the applicant may at his or her expense, employ a Maine registered professional engineer, a Maine certified soil scientist, a Maine state geologist, or other qualified individual to make a determination. If agreement is still not reached, the approving authority shall decide the matter, and the applicant may appeal the decision to the Board of Appeals.

(d) On a nonconforming lot of record on which only a residential structure exists, and on which it is not possible to place an accessory structure meeting the required water-body, tributary-stream, or wetland setback, the Code Enforcement Officer may issue a permit to place a single accessory structure, with no utilities, for the storage of yard tools and similar equipment. Such an accessory structure shall not exceed 80 square feet in area or eight feet in height, shall be located as far from the shoreline or tributary stream as practical, and shall meet all other applicable standards, including lot coverage and vegetation clearing limitations. In no case shall the structure be located closer to the shoreline or tributary stream than the principal structure.

(e) The Planning Board may increase the required setback of a proposed structure as a condition of approval, if necessary to accomplish the purposes of this ordinance. Instances where a greater setback may be appropriate include but are not limited to areas of steep slope; shallow or erodible soils; or where an adequate vegetative buffer does not exist.

#### **SECTION 1314. SETBACK REQUIREMENTS FOR ROAD RIGHTS-OF-WAY.**

(a) Except as provided in subsection (b), all new principal and accessory structures shall be set back at least 25 feet from the edge of any road right-of-way.

(b) Notwithstanding subsection (a), where a structure is proposed for a lot that is abutted on both sides by structures whose setback from the right-of-way is less than that required, or for a lot on which there are one or more existing structures whose setback from the right-of-way is less than required, the Planning Board may reduce the setback requirement to that of the abutting structure with the least setback, but in no case less than ten feet from the edge of the right-of-way. The right-of-way setback shall be required for each yard abutting the right-of-way.

#### **SECTION 1315. SETBACK REQUIREMENTS FROM LOT BOUNDARIES.**

(a) Except as provided in subsection (b), all new principal structures shall be set back from each lot boundary (other than those specified in sections 1313 and 1314) at least as follows:

<b>Structure or use</b>	<b>RP</b>	<b>MR</b>	<b>CFMA</b>	<b>SP</b>	<b>LC</b>	<b>RC</b>
Residential (one or two family)	20 feet	20 feet	Not allowed	20 feet	20 feet	20 feet
Residential (three or more units)	Not allowed	25 feet	Not allowed	Not allowed	25 feet	Not allowed
Nonresidential	Not allowed	20 feet	10 feet	Not allowed	10 feet	20 feet for campgrounds (other uses not allowed)
Accessory	20 feet	20 feet	10 feet	20 feet	20 feet	20 feet

(b) The requirements of subsection (a) shall not apply to electrical cable that is part of associated facilities of an offshore energy project, but other such associated facilities are subject to those requirements.

#### **SECTION 1316. LOT COVERAGE.**

(a) For purposes of calculating lot coverage under this section, non-vegetated surfaces include but are not limited to the following: structures, driveways, parking areas, and other areas from which vegetation has been removed. Naturally occurring ledge and rock outcroppings are not counted as non-vegetated surfaces when calculating lot coverage for lots of record on March 24, 1990, and in continuous existence since that date.

(b) The portion of a lot located in the shoreland zone and covered by non-vegetated surfaces shall not exceed—

- (1) 70 percent of the lot area in a commercial fisheries/maritime activities district;
- (2) 50 percent of the lot area in a limited commercial district; or
- (3) 20 percent of the lot area in any other district;

but this subsection does not apply to any public boat-launching facility regardless of the district in which the facility is located.

#### **SECTION 1317. STRUCTURE HEIGHT.**

(a) The height of any structure in the shoreland zone shall not exceed 35 feet, except that—

- (1) existing nonconforming structures are subject to chapter 15 (Nonconforming Lots, Structures and Uses); and
- (2) structures such as transmission towers, wind energy systems, antennas, and similar structures having no floor area are not subject to this section but shall meet the development standards in chapter 19 (Towers).

(b) For the purpose of determining height of a structure, a cupola, dome, widow's walk, or similar feature added to a legally existing conforming structure is exempt if—

- (1) the legally existing conforming structure is not located in a resource protection district or a stream protection district; and

(2) the cupola, dome, widow's walk, or other similar feature—

(A) does not extend beyond the exterior walls of the existing structure;

(B) has a floor area of 53 square feet or less; and

(C) does not increase the height of the existing structure by more than seven feet.

#### **SECTION 1318. FLOODPLAIN COMPLIANCE.**

The lowest floor elevation or openings of all buildings and structures including basements shall be elevated in accordance with chapter 25 (Floodplain Management).

#### **SECTION 1319. RETAINING WALLS.**

(a) Retaining walls that are necessary for erosion control need not meet any water-body, tributary-stream, or wetland structure setback requirement, but shall meet the following restrictions:

(1) The applicant must demonstrate that—

(A) the proposed retaining walls are necessary for erosion control purposes;

(B) the dimensions of the proposed retaining walls are no greater than reasonably necessary to control erosion; and

(C) the proposed retaining walls will be located no nearer to the normal high-water line of a water body or tributary spring or the upland edge of a wetland than is necessary to control erosion.

(2) A vegetated buffer area is established between the normal high-water line of a water body or tributary stream or the upland edge of a wetland and the



nearest retaining wall when a natural buffer area does not exist, and the buffer area shall meet the characteristics specified in subsection (c).

(b) Retaining walls that are not necessary for erosion control shall meet the structure setback requirement, except for low retaining walls and associated fill provided all of the following conditions are met:

(1) The site has been previously altered, and an effective vegetated buffer does not exist.

(2) Each such wall is at least 25 feet, horizontal distance, from the normal high-water line of a water body or tributary stream, or the upland edge of a wetland.

(3) The site where the retaining wall will be constructed is legally existing lawn or is a site eroding from lack of naturally occurring vegetation, and which cannot be stabilized with vegetative plantings.

(4) The total height of the wall or walls, in the aggregate, is not more than 24 inches.

(5) Each such retaining wall is located outside of the 100-year floodplain on rivers, streams, coastal wetlands, and tributary streams, as designated on the Federal Emergency Management Agency Flood Insurance Rate Maps or Flood Hazard Boundary Maps, or the flood of record; or in the absence of these, as determined by soil types identified as recent flood plain soils.

(6) The area behind each such wall is revegetated with grass, shrubs, trees, or a combination thereof, and no further structural development will occur within the setback area, including patios and decks.

(7) A vegetated buffer area is established within 25 feet, horizontal distance, of the normal high-water line of a water body or tributary stream, or the upland edge of a wetland when a natural buffer area does not exist, and the buffer area shall meet the characteristics specified in subsection (c).

(c) The buffer area required by paragraph (a)(2) or (b)(7) shall meet the following characteristics:

(1) The buffer shall include shrubs and other woody and herbaceous vegetation. Where natural ground cover is lacking the area shall be supplemented with leaf and bark mulch.

(2) Vegetation plantings shall be in quantities sufficient to retard erosion and provide for effective infiltration of stormwater runoff.

(3) Only native species may be used to establish the buffer area.

(4) The buffer area shall have a width, horizontal distance, measured perpendicularly to the normal high-water line of a water body or tributary stream or the upland edge of a wetland, of at least—

(A) two thirds of the distance between the nearest retaining wall and the normal high-water line of the water body or tributary stream or the upland edge of the wetland in the case of paragraph (a)(2), or

(B) 15 feet in the case of paragraph (b)(7).

(5) A footpath not to exceed the standards in section 1335(b)(1), may traverse the buffer.

(d) The Code Enforcement Officer is the approving authority for applications under this section.

**SECTION 1320. STAIRWAYS FOR SHORELINE ACCESS.** Notwithstanding any shoreline setback requirement in this chapter, stairways or similar structures may be allowed, with a permit from the Code Enforcement Officer, to provide shoreline access in areas of steep slopes or unstable soils, provided that—

(1) side-yard setback requirements are met;

(2) the structure is limited to a maximum of four feet in width;

(3) the structure does not extend below or over the normal high-water line of a water body or tributary stream or the upland edge of a wetland (unless permitted by the Maine Department of Environmental Protection pursuant to the Natural Resources Protection Act, 38 M.R.S. § 480-C); and

(4) the applicant demonstrates that no reasonable access alternative exists on the property.

**SECTION 1321. SHORELINE STABILIZATION.**

(a) In this section, “shoreline stabilization” means an effort to reduce erosion along shorelines and includes traditional engineering methods such as installing riprap as

well as living shoreline measures; and “living shoreline” means techniques that are made up of mostly native material and incorporates vegetation or other living, natural, “soft” elements alone or in combination with harder shoreline structures such as oyster reefs or rock sills.

(b) A permit is required from the Code Enforcement Officer to conduct shoreline stabilization of an eroding shoreline above the normal high-water line of a water body or tributary stream or the upland edge of a wetland, as long as vegetation is not removed in excess of the standards in section 1335. If vegetation is to be removed in excess of those standards, a permit is required from the Planning Board.

(c) A permit is required from the Planning Board to conduct shoreline stabilization below the normal high-water line of a water body or tributary stream or the upland edge of a wetland.

(d) When necessary, the removal of trees and other vegetation to allow for construction equipment access to the stabilization site by land, the removal area is limited to 12 feet in width. When the stabilization project is complete, revegetation must occur in accordance with section 1338.

(e) In all cases, a shoreline stabilization project shall make maximum use of living shoreline techniques consistent with achieving the necessary degree of stabilization.

#### **SECTION 1322. PIERS, DOCKS, AND WHARFS.**

(a) The following requirements apply to any pier, dock, wharf, or similar structure extending or located below the normal high-water line of the water body or within a wetland.

(1) No more than one such structure is allowed on a single lot except in a commercial fisheries/maritime activities district.

(2) Access from shore shall be developed on soils appropriate for such use and constructed so as to control erosion.

(3) The location shall not interfere with existing developed or natural beach areas.

(4) The facility shall be located so as to minimize adverse effects on fisheries.

(5) The facility shall be consistent with the surrounding character and uses of the area.

(6) The facility shall be no larger in dimension than necessary to carry on the activity.

(7) A pier, dock or wharf in non-tidal waters shall not be wider than six feet for non-commercial uses.

(8) The following requirements shall apply to any structure proposed to be built, and to any existing structure already located, on, over, or abutting a pier, wharf, dock, or other structure extending beyond the normal high-water line of a water body or within a wetland:

(A) No such new structure shall be built unless the structure requires direct access to the water body or wetland as an operational necessity.

(B) No such existing structure shall be converted to one or more residential dwelling units in any district.

(C) Except in a commercial fisheries/maritime activities district, no such structure shall exceed 20 feet in height above the pier, wharf, dock, or other similar structure.

(9) New permanent piers, docks, wharves, and similar structures on non-tidal waters shall not be permitted unless it is clearly demonstrated to the Planning Board that a temporary pier or dock is not feasible, and a permit has been obtained from the Maine Department of Environmental Protection pursuant to the Natural Resources Protection Act.

(10) Construction equipment must access the shoreline by barge when feasible, as determined by the Planning Board.

(b) When necessary for the construction of a pier, dock, wharf, or similar structure extending or located below the normal high-water line of the water body or within a wetland, the removal of trees and other vegetation to allow for construction equipment access to the construction site by land must be limited to no more than 12 feet in width. When the stabilization project is complete, the construction equipment accessway must be restored. Revegetation must occur in accordance with section 1338.

### **SECTION 1323. CAMPGROUNDS.**

(a) A campground shall comply with the Rules Relating to Campgrounds of the Maine Department of Health and Human Services, 10-144 C.M.R. chapter 205, whether or not the campground is required to be licensed by that department under those rules, and shall comply with the following:

(1) The campground shall be placed on a lot with a minimum lot area of five acres and contain a minimum of 5,000 square feet of land, not including roads and driveways, for each site. Land supporting wetland vegetation, and land below the normal high-water line of a water body shall not be included in calculating land area per site.

(2) The areas intended for placement of a recreational vehicle, tent or shelter, and utility and service buildings shall be set back a minimum of 100 feet, horizontal distance, from the normal high-water line of a great pond classified GPA or a river flowing to a great pond classified GPA, and 75 feet, horizontal distance, from the normal high-water line of any other water body, a tributary stream, or the upland edge of a wetland.

(b) Campgrounds are subject to site plan review under chapter 11.

**SECTION 1324. INDIVIDUAL PRIVATE CAMPSITES.** Individual private campsites not associated with campgrounds are allowed provided the following conditions are met:

(1) One campsite per lot existing on the effective date of this chapter, or 30,000 square feet of lot area within the shoreland zone, whichever is less, may be permitted.

(2) When an individual private campsite is proposed on a lot that contains another principal use or structure, the lot must contain the minimum lot dimensional requirements for the principal structure or use, and the individual private campsite separately.

(3) Campsite placement on any lot, including the area intended for a recreational vehicle or tent platform, shall be set back 100 feet, horizontal distance, from the normal high-water line of a great pond, and 75 feet, horizontal distance, from the normal high-water line of any other water body, a tributary stream, or the upland edge of a wetland.

(4) Only one recreational vehicle shall be allowed on a campsite. A recreational vehicle shall not be located on any type of permanent foundation except for a gravel pad, and no structure except a canopy shall be attached to the recreational vehicle.

(5) The clearing of vegetation for the siting of the recreational vehicle, tent or similar shelter in a resource protection district shall be limited to 1,000 square feet.

(6) A written sewage disposal plan describing the proposed method and location of sewage disposal shall be required for each campsite and shall be approved by the Local Plumbing Inspector. Where disposal is off-site, written authorization from the receiving facility or landowner is required.

(7) When a recreational vehicle, tent, or similar shelter is placed on-site in an individual private campsite for more than 90 days (whether or not consecutive and whether or not occupied) during any period of 365 consecutive days, all requirements for residential structures shall be met, including the installation, with a permit from the Local Plumbing Inspector obtained before the placement thereof, of a subsurface sewage disposal system in compliance with the Maine Subsurface Wastewater Disposal Rules, unless served by public sewage facilities. If such a structure is in place on the effective date of this ordinance, the requirements of this paragraph shall be met within one year after such effective date.

**SECTION 1325. COMMERCIAL AND INDUSTRIAL USES.** The following new commercial and industrial uses are prohibited within the shoreland zone:

(1) Auto washing facilities.

(2) Auto or other vehicle service and/or repair operations, including body shops.

(3) Chemical and bacteriological laboratories.

(4) Storage of sand, salt, or chemicals, including herbicides, pesticides, or fertilizers, other than amounts normally associated with individual households or farms.

(5) Commercial painting, wood preserving, and furniture stripping.

(6) Dry cleaning establishments.

(7) Electronic circuit assembly.

(8) Laundromats, unless connected to a sanitary sewer.

(9) Metal plating, finishing, or polishing.

(10) Petroleum or petroleum product storage and/or sale except storage on same property as use occurs and except for storage and sales associated with marinas.

(11) Photographic processing.

(12) Printing.

#### **SECTION 1326. PARKING AREAS.**

(a) Parking areas in the shoreland zone shall meet the shoreline, tributary-stream, and side-yard setback requirements for structures for the district in which such areas are located, except that in a commercial fisheries/maritime activities district parking areas shall be set back at least 25 feet, horizontal distance, from the shoreline. The setback requirement for parking areas serving public boat launching facilities in districts other than the commercial fisheries/maritime activities districts, shall be no less than 50 feet, horizontal distance, from the shoreline or tributary stream unless the Planning Board finds that no other reasonable alternative exists further from the shoreline or tributary stream.

(b) Parking areas shall be adequately sized for the proposed use and shall be designed to prevent stormwater runoff from flowing directly into a water body, tributary stream, or wetland and where feasible, to retain all runoff on-site.

(c) In determining the appropriate size, number, and layout of proposed parking facilities, section 910 or 1106(a)(5) shall apply, as applicable. Parking spaces for boat trailers shall be 40 feet long.

#### **SECTION 1327. ROADS AND DRIVEWAYS.**

(a) The standards in this section shall apply to the construction of roads and driveways and to related drainage systems, culverts, and other related features.

(b) Roads shall be located, constructed, and maintained in such a manner that minimal erosion hazards result. Adequate provision shall be made to prevent soil erosion and sedimentation of surface waters.

(c) Roads and driveways shall be set back at least 100 feet, horizontal distance, from the normal high-water line of a great pond, and 75 feet, horizontal distance from the normal high-water line of any other water body, a tributary stream, or the upland edge of a wetland unless no reasonable alternative exists as determined by the Planning Board. If no other reasonable alternative exists, the road or driveway setback requirement shall be no less than 50 feet, horizontal distance, upon clear showing by the applicant that appropriate techniques will be used to prevent sedimentation of the water body, tributary stream, or wetland. Such techniques may include, but are not limited to, the installation of settling basins or the effective use of additional ditch relief culverts and turnouts placed so as to avoid sedimentation of the water body, tributary stream, or wetland, or a combination of both.

(d) On slopes of greater than 20 percent the road or driveway setback required by subsection (c) shall be increased by two feet, horizontal distance, for each increase of one percentage point in slope above 20 percent.

(e) Subsection (c) does not apply to approaches to water crossings or to roads or driveways that provide access to permitted structures and facilities located nearer to the shoreline or tributary stream due to an operational necessity, excluding temporary docks for recreational uses. A road or driveway providing access to permitted structures within the setback area shall comply fully with the requirements of subsection (c) except for that portion of the road or driveway necessary for direct access to the structure.

(f) Existing public roads may be expanded within the legal road right-of-way regardless of their setback from a water body, tributary stream, or wetland.

(g) New roads and driveways are prohibited in a resource protection district, except that the Planning Board may grant a permit to construct a road or driveway to provide access to permitted uses within the district. A road or driveway may also be approved by the Planning Board in a resource protection district upon a finding that no reasonable alternative route or location is available outside the district. When a road or driveway is permitted in a resource protection district, the road or driveway shall be set back as far as practicable from the normal high-water line of a water body or tributary stream or the upland edge of a wetland.

(h) Road and driveway banks shall be no steeper than a slope of two horizontal to one vertical and shall be graded and stabilized in accordance with the provisions for erosion and sedimentation control contained in section 1339 .



(i) Road and driveway grades shall be no greater than ten percent except for segments of less than 200 feet.

(j) In order to prevent road and driveway surface drainage from directly entering water bodies, tributary streams, or wetlands, roads and driveways shall be designed, constructed, and maintained to empty onto an unscarified buffer strip, with a width of at least 50 feet plus two times the average slope, between the outflow point of the ditch or culvert and the normal high-water line of a water body or tributary stream, or the upland edge of a wetland. Surface drainage that is directed to an unscarified buffer strip shall be diffused and spread out to promote infiltration of the runoff and to minimize channelized flow of the drainage through the buffer strip.

(k) Ditch relief (cross drainage) culverts, drainage dips, and water turnouts shall be installed in a manner effective in directing drainage onto unscarified buffer strips before the flow gains sufficient volume or head to erode the road, driveway, or ditch. To accomplish this, the following shall apply:

(1) Ditch relief culverts, drainage dips and associated water turnouts shall be spaced along the road, or driveway at intervals no greater than indicated in the following table:

<b>Grade (%)</b>	<b>Spacing (in feet)</b>
0 - 2	250
3 - 5	200 - 135
6 -10	100 - 80
11 - 15	80 - 60
16 - 20	60 – 45
21+	40

(2) Drainage dips may be used in place of ditch relief culverts only where the grade is ten percent or less.

(3) On sections having slopes greater than ten percent, ditch relief culverts shall be placed at approximately a 30-degree angle downslope from a line perpendicular to the center line of the road or driveway.

(4) Ditch relief culverts shall be sufficiently sized and properly installed to allow for effective functioning, and their inlet and outlet ends shall be stabilized with appropriate materials.

(l) Ditches, culverts, bridges, dips, water turnouts, and other stormwater runoff control installations associated with roads and driveways shall be maintained on a regular basis to assure effective functioning.

**SECTION 1328. SIGNS.** Signs in the shoreland zone shall comply with chapter 17 (Signs).

**SECTION 1329. STORMWATER RUNOFF.**

(a) All new construction and development shall be designed to minimize stormwater runoff from the site in excess of the natural pre-development conditions. Where possible, existing natural runoff control features, such as berms, swales, terraces, and wooded areas shall be retained to reduce runoff and encourage infiltration of stormwaters.

(b) Stormwater runoff control systems shall be maintained as necessary to ensure proper functioning.

**SECTION 1330. SEPTIC WASTE DISPOSAL.**

(a) All subsurface sewage disposal systems shall be installed in conformity with the State of Maine Subsurface Wastewater Disposal Rules.

(b) Clearing or removal of woody vegetation necessary to site a new subsurface sewage disposal system and any associated fill extension shall not extend closer than 75 feet, horizontal distance, from the normal high-water line of a water body or the upland edge of a wetland.

(c) A holding tank is not allowed for first-time residential use of a subsurface sewage disposal system in the shoreland zone.

**SECTION 1331. ESSENTIAL SERVICES.**

(a) Where feasible, the installation of essential services shall be limited to existing public ways and existing service corridors.

(b) The installation of essential services, other than road-side distribution lines, is not allowed in a resource protection or stream protection district, except to provide services to a permitted use within that district, or except where the applicant demonstrates that no reasonable alternative exists. Where allowed, such structures and facilities shall be located so as to minimize any adverse effects on surrounding uses and resources, including visual effects.

(c) Damaged or destroyed public utility transmission and distribution lines, towers, and related equipment may be replaced or reconstructed without a permit.

### **SECTION 1332. MINERAL EXPLORATION AND EXTRACTION.**

(a) Mineral exploration to determine the nature or extent of mineral resources shall be accomplished by hand sampling, test boring, or other methods which create minimal disturbance of less than 100 square feet of ground surface. A permit from the Code Enforcement Officer shall be required for mineral exploration which exceeds the above limitation. All excavations, including test pits and holes, shall be immediately capped, filled, or secured by other equally effective measures to restore disturbed areas and to protect the public health and safety.

(b) Mineral extraction may be permitted under the following conditions:

(1) A reclamation plan shall be filed with and approved by the Planning Board before a permit is granted. Such plan shall describe in detail procedures to be undertaken to fulfill requirements of paragraph (3).

(2) No part of any extraction operation, including drainage and runoff control features, shall be permitted within 100 feet, horizontal distance, of the normal high-water line of a great pond, or within 75 feet, horizontal distance, of the normal high-water line of any other water body, a tributary stream, or the upland edge of a wetland. Extraction operations shall not be permitted within 75 feet, horizontal distance, of any property line, without written permission of the owner of such adjacent property.

(3) Within 12 months following the completion of extraction operations at any extraction site, which operations shall be deemed complete when less than 100 cubic yards of materials are removed in any consecutive 12-month period, ground levels and grades shall be established in accordance with the following:

(A) All debris, stumps, and similar material shall be removed for disposal in an approved location or shall be buried on-site. Only materials generated on-site may be buried or covered on-site.

(B) The final graded slope shall be 2.5 to one or flatter.

(C) Topsoil or loam shall be retained to cover all disturbed land areas, which shall be reseeded and stabilized with vegetation native to the

area. Additional topsoil or loam shall be obtained from off-site sources if necessary to complete the stabilization project.

(D) No excavation within 100 feet from an adjacent street shall be extended below the grade of the street unless provision has been made and approved by the Select Board for reconstruction of the street at a different level.

(4) In keeping with the purposes of this ordinance, the Planning Board may impose such conditions as are necessary to minimize the adverse effects associated with mineral extraction operations on surrounding uses and resources.

### **SECTION 1333. AGRICULTURE.**

(a) All spreading of manure shall be accomplished in conformity with the Manure Utilization Guidelines published by the former Maine Department of Agriculture on November 1, 2001, and the Nutrient Management Law, 7 M.R.S. §§ 4201 through 4209.

(b) Manure shall not be stored or stockpiled within 100 feet, horizontal distance, of the normal high-water line of a great pond, or within 75 feet horizontal distance, of any other water body, a tributary stream, or the upland edge of a wetland. All manure storage areas within the shoreland zone shall be constructed or modified such that the facility produces no discharge of effluent or contaminated stormwater.

(c) Agricultural activities involving tillage of soil greater than 40,000 square feet in surface area within the shoreland zone shall require a conservation plan to be filed with and approved by the Planning Board. Failure to conform to the provisions of such a plan shall be a violation of this ordinance.

(d) There shall be no new tilling of soil within 100 feet, horizontal distance, of the normal high-water line of a great pond; within 75 feet, horizontal distance, of the normal high-water line of any other water body or the upland edge of a coastal wetland; or within 25 feet, horizontal distance, of the normal high-water line of a tributary stream or the upland edge of a freshwater wetland. Operations lawfully in existence on the effective date of this chapter and not in conformity with this subsection may be maintained but may not be recommenced if abandoned for more than one year.

(e) Newly established livestock grazing areas shall not be permitted within 100 feet, horizontal distance, of the normal high-water line of a great pond; within 75 feet, horizontal distance, of the normal high-water line of any other water body or the upland edge of a coastal wetland; or within 25 feet, horizontal distance, of the normal high-water line of a tributary stream or the upland edge of a freshwater wetland. Livestock grazing

associated with ongoing farm activities lawfully in existence on the effective date of this chapter and not in conformity with this subsection may continue, provided that such grazing is conducted in accordance with a conservation plan that has been filed with the Planning Board; but no such activity may be recommenced if abandoned for more than one year.

**SECTION 1334. TIMBER HARVESTING—STATEWIDE STANDARDS.** Timber harvesting in the shoreland zone shall be conducted in compliance with standards set forth in Appendix A attached to this ordinance. Appendix A consists of the statewide standards for timber harvesting in the shoreland zone adopted by the Maine Bureau of Forestry (Maine Forest Service) and set forth in 01-669 C.M.R. chapter 21, as in effect on the date of enactment of this ordinance. As stated in Appendix A, if the Maine Forest Service modifies those standards after that date, the Town will be required to make the same modifications to this Appendix A. Until the Town does so, the modified statewide standards, rather than the standards in Appendix A, will govern timber harvesting in the shoreland zone. Persons intending to conduct timber harvesting activities are therefore advised to consult the current version of the statewide standards, which can be found as described in Appendix A.

**SECTION 1335. CLEARING OR REMOVAL OF VEGETATION FOR ACTIVITIES OTHER THAN TIMBER HARVESTING.**

(a) In a resource protection district abutting a great pond, there shall be no cutting of vegetation within the strip of land extending 75 feet, horizontal distance, inland from the normal high-water line, except to remove hazard trees as described in section 1335. Elsewhere in any resource protection district, the cutting or removal of vegetation shall be limited to that which is necessary for uses expressly authorized in that district.

(b) Except in areas described in subsection (a), within a strip of land extending 100 feet, horizontal distance, inland from the normal high-water line of a great pond classified GPA or a river flowing to a great pond classified GPA, or within a strip extending 75 feet, horizontal distance, from any other water body, a tributary stream, or the upland edge of a wetland, a buffer strip of vegetation shall be preserved as follows:

(1) There shall be no cleared opening greater than 250 square feet in the forest canopy (or other existing woody vegetation if a forested canopy is not present) as measured from the outer limits of the tree or shrub crown. However, a single footpath not to exceed six feet in width as measured between tree trunks or shrub stems is allowed for accessing the shoreline, provided that a cleared line of sight to the water through the buffer strip is not created.

(2) Selective cutting of trees within the buffer strip is allowed provided that a well-distributed stand of trees and other natural vegetation is maintained.

For purposes of this paragraph, a “well-distributed stand of trees” adjacent to a great pond classified GPA or a river or stream flowing to a great pond classified GPA, shall be defined as maintaining a rating score of 24 or more in each 25-foot by 50-foot rectangular (1,250 square feet) area as determined by the following rating system.

<b>Diameter of Tree at 4.5 feet Above Ground Level</b>	<b>Points</b>
2 - < 4 inches	1
4 - < 8 inches	2
8 - < 12 inches	4
12 inches or greater	8

Adjacent to other water bodies, tributary streams, and wetlands, a “well-distributed stand of trees” is defined as maintaining a minimum rating score of 16 per 25-foot by 50-foot rectangular area.

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**Note to section 1335(b)(2):** As an example, adjacent to a great pond, if a 25-foot x 50-foot plot contains four trees between two and four inches in diameter, two trees between four and eight inches in diameter, three trees between eight and 12 inches in diameter, and two trees over 12 inches in diameter, the rating score is:

$$(4 \times 1) + (2 \times 2) + (3 \times 4) + (2 \times 8) = 36 \text{ points}$$

Thus, the 25-foot by 50-foot plot contains trees worth 36 points. Trees totaling 12 points ( $36 - 24 = 12$ ) may be removed from the plot provided that no cleared openings are created.

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(3) The following shall govern in applying the point system established in paragraph (2):

(A) The 25-foot by 50-foot rectangular plots shall be established where the landowner or lessee proposes clearing within the required buffer.

(B) Each successive plot shall be adjacent to, but not overlap a previous plot.

(C) Any plot not containing the required points shall have no vegetation removed except as otherwise allowed by this chapter.

(D) Any plot containing the required points may have vegetation removed down to the minimum points required or as otherwise allowed by this chapter.

(E) Where conditions permit, no more than 50 percent of the points on any 25-foot by 50-foot rectangular area may consist of trees greater than 12 inches in diameter.

For the purposes of paragraph (2), “other natural vegetation” is defined as retaining existing vegetation under three feet in height and other ground cover and retaining at least five saplings less than two inches in diameter at 4.5 feet above ground level for each 25-foot by 50-foot rectangular area. If five saplings do not exist, no woody stems less than two inches in diameter can be removed until five saplings have been recruited into the plot.

(4) Notwithstanding paragraphs (2) and (3), no more than 40 percent of the total volume of trees four inches or more in diameter, measured at 4.5 feet above ground level, may be removed in any ten-year period, except that 70 percent of a lot in a commercial fisheries/maritime activities district may be non-vegetated.

(5) In order to protect water quality and wildlife habitat, existing vegetation under three feet in height and other ground cover, including leaf litter and the forest duff layer, shall not be cut, covered, or removed, except to provide for a footpath or other permitted uses as described in paragraph (1).

(6) Pruning of tree branches, on the bottom one-third of the tree, is allowed.

(7) In order to maintain a buffer strip of vegetation, when the removal of storm-damaged, dead, or hazard trees results in the creation of cleared openings, these openings shall be replanted with native tree species in accordance with section 1338, unless existing new tree growth is present.

(8) In order to maintain the vegetation in the shoreline buffer, clearing or removal of vegetation for allowed activities, including associated construction and related equipment operation, within or outside the shoreline buffer, must comply with the requirements of this subsection.

(c) At distances greater than 100 feet, horizontal distance, from a great pond classified GPA or a river flowing to a great pond classified GPA, and 75 feet, horizontal distance, from the normal high-water line of any other water body, a tributary stream, or the upland edge of a wetland, there shall be allowed on any lot, in any ten-year period,

selective cutting of not more than 40 percent of the volume of trees four inches or more in diameter, measured 4.5 feet above ground level. Tree removal in conjunction with the development of permitted uses shall be included in the 40-percent calculation. For purposes of these standards volume may be considered to be equivalent to basal area. In no event shall cleared openings for any purpose, including but not limited to, principal and accessory structures, driveways, lawns, and sewage disposal areas, exceed in the aggregate, 25 percent of the lot area within the shoreland zone or (10,000) square feet, whichever is greater, including land previously cleared. The restrictions in this subsection apply to the portion of a lot within the shoreland zone, including the buffer area, but shall not apply in any commercial fisheries/maritime activities district.

(d) Legally existing nonconforming cleared openings may be maintained but shall not be enlarged except as allowed by this chapter.

(e) Fields and other cleared openings which have reverted to primarily shrubs, trees, or other woody vegetation shall be regulated under the provisions of this section.

#### **SECTION 1336. HAZARD TREES, STORM-DAMAGED TREES, AND DEAD TREE REMOVAL.**

(a) In this section, “shoreline buffer” means the area within 100 feet, horizontal distance, from a great pond classified GPA or a river flowing to a great pond classified GPA, or within 75 feet, horizontal distance, from the normal high-water line of any other water body, a tributary stream, or the upland edge of a wetland.

(b) Hazard trees in the shoreland zone may be removed without a permit after consultation with the Code Enforcement Officer if the following requirements are met:

(1) Within the shoreline buffer, if the removal of a hazard tree results in a cleared opening in the tree canopy greater than 250 square feet, replacement with native tree species is required unless there is new tree growth already present. New tree growth must be as near as practicable to where the hazard tree was removed and be at least two inches in diameter, measured at 4.5 feet above the ground level. If new growth is not present, then replacement trees shall consist of native species and be at least four feet in height and be no less than two inches in diameter. Stumps may not be removed.

(2) Outside of the shoreline buffer, when the removal of hazard trees—

(A) exceeds, in any ten-year period, 40 percent of the volume of trees (located on the portion of a lot within the shoreland zone) four inches or more in diameter, measured at 4.5 feet above ground level, or



(B) results in cleared openings exceeding 25 percent of the lot area within the shoreland zone or 10,000 square feet, whichever is greater,

replacement with native tree species is required unless there is new tree growth already present. New tree growth must be as near as practicable to where the hazard tree was removed and be at least two inches in diameter, measured at 4.5 feet above the ground level. If new growth is not present, then replacement trees shall consist of native species and be at least two inches in diameter, measured at 4.5 feet above the ground level.

(3) The removal of standing dead trees, resulting from natural causes, is permissible without the need for replanting or a permit, if the removal does not result in the creation of new lawn areas, or other permanently cleared areas, and stumps are not removed. For purposes of this paragraph, dead trees are those trees that contain no foliage during the growing season.

(4) The Code Enforcement Officer may require the property owner to submit an evaluation from a licensed forester or arborist before any hazard tree can be removed within the shoreland zone.

(5) The Code Enforcement Officer may require more than a one-for-one replacement for hazard trees removed that exceed eight inches in diameter measured at 4.5 feet above the ground level.

(b) Storm-damaged trees in the shoreland zone may be removed without a permit after consultation with the Code Enforcement Officer if the following requirements are met:

(1) Within the shoreline buffer, when the removal of storm-damaged trees results in a cleared opening in the tree canopy greater than 250 square feet, replanting is not required, but the area shall be required to naturally revegetate, and the following requirements must be met:

(A) The area from which a storm-damaged tree is removed does not result in new lawn areas, or other permanently cleared areas.

(B) Stumps from the storm-damaged trees may not be removed.

(C) Limbs damaged from a storm event may be pruned even if they extend beyond the bottom one-third of the tree.

(D) If, after one growing season, no natural regeneration or regrowth is present, replanting of native tree seedlings or saplings is

required at a density of one seedling per every 80 square feet of lost canopy.

(2) Outside of the shoreline buffer, if the removal of storm-damaged trees—

(A) exceeds, in any ten-year period, 40 percent of the volume of trees (located on the portion of a lot within the shoreland zone) four inches or more in diameter, measured at 4.5 feet above the ground level, or

(B) results, in the aggregate, in cleared openings exceeding 25 percent of the lot area within the shoreland zone or 10,000 square feet, whichever is greater,

and no natural regeneration occurs within one growing season, then native tree seedlings or saplings shall be replanted on a one-for-one basis.

**SECTION 1337. EXEMPTIONS TO CLEARING AND VEGETATION REMOVAL REQUIREMENTS.** The following activities are exempt from the clearing and vegetation removal standards set forth in section 1335, provided that all other applicable requirements of this chapter are complied with, and the removal of vegetation is limited to that which is necessary:

(1) The removal of vegetation that occurs at least once every two years for the maintenance of legally existing areas that do not comply with the vegetation standards in this chapter, such as but not limited to cleared openings in the canopy or fields. Such areas shall not be enlarged, except as allowed by this part. If any of these areas, due to lack of removal of vegetation every two years, reverts to primarily woody vegetation, the requirements of section 1335 apply.

(2) The removal of vegetation from the location of allowed structures or allowed uses when the shoreline setback requirements of section 1313 are not applicable.

(3) The removal of vegetation from the location of public swimming areas associated with an allowed public recreational facility.

(4) The removal of vegetation associated with allowed agricultural uses, provided best management practices are utilized, and provided all requirements of section 1333 are complied with.

(5) The removal of vegetation associated with brownfields or voluntary response action program projects, provided that the removal of vegetation is

necessary for remediation activities to clean up contamination on a site in a commercial fisheries/maritime activities district that is part of a state or federal brownfields program or a voluntary response action program pursuant to 39 M.R.S. § 343-E, and that is located along—

(A) a coastal wetland, or

(B) a river that does not flow to a great pond classified as GPA.

(6) The removal of non-native invasive vegetation species provided the following minimum requirements are met:

(A) If removal of vegetation occurs by means of wheeled or tracked motorized equipment, the wheeled or tracked motorized equipment is operated and stored at least 25 feet, horizontal distance, from the shoreline, except that wheeled or tracked equipment may be operated or stored on existing structural surfaces, such as pavement or gravel.

(B) Removal of vegetation within 25 feet, horizontal distance, from the shoreline occurs by means of hand tools.

(C) If applicable clearing and vegetation removal standards are exceeded due to the removal of non-native invasive species vegetation, the area shall be revegetated with native species to achieve compliance.

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**Note to section 1337(6):** An updated list of non-native invasive vegetation is maintained by the Department of Agriculture, Conservation Land Forestry’s Natural Areas Program:  
[http://www.maine.gov/dacf/mnap/features/invasive\\_plants/invasives.htm](http://www.maine.gov/dacf/mnap/features/invasive_plants/invasives.htm).

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(7) The removal of vegetation associated with emergency response activities conducted by the Maine Department of Environmental Protection, the U.S. Environmental Protection Agency, the U.S. Coast Guard, and their agents.

#### **SECTION 1338. REVEGETATION REQUIREMENTS.**

(a) When revegetation is required in response to violations of the vegetation standards set forth in section 1335, to address the removal of non-native invasive species of vegetation, or as a mechanism to allow for development that may otherwise not be

permissible due to the vegetation standards, including removal of vegetation in conjunction with a shoreline stabilization project, the revegetation must comply with the requirements of this section.

(b) The property owner must submit a revegetation plan, prepared and signed by a qualified professional that describes revegetation activities and maintenance. The plan must include a scaled site plan, depicting where vegetation was, or is to be removed, where existing vegetation is to remain, and where vegetation is to be planted, including a list of all vegetation to be planted.

(c) Revegetation must occur along the same segment of shoreline and in the same area where vegetation was removed and at a density comparable to the pre-existing vegetation, unless a shoreline stabilization activity does not allow revegetation to occur in the same area and at a density comparable to the pre-existing vegetation, in which case revegetation must occur along the same segment of shoreline and as close as possible to the area where vegetation was removed.

(d) If revegetation is part of an activity for which a permit has been issued, revegetation shall occur before the expiration of the permit. If the activity or revegetation is not completed before the expiration of the permit, a new revegetation plan shall be submitted with any renewal or new permit application.

(e) Revegetation activities must meet the following requirements for trees and saplings:

(1) All trees and saplings removed must be replaced with native noninvasive species.

(2) Replacement vegetation must at a minimum consist of saplings.

(3) If more than three trees or saplings are planted, then at least three different species shall be used.

(4) No one species shall make up 50 percent or more of the number of trees and saplings planted.

(5) If revegetation is required for a shoreline stabilization project, and it is not possible to plant trees and saplings in the same area where trees or saplings were removed, then trees or saplings must be planted in a location that effectively reestablishes the screening between the shoreline and structures.

(6) A survival rate of at least 80 percent of planted trees or saplings is required for a minimum period of five years.

(f) Revegetation activities must meet the following requirements for woody vegetation and other vegetation under three feet in height:

(1) All woody vegetation and vegetation under three feet in height must be replaced with native noninvasive species of woody vegetation and vegetation under three feet in height as applicable.

(2) Woody vegetation and vegetation under three feet in height shall be planted in quantities and variety sufficient to prevent erosion and provide for effective infiltration of stormwater.

(3) If more than three woody vegetation plants are to be planted, then at least three different species shall be planted.

(4) No one species shall make up 50 percent or more of the number of planted woody vegetation plants.

(5) Survival of planted woody vegetation and vegetation under three feet in height must be sufficient to remain in compliance with the standards in this chapter for a minimum of five years.

(g) Revegetation activities must meet the following requirements for ground vegetation and ground cover:

(1) All ground vegetation and ground cover removed must be replaced with native herbaceous vegetation, in quantities and variety sufficient to prevent erosion and provide for effective infiltration of stormwater.

(2) Where necessary due to a lack of sufficient ground cover, an area must be supplemented with a minimum four-inch depth of leaf mulch or bark mulch to prevent erosion and provide for effective infiltration of stormwater.

(3) Survival and functionality of ground vegetation and ground cover must be sufficient to remain in compliance with the standards contained in this chapter for a minimum of five years.

#### **SECTION 1339. EROSION AND SEDIMENTATION CONTROL.**

(a) All activities that involve filling, grading, excavation, or other similar activities that result in unstabilized soil conditions, and that require a permit shall also require a written soil erosion and sedimentation control plan. The plan shall be submitted

to the approving authority for approval and shall include, where applicable, provisions for—

- (1) mulch and revegetation of disturbed soil;
- (2) temporary runoff control features such as hay bales, silt fencing or diversion ditches; and
- (3) permanent stabilization structures such as retaining walls or riprap.

(b) In order to create the least potential for erosion, development shall be designed to fit with the topography and soils of the site. Areas of steep slopes where high cuts and fills may be required shall be avoided wherever possible, and natural contours shall be followed as closely as possible.

(c) Erosion and sedimentation control measures shall apply to all aspects of the proposed project involving land disturbance and shall be in operation during all stages of the activity. The amount of exposed soil at every phase of construction shall be minimized to reduce the potential for erosion.

(d) Any exposed ground area shall be temporarily or permanently stabilized within one week from the time it was last actively worked, by use of riprap, sod, seed, mulch, or other effective measures. In all cases permanent stabilization shall occur within nine months of the initial date of exposure. In addition:

(1) Where hay or straw mulch is used, it shall be applied at a rate of at least one bale per 500 square feet and shall be maintained until a catch of vegetation is established.

(2) Anchoring the mulch with netting, peg and twine or other suitable method may be required to maintain the mulch cover.

(3) Additional measures shall be taken where necessary to avoid siltation into the water. Such measures may include the use of staked hay bales and/or silt fences.

(e) Natural and fabricated drainage ways and drainage outlets shall be protected from erosion from water flowing through them. Drainageways shall be designed and constructed to carry water from a 25-year storm or greater and shall be stabilized with vegetation or lined with rip-rap.

**SECTION 1340. SOILS.** All land uses shall be located on soils in or upon which the proposed uses or structures can be established and maintained without causing

adverse environmental effects, including severe erosion, mass soil movement, improper drainage, and water pollution, whether during or after construction. Proposed uses requiring subsurface waste disposal, and commercial or industrial development and other similar intensive land uses shall require a soils report based on an on-site investigation and be prepared by state-certified professionals. Certified persons may include Maine certified soil scientists, Maine registered professional engineers, Maine state certified geologists, and other persons who have training and experience in the recognition and evaluation of soil properties. The report shall be based upon the analysis of the characteristics of the soil and surrounding land and water areas, maximum ground water elevation, presence of ledge, drainage conditions, and other pertinent data which the evaluator deems appropriate. The soils report shall include recommendations for a proposed use to counteract soil limitations where they exist.

**SECTION 1341. WATER QUALITY.** No activity shall deposit on or into the ground or discharge to Maine waters any pollutant that, by itself or in combination with other activities or substances, will impair designated uses or the water classification of the water body, tributary stream, or wetland.

**SECTION 1342. ARCHAEOLOGICAL SITES.** Any proposed land-use activity involving structural development or soil disturbance on or adjacent to sites listed on, or eligible to be listed on, the National Register of Historic Places, as determined by the approving authority, shall be submitted by the applicant to the Maine Historic Preservation Commission for review and comment, at least 20 days prior to action being taken by the permitting authority. The approving authority shall consider comments received from the Commission prior to rendering a decision on the application.

## **PART 6. MISCELLANEOUS PROVISIONS**

### **SECTION 1343. SPECIAL EXCEPTIONS.**

(a) The Planning Board may approve a permit for a single-family residential structure in a resource protection district, provided that the applicant demonstrates that all of the following conditions, in addition to the standards in section 1311 (except structure setback requirements), are met:

(1) There is no location on the property, other than a location within the resource protection district, where the structure can be built.

(2) The lot on which the structure is proposed is undeveloped and was established and recorded in the registry of deeds of the county in which the lot is located before the adoption of the resource protection district.

(3) All proposed buildings, sewage disposal systems and other improvements are—

(A) located on natural ground slopes of less than 20 percent; and

(B) located outside the floodway of the 100-year floodplain along rivers and outside the velocity zone in areas subject to tides, based on detailed flood insurance studies and as delineated on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate Maps; all buildings, including basements, are elevated at least one foot above the 100-year floodplain elevation; and the development is otherwise in compliance with chapter 27, Floodplain Management.

(4) The total footprint, including cantilevered or similar overhanging extensions, of all principal and accessory structures is limited to a maximum of 1,500 square feet. This limitation shall not be altered by variance.

(5) All structures, except functionally water-dependent structures, are set back from the normal high-water line of a water body, tributary stream, or the upland edge of a wetland to the greatest practical extent, but not less than 75 feet, horizontal distance. In determining the greatest practical extent, the Planning Board consider the depth of the lot, the slope of the land, the potential for soil erosion, the type and amount of vegetation to be removed, the proposed building site's evaluation regarding the floodplain, and its proximity to moderate-value and high-value wetlands.

(b) An application for a special exception shall be subject to the review procedures in chapter 7 (Review Procedures and Permit Administration). If no action is taken by the Planning Board within the prescribed time, the applicant may apply to the Board of Appeals.

**SECTION 1344. INSTALLATION OF PUBLIC UTILITY SERVICE.** A public utility, water district, sanitary district or any utility company of any kind may not install services to any new structure located in the shoreland zone unless written authorization attesting to the validity and currency of all local permits required under this or any previous ordinance, has been issued by the appropriate municipal officials or other written arrangements have been made between the municipal officials and the utility.

**SECTION 1345. APPEALS AND VARIANCES.** An appeal of any decision of the Planning Board or Code Enforcement Officer, under this chapter, and any application for a variance from any provision of this chapter, shall be governed by the Town's Board of Appeals Ordinance.



**SECTION 1346. LAND USE REQUIREMENTS.** Except as specified in this chapter, no building, structure, or land in the shoreland zone shall hereafter be used or occupied, and no building or structure or part thereof in the shoreland zone shall hereafter be erected, constructed, expanded, moved, or altered and no new lot shall be created in the shoreland zone except in conformity with all of the regulations herein specified for the district in which it is located, unless a variance is granted.

**SECTION 1347. APPLICABILITY OF CHAPTER.**

(a) This chapter applies to—

(1) all land areas within 250 feet, horizontal distance, of (A) the normal high-water line of any great pond or river, (B) the upland edge of a costal wetland, including all areas affected by tidal action, or (C) the upland edge of a freshwater wetland; and

(2) all land areas within 75 feet, horizontal distance, of a normal high-water line of a stream; and

(3) any structure built on, over, or abutting a dock, wharf, or pier, and any other structure extending or located below the normal high-water line of a water body or with a wetland.

(b) Each requirement of this chapter, whether or not expressly so stated, shall apply only to the portion of any lot that lies within the shoreland zone.

# # #

## **CHAPTER 15**

### **NONCONFORMING LOTS, STRUCTURES, AND USES**

#### **PART 1. PURPOSE AND APPLICABILITY**

##### **SECTION 1501. PURPOSE AND APPLICABILITY OF CHAPTER.**

(a) It is the purpose of this chapter to promote land use conformities, except that lawful nonconforming conditions that existed before the effective date of the relevant provision of this ordinance or any relevant amendment shall be allowed to continue, subject to the applicable requirements set forth in this ordinance. Except as otherwise provided in this chapter, an increase in the nonconformity of a nonconforming condition is prohibited.

(b) This part and parts 2 and 3 apply everywhere in the Town, except as expressly provided. Parts 4, 5, and 6 apply only to the portions of a lot that are located in the shoreland zone.

#### **PART 2. GENERAL PROVISIONS**

**SECTION 1502. TRANSFER OF OWNERSHIP.** Nonconforming structures, lots, and uses may be transferred, and the new owner may continue the nonconforming use or continue to use the nonconforming structure or lot, subject to the provisions of this ordinance.

**SECTION 1503. REPAIR AND MAINTENANCE.** This ordinance allows, without a permit, the normal upkeep and maintenance of nonconforming uses and structures, including repairs which do not involve expansion of the nonconforming use or structure, or such other changes in a nonconforming use of structure as federal, state, or local building and safety codes may require.

**SECTION 1504. RESTORATION OF UNSAFE PROPERTY.** Nothing in this ordinance shall prevent the strengthening or restoring to safe condition any part of any building or structure declared unsafe by the Code Enforcement Officer.

**SECTION 1505. NONCONFORMING STRUCTURES.** The use of a structure lawfully existing on the effective date of the relevant provision of this ordinance or any relevant amendment may continue although the structure does not conform to the provisions of this ordinance. A nonconforming structure may be expanded only if the expansion

complies with the requirements of this ordinance and does not increase the nonconformity of the structure.

### **PART 3. NONCONFORMING LOTS**

**SECTION 1506. NONCONFORMING LOTS, IN GENERAL.** A nonconforming lot of record as of the effective date of the relevant provision of this ordinance or any relevant amendment may be built upon, without the need for a variance, provided that such lot is in separate ownership and not contiguous with any other lot in identical ownership of record, and that all provisions of this ordinance except lot area, lot width, and shore frontage are met. Variances relating to setback or other requirements not involving lot area or shore frontage may be obtained from the Board of Appeals under the Board of Appeals Ordinance.

#### **SECTION 1507. CONTIGUOUS BUILT LOTS.**

(a) If two or more contiguous lots are in identical ownership of record at the effective date of the relevant provision of this ordinance or any relevant amendment, and if all or part of the lots do not meet the dimensional requirements of this ordinance, and if a principal use or structure exists on each lot, the nonconforming lots may be conveyed separately or together, provided that the law and rules referred to in subsection (c) are complied with.

(b) If two or more principal uses or structures existed on a single lot of record on the effective date of the relevant provision of this ordinance or any relevant amendment, the lot may be divided and each resulting lot may be sold separately, provided that section 901 and 1312 and the law and rules referred to in subsection (c) are complied with. When such a lot is divided, each lot thus created must be as conforming as possible to the dimensional requirements of this ordinance.

(c) The law and rules referred to in this section are the Maine Minimum Lot Size Law and the Maine Subsurface Wastewater Disposal Rules.

#### **SECTION 1508. CONTIGUOUS VACANT OR PARTIALLY-BUILT LOTS.**

(a) Except as provided in subsection (b), if two or more contiguous lots are in identical ownership of record on the effective date of the relevant provision of this ordinance or any relevant amendment, and if any of the lots do not individually meet the dimensional requirements of this ordinance or any relevant amendment, and if one or more of the lots are vacant or contain no principal structure, the lots shall be treated as

they were a single lot to the extent necessary to meet the dimensional requirements of this ordinance.

(b) Subsection (a) shall not apply to two or more contiguous lots, at least one of which is nonconforming, that were in identical ownership on March 8, 1993, as reflected in the registry of deeds, if—

(1) each lot is served by a public sewer or can accommodate a subsurface sewage disposal system in conformity with the Subsurface Wastewater Disposal Rules; and

(2) either—

(A) each lot that borders a water body, tributary stream, or wetland contains at least 100 feet of shore frontage and at least 20,000 square feet of lot area; or

(B) any lots that border a water body, tributary stream, or wetland and do not meet the shore frontage and lot area requirements of subparagraph (A) are reconfigured or combined of record so that each new lot contains at least 100 feet of shore frontage and 20,000 square feet of lot area.

**SECTION 1509. DIVISION OF NONCONFORMING LOTS.** A nonconforming lot of record may be divided provided that the resulting lots do not increase the original nonconformity or create a new nonconformity and are in compliance with all other conditions of this ordinance.

#### **PART 4. SHORELAND ZONE REQUIREMENTS: EXPANSION OF NONCONFORMING STRUCTURES**

**SECTION 1510. APPLICABILITY.** This part applies only to the portions of a lot that are located in the shoreland zone and to structures located in whole or in part on such portions.

#### **SECTION 1511. EXPANSION OF STRUCTURES.**

(a) **IN GENERAL.** All new principal and accessory structures, excluding functionally water-dependent uses, must meet the water-body, tributary-stream, and wetland setback requirements contained in section 1313. Subject to the prohibitions and

limitations provided in this part, a nonconforming structure lawfully existing on the effective date of the relevant provision of this ordinance or any relevant amendment may be added to or expanded after obtaining a permit from the Planning Board, if such addition or expansion does not increase the nonconformity of the structure.

**(b) PROHIBITIONS.**

(1) Except as provided in subsection (c), expansion of any portion of a structure within 25 feet of the normal high-water line of a water body, tributary stream, or upland edge of a wetland is prohibited, even if the expansion will not increase nonconformity with the water-body, tributary-stream, or wetland setback requirement.

(2) Expansion of an accessory structure that does not meet the water-body, tributary-stream, or wetland setback requirement and that is located closer to the normal high-water line of a water body or tributary stream or the upland edge of a wetland than the principal structure is prohibited, even if the expansion will not increase nonconformity with the water-body, tributary-stream, or wetland setback requirement.

**(c) EXCEPTION FOR PRINCIPAL STRUCTURES LOCATED ENTIRELY WITHIN 25 FEET.** Notwithstanding paragraph (b)(1), if a nonconforming principal structure, lawfully existing on the effective date of the relevant provision of this ordinance or any relevant amendment, is entirely located less than 25 feet from the normal high-water line of a water body or tributary stream or the upland edge of a wetland, that structure may be expanded as follows, as long as all other applicable standards of this ordinance are met and the expansion is not prohibited by subsection (a):

(1) the total footprint for the principal structure may not be expanded to a size greater than 800 square feet or 30 percent larger than the footprint that existed on January 1, 1989, whichever is greater; and

(2) the height of the principal structure may not be made greater than 15 feet or the height of the existing structure, whichever is greater.

**(d) LIMITATION ON EXPANSIONS OF OTHER STRUCTURES.** All other legally existing nonconforming principal and accessory structures (that is, those not described in subsection (b) or (c)) that do not meet the water-body, tributary-stream, or wetland setback requirements may be expanded or altered as follows, as long as other applicable standards of this ordinance are met and the expansion is not prohibited by subsection (a).

(1) For structures located in whole or part less than 75 feet from the normal high-water line of a water body or tributary stream or the upland edge of a wetland—

(A) the combined total footprint for all portions of such structures located less than 75 feet from such normal high-water line or upland edge may not be expanded to a size greater than 1,000 square feet or 30 percent larger than the footprint that existed on January 1, 1989, whichever is greater; and

(B) the height of any portion of such structures located less than 75 feet from such normal high-water line or upland edge may not be made greater than 20 feet or the height of the existing structure, whichever is greater.

(2) For structures located in whole or part less than 100 feet from the normal high-water line of a great pond classified as GPA or a river flowing to a great pond classified as GPA—

(A) the combined total footprint for all portions of such structures located less than 100 feet from such normal high-water line may not be expanded to a size greater than 1,500 square feet or 30 percent larger than the footprint that existed on January 1, 1989, whichever is greater;

(B) the height of any portion of such structures located less than 100 feet from such normal high-water line may not be made greater than 25 feet or the height of the existing structure whichever is greater; and

(C) any portion of those structures located less than 75 feet from the normal high-water line of a water body or upland edge of a wetland shall meet the footprint and height limits in paragraphs (c)(1) and (2) and subparagraphs (1)(A) and (B).

(3) In addition to the limitations in paragraphs (1) and (2), for structures that are lawfully existing in a resource protection district on the effective date of the relevant provision of this ordinance or any relevant amendment and are nonconforming due to the location of all or a portion thereof less than 250 feet from the normal high-water line of a water body or tributary stream or the upland edge of a wetland—

(A) the combined total footprint for all portions of such structures located less than 250 feet from the normal high-water line or upland edge may not be expanded to a size greater than 1,500 square feet or 30 percent larger than the footprint that existed at the time the resource protection district was established on the lot, whichever is greater;

(B) the height of any portion of such structure located less than 250 feet from such normal high-water line or upland edge may not be made greater than 25 feet or the height of the existing structure, whichever is greater; and

(C) any portion of those structures located less than 75 feet from the normal high-water line of a water body or upland edge of a wetland shall meet the footprint and height limits in paragraphs (c)(1) and (2) and subparagraphs (c)(1) and (2).

(e) **RECORDING.** An approved plan for expansion of a nonconforming structure must be recorded by the applicant with the registry of deeds within 90 days after approval. The recorded plan must show the existing and proposed footprint of the nonconforming structure, the existing and proposed structure height, the footprint of any other structures on the lot, the shoreland zone boundary and evidence of approval by the Planning Board.

## **PART 5. SHORELAND ZONE REQUIREMENTS: FOUNDATIONS, RELOCATION, RECONSTRUCTION, AND REPLACEMENT**

**SECTION 1512. APPLICABILITY OF PART.** This part applies only to the portions of a lot that are located in the shoreland zone and to structures located in whole or in part on such portions.

**SECTION 1513. FOUNDATIONS.** Whenever a new, enlarged, or replacement foundation is constructed under a nonconforming structure, the structure and new foundation shall be placed such that all setback requirements are met to the greatest practical extent as determined by the Planning Board or its designee, basing its decision on the criteria specified in section 1516.

**SECTION 1514. RELOCATION OF NONCONFORMING STRUCTURES.** A nonconforming structure may be relocated within the boundaries of the lot on which the structure is located (whether or not relocation is required under section 1513), provided that the site of relocation conforms to all setback requirements to the greatest practical

extent as determined by the Planning Board or its designee, basing its decision on the criteria specified in section 1516, and provided that the applicant demonstrates that the present subsurface sewage disposal system meets the requirements of the Maine Minimum Lot Size Law and the Maine Wastewater Disposal Rules, or that a new system can be installed in compliance with that statute and those rules. In no case shall a structure be relocated so as to increase its nonconformity. If any portion of the relocated structure is less than the required water-body, tributary-stream, or wetland setback, it shall not be any larger than the nonconforming portion of the original structure, except as allowed pursuant to section 1511, as determined by the nonconforming footprint of the relocated structure at its new location. If the total amount of footprint of the original structure can be relocated beyond the required water-body, tributary-stream, or wetland setback area, no portion of the relocated structure shall be replaced or constructed at less than the water-body, tributary-stream, or wetland setback requirement for a new structure. When it is necessary to remove vegetation in order to relocate a structure, vegetation shall be replanted in accordance with section 1517.

#### **SECTION 1515. RECONSTRUCTION OR REPLACEMENT OF NONCONFORMING STRUCTURES.**

(a) Any nonconforming structure that is located less than the required setback from a water body, tributary stream, or wetland and which is removed, or damaged or destroyed, regardless of the cause, by more than 50 percent of the market value of the structure before such damage, destruction, or removal, may be reconstructed or replaced provided that (1) a permit is obtained within 18 months after the date of said damage, destruction, or removal, (2) such reconstruction or replacement is in compliance with all setback requirements to the greatest practical extent as determined by the Planning Board or its designee in accordance with the purposes of this ordinance, basing its decision on the criteria specified in section 1516. In no case shall a structure be reconstructed or replaced so as to increase its nonconformity. If any portion of the reconstructed or replacement structure is located less than the required water-body, tributary-stream, or wetland setback, it shall not be any larger than the nonconforming portion of the original structure, except as allowed pursuant to section 1511, as determined by the nonconforming footprint of the reconstructed or replaced structure at its new location. If the total amount of footprint of the original structure can be reconstructed or replaced beyond the required water-body, tributary-stream, or wetland setback area, no portion of the reconstructed or replacement structure shall be replaced or constructed at less than the water-body, tributary-stream, or wetland setback requirement for a new structure. When it is necessary to remove vegetation in order to replace or reconstruct a structure, vegetation shall be replanted in accordance with section 1517.



(b) Any nonconforming structure which is located less than the required setback from a water body, tributary stream, or wetland and which is removed by 50 percent or less of the market value, or damaged or destroyed by 50 percent or less of the market value of the structure, excluding normal maintenance and repair, may be reconstructed in place and without expansion if a permit is obtained from the Code Enforcement Officer within one year after such damage, destruction, or removal.

**SECTION 1516. CRITERIA FOR DETERMINING “GREATEST PRACTICAL EXTENT.”** In determining whether the relocation of a structure under section 1513 or 1514 meets the setback requirement to the greatest practical extent, the Planning Board shall consider the size of the lot, the slope of the land, the potential of soil erosion, the location of other structures on the property and on adjacent properties, the location of wells, the septic system, other on-site conditions suitable for wells and septic systems, and the type and amount of vegetation to be removed to accomplish the relocation.

**SECTION 1517. REMOVAL AND REPLACEMENT OF VEGETATION.** When it is necessary to remove vegetation within the required water-body, tributary-stream, or wetland setback area in order to relocate or replace a structure under section 1514 or 1515, the Planning Board shall require replanting of native vegetation to compensate for the destroyed vegetation in accordance with section 1338. In addition, the area from which the relocated structure was removed shall be replanted with vegetation. Replanting shall be required as follows:

(1) Trees removed in order to relocate a structure shall be replanted or replaced with at least one native tree, at least three feet in height, for every tree removed. If more than five trees are replaced, no one species of tree shall make up more than 50 percent of the number of trees planted. Replaced trees shall be planted no further from the water body, tributary stream, or wetland than the trees that were removed.

(2) Other woody and herbaceous vegetation and ground cover that are removed or destroyed in order to relocate a structure shall be re-established. An area at least the same size as the area where vegetation or ground cover was disturbed, damaged, or removed shall be re-established within the setback area. The vegetation or ground cover shall consist of similar native vegetation or ground cover that was disturbed, destroyed, or removed.

(3) Where feasible, when a structure is relocated on a lot, the original location of the structure shall be replanted with vegetation, which may consist of grasses, shrubs, trees, or a combination thereof.

## **PART 6. SHORELAND ZONE REQUIREMENTS: NONCONFORMING USES**

**SECTION 1518. APPLICABILITY OF PART.** This part applies only to uses conducted in whole or in part on the portions of a lot that are located in the shoreland zone.

### **SECTION 1519. CHANGE OF USE OF A NONCONFORMING STRUCTURE.**

(a) The use of a nonconforming structure may not be changed to another use unless the Planning Board, after receiving a written application, determines that the new use will have no greater adverse effect on the water body, tributary stream, or wetland, or on the subject or adjacent properties and resources than the existing use.

(b) In determining that no greater adverse effect will occur, the Planning Board shall require written documentation from the applicant, regarding the probable effects on public health and safety, erosion and sedimentation, water quality, fish and wildlife habitat, vegetative cover, visual and actual points of public access to waters, natural beauty, flood plain management, archaeological and historic resources, commercial fishing and maritime activities, and other functionally water-dependent uses.

**SECTION 1520. EXPANSIONS OF NONCONFORMING USES.** Expansions of nonconforming uses are prohibited, except that nonconforming residential uses may, after obtaining a permit from the Planning Board, be expanded within existing residential structures or within expansion of such structures allowed in section 1511.

### **SECTION 1521. RESUMPTION OF NONCONFORMING USE PROHIBITED.**

(a) Except as provided in subsection (b), a lot or structure on or in which a nonconforming use is discontinued for a period exceeding one year, or on or in which a nonconforming use is superseded by a conforming use, may not again be devoted to a nonconforming use, except that the Planning Board may, for good cause shown by the applicant, grant up to a one-year extension to that time period.

(b) Subsection (a) shall not apply to the resumption of a use of a residential structure provided that the structure has been used or maintained for residential purposes during the preceding five-year period (even if vacant for part of that period).

**SECTION 1522. CHANGE OF NONCONFORMING USE.** An existing nonconforming use may be changed to another nonconforming use provided that the proposed use has no greater adverse effect on the subject and adjacent properties and

resources, including water dependent uses in a commercial fisheries/maritime activities district, than the former use, as determined by the Planning Board according to criteria listed in section 1519(b).

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## **CHAPTER 17**

### **SIGNS**

**SECTION 1701. DEFINITIONS.** Certain terms used in this chapter are defined in sections 1713 and 3101. Any term defined in both of those sections is used in this chapter with the meaning given in section 1713, and any such term used elsewhere in this ordinance is used there with the meaning given in section 3101.

**SECTION 1702. PURPOSES.** The purposes of this chapter are (1) to permit business owners to advertise their businesses, (2) to permit the right of free expression guaranteed by the Constitutions of the United States and the State of Maine, (3) to require Town decisions on signage to be made in a content-neutral manner, and (4) to promote the health, safety, and welfare by providing for signage to be consistent with safe and orderly traffic movement, all while maintaining an attractive and inviting landscape that is consistent with the character of the Town.

#### **SECTION 1703. PERMIT REQUIRED.**

(a) **IN GENERAL.** Except as provided in subsection (b) and section 1704, on and after August 17, 2020, no new sign, either on-premises or off-premises, permanent or temporary, shall be erected, attached to a building, physically altered, reconstructed, or relocated until a permit has been issued in accordance with section 1709. For this purpose, “alteration” or “reconstruction” does not include (1) repainting or replacing an existing display without changing the message or symbols, (2) changing the contents of a message board, (3) replacing structural parts with like structural parts, or (4) maintaining a sign as required by section 1710.

(b) **SEASONAL SIGNS.** A sign advertising a seasonal business shall be treated as a permanent sign even if it is removed during the part of the year the business is closed and replaced when it reopens. Any such sign may be replaced seasonally without a permit, subject to the provisions of subsection (a) relating to alteration, reconstruction, and relocation of signs.

#### **SECTION 1704. SIGNS ALLOWED WITHOUT A PERMIT.**

(a) **PERMANENT SIGNS.** The following permanent signs shall be allowed without a permit. Upon request of the Code Enforcement Officer, a property owner shall provide an inventory of the number and square footage of signs placed on the property.

(1) Traffic-control signs.

(2) Private traffic-control signs placed on private property by or with the consent of the property occupant. No such sign shall exceed six feet in height or three square feet in area per exposed face.

(3) A single property address sign placed on private residential property by or with the consent of the property occupant indicating the street address of the property and the name of the owner or occupant. No such sign shall exceed three square feet in area per exposed face.

(4) No-trespassing and no-hunting signs placed on private property by or with the consent of the property occupant. No such sign shall exceed two square feet in area per exposed face.

(5) Signs alerting the public to a danger or hazardous condition or otherwise relating to public safety.

(6) Signs marking access points to, and directions within, recreational trails, and signs posted on kiosks describing features of trails and other nature areas, placed on private property by or with the consent of the property owner. No such sign shall exceed nine feet in height, 20 square feet in area per exposed face, or 40 square feet in total sign area.

(7) Official business directional signs placed in conformity with 23 M.R.S. chapter 21 and the rules and regulations of the Maine Department of Transportation thereunder.

(8) A single sign advertising a home occupation and located on the lot where the home occupation is conducted. No such sign shall exceed nine feet in height, seven square feet in area per exposed face, or 14 square feet in total sign area.

(9) Banners permitted by section 1705 awning signs, permanent window displays, and message boards permitted by section 1705 or 1706.

(b) **TEMPORARY SIGNS ON PRIVATE PROPERTY.** Any person may place a single temporary sign on any privately-owned lot without a permit, but with the consent of the property occupant. No such sign shall exceed nine feet in height, seven square feet in area per exposed face, or 14 square feet in total sign area. Every such sign shall include or be marked with the name and address of the individual, entity, or organization that placed the sign and the date the sign was placed.

(c) **TEMPORARY SIGNS ON PUBLIC ROAD RIGHTS-OF-WAY.** Any person may place temporary signs within any public road right-of-way without a permit. No such

temporary sign shall be placed within 30 feet of another temporary sign bearing the same or substantially the same message. No such temporary sign shall exceed nine feet in height, seven square feet in area per exposed face, or 14 square feet in total sign area. Every such sign shall include or be marked with the name and address of the individual, entity, or organization that placed the sign and the date the sign was placed.

#### **SECTION 1705. SIGN DIMENSIONS OUTSIDE THE SHORELAND ZONE.**

(a) Except as otherwise provided in this chapter, signs on any lot lying entirely outside the shoreland zone shall conform to the following table. The areas and numbers of signs specified in the following table apply separately to each distinct business conducted on such a lot.

<b>Type of Sign</b>	<b>Maximum Sign Area for Each Exposed Face</b>	<b>Maximum Total Sign Area</b>	<b>Maximum Height</b>	<b>Maximum Number Allowed</b>
Freestanding permanent sign	20 square feet	40 square feet	9 feet	1
Wall sign	20 square feet or 10% of wall area, whichever is smaller	N/A	Height of building	1
Projecting sign	6 square feet	12 square feet	20 feet; bottom of sign at least 8 feet above ground	1
Banner*	15 square feet	30 square feet	20 feet	1
Awning sign*	4 square feet	4 square feet	10 feet from bottom; at least 8 feet above ground	1 per building
Window display*	Size of window	N/A	N/A	Number of windows

<b>Type of Sign</b>	<b>Maximum Sign Area for Each Exposed Face</b>	<b>Maximum Total Sign Area</b>	<b>Maximum Height</b>	<b>Maximum Number Allowed</b>
Sandwich board or message board (not electronic message board)*	12 square feet; no dimension greater than 4 feet	24 square feet	5 feet	1

\* As provided in section 1704(a)(9), these do not require a permit.

(b) Two or more distinct businesses conducted on a lot may combine one or more of their permitted signs in subsection (a) into a single sign, but the area of any single sign may not exceed the area specified for that type of sign in subsection (a).

#### **SECTION 1706. SIGN DIMENSIONS AND OTHER REQUIREMENTS IN THE SHORELAND ZONE.**

(a) Signs on any lot lying wholly or partly in the shoreland zone shall conform to this section, unless a more restrictive requirement is imposed elsewhere in this chapter.

(b) On the portion of such a lot that lies within the shoreland zone, there may be not more than two signs (which may be freestanding, wall, or projecting signs, message boards (but not electronic message boards), awning signs, or any combination thereof) relating to goods and services sold on the premises. Each such sign shall not exceed the height specified in section 1705(a) for the type of sign. Except in a limited commercial district, each such sign shall not exceed six square feet in area per exposed face, and all such signs shall not exceed 12 square feet per exposed face, except that an awning sign shall not exceed four square feet in area. Signs relating to goods or services not sold or rendered on the premises are prohibited.

(c) On the portion of such a lot that lies within the shoreland zone, in addition to the signage area allowed under subsection (b), there may be not more than two signs (which may be freestanding, wall, or projecting signs, message boards (but not electronic message boards), awning signs, or any combination thereof) displaying only the name of a business conducted on the premises. All such signs in the aggregate shall not exceed 12 square feet in area per exposed face, except that an awning sign shall not exceed four square feet in area, and the height of any such sign shall not exceed that specified in section 1705(a) for the kind of sign.

(d) On the portion of such a lot that lies outside the shoreland zone, each distinct business conducted on any such lot may have the signage allowed by section 1705, *minus* the total sign area of signs placed in the portion of that lot that lies within the shoreland zone and described in subsections (b) and (c).

(e) Banners, pennants, and advertising flags are prohibited in the portion of any such lot that lies within the shoreland zone.

(f) Signs that are illuminated shall use lights that are down-shielded and otherwise designed to minimize adverse effects on neighboring properties and rights-of-way.

#### **SECTION 1707. ADDITIONAL PROVISIONS.**

(a) **IN GENERAL.** Signs shall comply with applicable setback requirements of Maine law. In addition, on streets without sidewalks signs shall be located at least eight feet from the edge of the pavement (unless chapter 11 or 13 requires a greater setback) and shall not be a hazard to traffic or pedestrians. On streets with sidewalks, signs shall not extend past the curb or be placed in the sidewalk. In any event, signs shall be a minimum of 10 feet from side and rear boundary lines, unless chapter 11 or 13 requires a greater setback.

#### **(b) SUBDIVISION SIGNS.**

(1) One sign may be placed at each entrance to an approved subdivision. The height of any such sign shall not exceed nine feet; each such sign located in the shoreland zone sign shall not exceed 12 square feet in area per exposed face or 24 square feet in total sign area; each such sign located elsewhere shall not exceed 20 square feet in area per exposed face or 40 square feet in total sign area; and the text on any such sign shall be limited to the name of the subdivision.

(2) In addition to the signage allowed by paragraph (1), during the sales period, one or more additional signs may be placed at each entrance to an approved subdivision containing sales-related information, including photographs. The height of any such sign shall not exceed nine feet; each such sign located in the shoreland zone sign shall not exceed 12 square feet in area per exposed face or 24 square feet in total sign area; and each such sign located elsewhere shall not exceed 20 square feet in area per exposed face or 40 square feet in total sign area. "Sales period" means the period from the commencement of work on the land until the time when 80 percent of the lots in the subdivision have been sold.

(c) **SIGNS ON MOTOR VEHICLES AND OTHER CONVEYANCES.** This chapter does not apply to any sign displayed on a motor vehicle or other conveyance, such as a boat or trailer, unless the Code Enforcement Officer determines that any such sign has the effect



of circumventing the restrictions of this chapter, in which case such sign shall be subject to the applicable requirements of this chapter, including permitting, dimensional, and maintenance requirements. A sign on a motor vehicle or other conveyance will be presumed to have the effect of circumventing the restrictions of this chapter if the motor vehicle or other conveyance is parked or stored in a location visible from a public way and one or more of the following circumstances exist:

- (1) in the case of a motor vehicle, it is unregistered, uninspected, or inoperable;
- (2) the sign is larger in any dimension than or (except for a roof-mounted sign) extends beyond any surface of the conveyance;
- (3) the conveyance is parked or stored continuously in the same location;
- (4) the conveyance is regularly parked or stored in an area not designed, designated, or commonly used for parking or storage;
- (5) the conveyance is regularly parked or stored in a front yard, or in the public right-of-way adjacent to the front yard, when there is parking available in a side or rear yard; or
- (6) the conveyance is regularly parked or stored in a location where a sign would not be allowed under this chapter.

**SECTION 1708. PROHIBITED SIGNS.** The following signs are prohibited:

- (1) Roof-mounted signs that extend above the ridge line of the roof.
- (2) Banners that extend over the public right-of-way.
- (3) Signs that interfere with the visibility of traffic or traffic-control signs.
- (4) Outdoor internally-illuminated signs, including electronic message board signs, but excluding traffic-control signs.
- (5) Indoor internally-illuminated signs visible from the road, except that a business may have one such sign stating "open" or "closed," and one other such sign. No such sign shall have an area greater than two square feet, and the lighting of each such sign shall remain constant in brightness, color, location, text, and other aspects of its appearance.

(6) Signs with visible moving parts or consisting in whole or in part of ribbons, balloons, streamers, spinners, or other similar devices.

(7) Signs lighted by blinking, moving, or glaring illumination.

#### **SECTION 1709. SIGN PERMIT PROCEDURE.**

(a) **APPLICATION.** Before installing any sign that requires a permit, a completed application to install the sign shall be submitted to the Code Enforcement Officer. The application shall include the information listed in subsection (b) and a description of how the standards in subsection (c) are met.

(b) **SUBMISSION OF INFORMATION.** The application shall include the following information:

(1) the name, address and contact information of the applicant;

(2) the proposed location of the sign;

(3) evidence of right, title, or interest in, or permission from the owner of, the sign installation site, if requested by the Code Enforcement Officer;

(4) a drawing of the sign showing dimensions, height as measured from the ground, and all relevant area data for the sign;

(5) the methods and materials to construct and install the sign;

(6) the effect of the sign on sight distance; and

(7) the expected light levels if the sign will be lighted.

(c) **REVIEW STANDARDS.** The Code Enforcement Officer shall issue a permit if and only if the applicant demonstrates compliance with the following standards:

(1) The sign will be installed in an area for which the applicant has right, title, interest, or permission to place a sign.

(2) The sign will comply with the requirements of this chapter and is not prohibited by section 1708.

(3) The sign will be constructed and installed in a manner that is structurally sound, as determined by the Code Enforcement Officer. When the Code Enforcement Officer determines that the sign may not be structurally sound,

the sign shall be installed in a manner consistent with the provisions relating to signs of the International Building Code most recently published by the International Code Council.

(4) If the sign will be lighted, the light source shall be shielded to prevent glare onto rights-of-way or private properties and to direct lighting downward onto the sign. Sign lighting shall not exceed 0.5 foot-candles more than 50 feet from the sign.

(d) **PERMIT DURATION.** Once issued, the sign permit shall be valid for one year, or, if the sign is installed within that period, for the life of the sign.

#### **SECTION 1710. MAINTENANCE.**

(a) **STANDARD OF MAINTENANCE.** All signs allowed under this chapter, whether or not a permit is required, shall be appropriately maintained. Appropriate maintenance consists of no missing lettering, no peeling paint, no cracked or broken glass or plastic, a solid foundation for fixed signs, all lighting being fully operational or discontinued, and no unsafe conditions. Signs not intended to be permanently affixed to the ground shall be weighted or secured to withstand inclement weather.

(b) **FAILURE TO MAINTAIN.** The Code Enforcement Officer shall determine if a sign is adequately maintained. If, the judgment of the Code Enforcement Officer, a sign is not adequately maintained, the Code Enforcement Officer shall give thirty days' notice to have it repaired or removed. The owner of the sign shall have the option to repair or remove the sign. Anyone not complying with the order of the Code Enforcement Officer may be subject to a fine as provided in section 1712(a).

(c) **HAZARD.** Any sign that poses an immediate hazard to public safety may be removed by any authorized municipal agent without prior notice.

#### **SECTION 1711. NONCONFORMITY.**

(a) **NEW SIGNS.** Except as provided in subsection (c), a permanent or temporary sign put in place on or after August 17, 2020, that is not in conformity with this chapter may be removed by the Code Enforcement Officer or a designee.

(b) **EXISTING NONCONFORMING PERMANENT SIGNS.** Any permanent sign in place before August 17, 2020, that is not in conformity with this chapter may remain in place, but may not be altered, reconstructed, or relocated unless it is brought into conformity and unless the Code Enforcement Officer issues a permit pursuant to section 1709. For this purpose, "alteration" and "reconstruction" do not include (1) repainting or replacing the existing display without changing the message or symbols, (2) changing the

contents of a message board, (3) replacing structural parts with like structural parts, or (4) maintaining the sign as required by section 1710.

(c) **EXISTING NONCONFORMING SEASONAL SIGNS.** Any nonconforming sign on the premises of a seasonal business shall be treated as a permanent sign even if it is removed during the part of the year the business is closed and replaced when it reopens. Any such sign that was in place before August 17, 2020, may be replaced without obtaining a permit, even if it is not in conformity of this chapter. Any such nonconforming signs are subject to the provisions of subsection (b) relating to alteration and relocation of nonconforming signs.

(d) **EXISTING NONCONFORMING TEMPORARY SIGNS.** Any temporary sign put in place before August 17, 2020, that is not in conformity with this chapter may remain in place until it is removed by the person who placed it, or until the time specified in the definition of “temporary sign” expires, whichever is earlier. Thereafter, any temporary sign that is to be re-placed must conform to the requirements of this chapter.

## **SECTION 1712. ADMINISTRATION.**

(a) **VIOLATIONS AND ENFORCEMENT.** Violations of this chapter may be enforced as provided in part 4 (Enforcement) of chapter 7 (Review Procedures and Permit Administration). In addition, the Code Enforcement Officer or a designee of the Code Enforcement Officer may remove a noncomplying sign if a person does not commence efforts to correct a violation within ten days after receiving notice of violation under part 4 (Enforcement) of chapter 7 (Review Procedures and Permit Administration), or ceases to pursue those activities with diligence, or does not fully correct the violation within 30 days after receiving the notice.

(b) **SUBSTITUTION.** A non-commercial sign, except one described in section 1704(a)(1) through (7), may be substituted for any sign allowed under this chapter.

(c) **HOLD HARMLESS.** The Town shall have no liability for, and shall be held harmless from, any damage to signs installed in the public right-of-way, or for any sign removed under this chapter.

**SECTION 1713. DEFINITIONS.** In this chapter, the following terms have the following meanings unless the context requires otherwise. Other terms are defined in section 1901. Any term defined in both this section and in section 3101 is used in this chapter with the meaning given in this section, and any such term used elsewhere in this ordinance is used there with the meaning given in section 3101.

“Area” means, with reference to the an exposed face of a sign, the entire area within a single continuous perimeter enclosing the extreme limits of the sign surface. For

an exposed face painted on or applied to a structure, the area shall include any background of a color or finish different from the color or finish of the structure. For an exposed face of a sign consisting of individual letters or symbols without a distinguishable background, the area shall be that of the smallest rectangle which encompasses all of the letters and symbols. "Total sign area" is defined below. The area of an exposed face of a sign shall not include supporting structures but shall include any frames.

"Banner" means a sign on a textile or plastic material, which is secured, to a pole or structure in a fashion, which may allow movement by the atmosphere.

"Distinct business":

(a) In determining whether two or more businesses conducted on a lot or in a building are "distinct" for purposes of section 1705 or 1706, the Code Enforcement Officer shall consider all relevant factors, including:

- (1) the nature of each business;
- (2) the kinds of goods and services offered by each business;
- (3) whether the businesses are conducted in physically separate spaces, or occupy a common space;
- (4) whether the businesses have common employees;
- (5) whether the businesses hold themselves out to the public as separate from one another, such as by trading under different names;
- (6) the extent to which the businesses are managed by the same persons;  
and
- (7) the extent of common ownership of the businesses.

(b) In determining the extent of common ownership under paragraph (a)(7) of this definition, the existence of separate legal entities should generally be disregarded in favor of considering the ultimate ownership of the businesses. Common ownership of two or more businesses shall create a presumption that the businesses are not distinct, but the presumption may be overcome by the presence of other factors (including those listed in paragraph (a) of this definition) indicating that the businesses are operated separately from one another.

“Electronic message board” means a message board sign in which copy may be changed other than by manual replacement of letters, numbers, and images. This includes, without limitation, a sign using lights, light emitting diodes, liquid crystal displays, plasma screens, or other similar technology.

“Freestanding sign” means a sign in a fixed location supported by structure, supports, or the ground and not attached to or dependent for support upon any building.

“Height” means, with reference to a sign, the distance from the average natural grade of the land beneath the sign to the top of the sign.

“Internally-illuminated sign means a sign (including only for this purpose a decorative sign described in clause (c) of the last sentence of the definition of “sign”) that has characters, letters, figures, designs, or outlines illuminated by electric lighting or luminous tubes that are part of the sign.

“Message board” means a sign designed for or operated with changeable copy.

“Permanent sign” means a sign other than a temporary sign. The term includes a sign advertising a seasonal business even if it is removed during the part of the year the business is closed and replaced when it reopens.

“Private traffic-control sign” means a sign, permanent or temporary, placed on private property for the sole purpose of (1) providing direction to entrances and exits, parking, and facilities, (2) promoting the safety of members of the public on the property, and (3) directing persons to keep out of the property, and not including any advertising other than the name of any business conducted at the property.

“Projecting sign” means a sign fixed at an angle or perpendicular to the wall of any building in such a manner as to read perpendicular or at an angle to the wall on which it is mounted.

“Property address sign” means a sign located on private property containing only the property address or street number and the name of the occupant.

“Public road right-of-way” means a strip of land acquired by conveyance, reservation, dedication, forced dedication, prescription or condemnation and intended to be occupied by a road.

“Sign” means a name, word, letter, writing, identification, description, or illustration that is erected, placed upon, affixed to, painted, or represented upon a building or structure, or any part thereof, or in any manner upon a parcel of land, lot, or right-of-way, public or private, and which publicizes an object, product, place, activity,

opinion, person, institution, organization, or place of business, or which is used to advertise or promote the interests of any business or person. The term includes banner, pennant, flag, insignia, bulletin board, ground sign, sandwich board, billboard, marquee, yard sign, wall sign, window display, and window sign, in each case wherever placed out of doors in view of the general public or indoors and visible by the general public from the outside. The term does not include (a) the flag of a national, state, local, or other governmental unit, or an international organization, (b) a flag, banner, name, or logo of a professional or amateur sports team, or (c) a decorative sign (such as a vintage sign) not advertising goods or services sold on the premises.

“Temporary sign” means a sign placed for a period of 84 days or less in a calendar year, whether or not consecutive. For the purpose of measuring length of time a temporary sign is displayed, use of a sign for any portion of a calendar day shall constitute one day. Examples of temporary signs are those announcing an event such as a farmers’ market, a yard, lawn, garage, barn, or similar sale, or directions to an event such as a party or a wedding; those advertising the sale, lease, or rental of real estate; those placed at the site of a construction project to identify the project and contractors; those relating to elections and expressions of opinion; and those placed to announce an event to be held in the Town by a charitable, civic, or religious organization.

Total sign area” means, with reference to a sign, the aggregate area of all exposed faces of the sign.

“Traffic-control sign” means a sign, permanent or temporary, placed by a state or local government within the public right of way or on municipal property to promote the safety of members of the public on the property or to provide direction or information (wayfinding) to citizens and visitors.

“Wall Sign” means a sign affixed to a wall or printed on a wall in such a manner as to read parallel to the wall on which it is mounted, including awnings and canopies.

“Window display” means a sign attached to, placed upon or painted on the interior of a window or door of a building, which is intended for viewing from the exterior of a building.

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## **CHAPTER 19**

### **TOWERS**

**SECTION 1901. APPLICABILITY OF CHAPTER.** This chapter applies to towers (defined in section 3101 as structures such as transmission towers, wind energy systems, antennas, and similar structures having no floor area).

**SECTION 1902. PURPOSE.** The purpose of this chapter is to promote the safe, effective, and efficient use of towers. This chapter describes the requirements for obtaining a permit to install towers.

#### **SECTION 1903. SETBACKS.**

(a) Towers shall be set back a distance equal to 110 percent of its height from—

(1) any public or private road right of way, unless written permission is granted by the Town or a state entity with jurisdiction over the road or the owner of a private road right-of-way,

(2) any overhead utility lines, unless written permission is granted by the utility, and

(3) all property lines, unless written permission is granted from the affected landowner or neighbor.

(b) The Planning Board may accept restrictive easements on abutting parcels to satisfy setback requirements.

(c) Towers shall meet all setbacks for residential structures for the district in which the system is located. Setback requirements in this subsection apply to guy wires, including anchors.

#### **SECTION 1904. TOWER HEIGHT.**

(a) There shall be no limitation on tower height except as imposed by Federal Aviation Administration regulations and setback requirements.

(b) The applicant shall provide evidence that the proposed tower height does not exceed the height recommended by the manufacturer of the system.



## **SECTION 1905. DESIGN REQUIREMENTS.**

### **(a) ACCESS.**

(1) All ground-mounted electrical and control equipment shall be labeled and secured to prevent unauthorized access. All electrical transmission lines connecting to the public utility electrical distribution system shall be located underground.

(2) The tower shall be designed and installed such that public access by step bolts or a ladder is prevented for a minimum of 12 feet above the ground, or a locked anti-climb device is installed on the tower, or a locked protective fence at least six feet in height encloses the tower.

**(b) BLADE CLEARANCE.** For wind energy systems the minimum distance between the ground and any protruding blade shall be 15 feet as measured at the lowest point of the arc of the blade.

**(c) APPEARANCE.** Towers shall maintain a galvanized steel finish (non-reflective surface) unless Federal Aviation Administration standards require otherwise or unless the owner is attempting to conform the tower to the surrounding environment and architecture, in which case it may be painted to reduce visual obtrusiveness. The owner will immediately repair any visible oxidation or corrosion.

**(d) LOCATION.** The system shall be designed and located in such a manner to minimize negative visual effect on significant designated resources.

**(e) GUY WIRES.** Guy wires, if required, shall be enclosed by a fence or sheathed in bright orange or yellow covering from three to eight feet above the ground.

**(f) SIGNS.** Towers shall not display any permanent or temporary signs, writing, symbols, logos, or any graphic representation of any kind, except signs warning of safety hazards.

**(g) LIGHTING.** Towers shall be lighted when required by the Federal Aviation Administration or at the discretion of the Planning Board.

**(h) NOISE.** Except during short-term events, including utility outages and severe wind storms, the audible noise due to wind turbine operations shall not be created which causes the noise level at the property boundary line of the proposed site to exceed 50

dBA for more than five minutes out of any one-hour time period or to exceed 55 dBA for any time period. Certification shall be provided by the applicant before construction demonstrating compliance with this noise requirement.

(g) **VIBRATION.** Any proposed tower shall not produce vibrations humanly perceptible beyond the boundaries of the property on which the system is located.

(h) **ENDANGERED OR THREATENED SPECIES AND MIGRATORY BIRDS.** Installation of a tower shall not have an adverse effect on endangered or threatened species or migratory birds, as determined through consultation with the Maine Field Office of the United States Fish and Wildlife Service.

**SECTION 1906. DOCUMENTS REQUIRED.** In addition to the requirements of chapters 5 (Application Content and Other Requirements) and 11 (Site Plan Review), the following documents shall be submitted with the application for a tower:

- (1) A plot plan showing—
  - (A) the location of all existing and proposed structures or uses with scale and arrow pointing north;
  - (B) the setbacks of the towers from the abutting property lines and water setbacks; and
  - (C) overhead utility lines.
- (2) Wind system specifications, including manufacturer and model, rotor diameter, tower height, and tower type (freestanding or guyed).
- (3) Tower foundation blueprints or drawings.
- (4) Tower blueprint or drawing.
- (5) Standard drawing and an engineering analysis of the tower, and certification by a professional mechanical, structural, or civil engineer. This analysis shall include standards for ice and wind load.
- (6) A drawing of the electrical components in sufficient detail to allow for a determination that the manner of installation conforms to the current edition of the National Electric Code on file in the Code Enforcement Officer's office.

(7) Data on approval from any small wind certification program that may apply.

(8) Information showing that the generators and alternators to be used are constructed as to prevent the emission of disruptive electromagnetic interference with signal transmission or reception beyond the site, including radio and television signals.

**SECTION 1907. ELECTROMAGNETIC INTERFERENCE.** If it is demonstrated that a system, once in operation, is causing disruptive electromagnetic interference described in section 1906(8), the system operator shall promptly eliminate the disruptive electromagnetic interference or cease operation of the system.

**SECTION 1908. NOTIFICATION.** The applicant shall provide evidence that the utility company has been informed of the customer's intent to install an interconnected customer-owned generator. Off-grid systems shall be exempt from this requirement.

**SECTION 1909. STATE AND FEDERAL REQUIREMENTS.**

(a) Towers shall comply with applicable Federal Aviation Administration regulations, including any necessary approvals for installations close to airports. Evidence of compliance or non-compliance shall be submitted with the application.

(b) Towers shall comply with applicable building codes, National Electric Code, and other state and federal requirements.

**SECTION 1910. REMOVAL OF UNSAFE TOWERS.** Any tower found to be unsafe by the Code Enforcement Officer shall be repaired by the owner to meet all federal, state, or local safety standards or removed within six months. If the owner fails to repair/remove the system as directed, the Town may pursue legal action to have the system removed at the owner's expense.

**SECTION 1911. ABANDONMENT OF USE.** A tower that is not used for 18 consecutive months shall be deemed abandoned and shall be dismantled and removed from the property at the expense of the property owner within six months after receipt of notice from the Town.

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## **CHAPTER 21**

### **ASSOCIATED FACILITIES OF OFFSHORE ENERGY PROJECTS**

**SECTION 2101. APPLICABILITY OF CHAPTER.** This chapter applies to associated facilities of offshore energy projects.

**SECTION 2102. TOWN'S ELECTRICAL NEEDS.** An applicant for the installation of associated facilities of an offshore energy project shall use reasonable efforts so that the design, construction, and location of the associated facilities (including the location of the point of landing and of related equipment) do not preclude the Town's residents, businesses, and municipal facilities from the ability to satisfy anticipated electrical capacity requirements over the life of the offshore energy project.

#### **SECTION 2103. CABLE TO BE BURIED.**

(a) Electrical cable that is part of associated facilities of an offshore energy project shall be buried to a depth of 18 inches from the point where it meets the land to the point where it connects to a utility pole, vault, or other structure, or to a transformer or other item of electrical equipment, except that—

(1) in places where ground conditions do not make it reasonably practical for it to be buried to that depth without resorting to blasting, the cable may be buried to a depth sufficient for vegetation to take root; or

(2) if that is not possible, the cable shall be permanently encased in concrete or the like, which shall be covered by sufficient soil to allow vegetation to take root.

(b) Land disturbed to bury cable and the surface covering the cable or its encasement shall be regraded to return the land to its original contour to the extent reasonably practicable. If any vegetation in the shoreland zone is removed or disturbed by such burial and covering, the land shall be revegetated in accordance with section 1338.

(c) The Planning Board may require the installation of signage identifying the location of buried cable if it considers it advisable on the basis of public safety.

**SECTION 2104. SETBACK REQUIREMENTS.** Electrical cable that is part of associated facilities of an offshore energy project shall not be subject to the setback requirements of chapter 9 (Dimensional Standards and Other Requirements) and chapter 13 (Shoreland Zoning). Other associated facilities that are part of an offshore energy project shall be subject to the applicable setback requirements of this ordinance.

## **SECTION 2105. DECOMMISSIONING.**

(a) If the authority from the State of Maine to operate an offshore energy project expires or is terminated, or if the associated facilities of an offshore energy project are not used for 12 consecutive months to transmit or distribute electricity, the Town may give written notice to the owner of the associated facilities requiring removal of specified portions of the associated facilities. The specified portions shall then be dismantled and removed, in accordance with the decommissioning plan included in the application, and at the expense of the owner of the associated facilities, within 12 months after receipt of such notice, unless state law imposes a different schedule.

(b) The following requirements shall apply to the dismantlement and removal of the associated facilities:

(1) Unless state law provides otherwise, in determining which portions of the associated facilities shall be required to be removed, the Town shall consider the extent to which the individual components of the associated facilities will continue to serve a useful purpose or are capable of being usefully repurposed. In determining whether to require the removal of buried cable, the Town shall balance the cost of its removal against the consequences to the Town and its residents of leaving it in place (in terms of both safety and appearance), whether or not the cable is proposed to be or capable of being repurposed.

(2) Unless state law provides otherwise, land disturbed in effecting such removal shall be regraded to return the land to its original contour to the extent reasonably practicable. If any vegetation in the shoreland zone is removed or disturbed by such removal, the land shall be revegetated in accordance with section 1338.

(3) The provisions of this section shall be binding on and enforceable against the applicant and each subsequent owner of the associated facilities of an offshore energy project. The applicant and each such subsequent owner shall require any transferee of such associated facilities to expressly assume those obligations in a writing reasonably satisfactory to the Town, but no failure to do so shall affect the transferee's obligations.

(4) If the owner fails to comply with its obligations under this section, the Town, in addition to its other remedies, may itself carry out or contract for the performance of those obligations at the expense of the owner, and the owner's obligation to pay the cost thereof will be secured as provided in section 2106. The owner will also pay the Town's reasonable attorneys' fees and costs in enforcing

the obligations under this section, and the owner's obligation to do so will also be secured as provided in section 2106.

**SECTION 2106. SECURITY FOR DECOMMISSIONING OBLIGATIONS.**

(a) If the applicant provides funds (in escrow or otherwise), a bond, or other security for its obligation to the State of Maine, the United States, any other government, or any agency of them, to secure the applicant's obligation with respect to the decommissioning of an offshore energy project, the applicant (if the government or agency so agrees) will include provisions in the security arrangement, reasonably satisfactory to the Planning Board, to the effect that (1) the arrangement secures the obligations under section 2105, and (2) the Town may directly enforce the security arrangement against the escrow holder, bonding company, or other person obligated under the arrangement as it relates to the obligations under section 2105.

(b) If subsection (a) does not apply, the applicant shall provide a cash deposit, performance bond, letter of credit, or other form of security specified by the Planning Board to secure performance of the obligations under section 2105. The amount of the security shall be 150 percent of the estimated decommissioning costs, or such lesser amount as the Planning Board shall approve, and the terms of the security instrument shall be reasonably satisfactory to the Planning Board. The issuer of the security instrument shall be an insurance company licensed to do business in the State of Maine and having an A. M. Best financial strength rating of A or better, or a bank or other financial institution with a long-term credit rating of A or better from a nationally recognized rating service.

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## **CHAPTER 23**

### **WELLHEAD PROTECTION**

#### **PART 1. GENERAL**

**SECTION 2301. PURPOSE.** The purpose of this chapter is to protect the quality of the ground water being extracted from the wells which serve the Tenants Harbor Water District (sometimes referred to in this chapter as “THWD”) and the Port Clyde Water District (sometimes referred to in this chapter as “PCWD”).

**SECTION 2302. AUTHORITY.** The chapter is adopted pursuant to the enabling provisions of Article VIII-A of the Maine Constitution, 30-A M.R.S. § 3001 (Home Rule), 30-A M.R.S. § 4311 (Growth Management) and 22 M.R.S. § 2642 (Protection of Drinking Water Supplies).

#### **SECTION 2303. APPLICABILITY.**

(a) This chapter applies to all land uses within the Wellhead Protection Areas (sometimes referred to in this chapter as “WHPA”) of the Tenants Harbor Water District’s and the Port Clyde Water District’s production wells.

(b) The WHPA of the Tenants Harbor Water District was based upon analysis of extensively monitored pumping tests, and is illustrated on maps produced by Emery and Garrett Groundwater, Inc. of Waterville, Maine for the Maine Department of Environmental Protection. The land area consists of two zones, with decreasing need for special land use protection. All zones were defined based upon an understanding of groundwater flow towards the two pumping wells within the bedrock aquifer. The zones are as follows: Zone 1 includes an area of about 67 acres around the THWD wells. It is the area within which flow of groundwater towards the pumping wells is likely to be sufficiently rapid that any spills would have serious and relatively rapid consequences for water quality in the wells. This area is the area owned by the THWD, and put under a restrictive easement, so that the land can be kept in a pristine condition that favors the highest water quality standards in perpetuity. Zone 2 includes the immediate area that may contribute groundwater to the wells while pumping. Zone 2 shall be protected by the best management practices described in part 4.

(b) The WHAP of the Port Clyde Water District has four bedrock wells, neither of which has wellhead protection areas defined by hydrogeological evaluation following a pumping test. In the absence of such scientific definition, the Town arbitrarily assigns Zone 1 to an area of 300-foot radius around each production well, and Zone 2 as an area



of 1,000-foot radius around each production well. Zone 1 and Zone 2 shall be protected by best management practices described in part 4.

**SECTION 2304. DEFINITIONS.** Certain terms used in this chapter are defined in sections 2314 and 3101. Any term defined in both of those sections is used in this chapter with the meaning given in section 2314, and any such term used elsewhere in this ordinance is used there with the meaning given in section 3101.

## **PART 2. ADMINISTRATION, ENFORCEMENT, APPEALS, AND VARIANCES**

### **SECTION 2305. ADMINISTERING BODIES AND AGENTS.**

(a) The Code Enforcement Officer shall administer land uses in Zone 2 and enforce this ordinance.

(b) The Planning Board shall administer all land uses in Zone 1 and land uses in Zone 2 that are appropriate.

(c) The employees and officers of the public water systems shall refer any problems or potential problems regarding land uses within the wellhead protection area to the Code Enforcement Officer.

(d) The Board of Appeals shall hear and act on administrative appeals and variance applications in accordance with the Board of Appeals Ordinance.

### **SECTION 2306. EXISTING AND FUTURE LAND USES.**

(a) Lawful nonconforming uses within a WHPA that existed before the effective date of this ordinance shall be allowed to continue. No expansion will be allowed unless it can be shown that the expansion does not pose a potential threat to the water supply. Changes to other nonconforming uses will not be allowed.

(b) Any existing or future land use within the WHPA may be subject to inspection by the Code Enforcement Officer accompanied by a representative of a Water District and their consultant to determine if an existing or future land use may pose a threat to the water supply.

(1) If the Code Enforcement Officer and Water District representatives agree that there is a potential, but not immediate threat, the Code Enforcement Officer will notify the landowner in writing of the potential threat and request that the problem be remedied.

(2) If the landowner cannot agree with the Code Enforcement Officer regarding the threat or the remedy, the landowner may ask for the opinion of a third party expert agreeable to the landowner, and the Code Enforcement Officer. The landowner will pay for this opinion and all parties will abide by it.

(3) If the Code Enforcement Officer and Water District representatives agree that there is an immediate threat, in violation of any provision in this chapter, the Code Enforcement Officer will notify the landowner in writing of the violation and request that the problem be remedied immediately. If the landowner does not agree, or the Code Enforcement Officer is not satisfied with the response received, the Code Enforcement Officer, or his authorized agents, may enter the property and remedy the problem. The Town shall be reimbursed by the landowner for the costs of the remedial action in addition to any fines associated with the violation.

(4) When the Code Enforcement Officer finds that a credible threat to the public water supply exists and that groundwater monitoring in the area will serve to protect the public water supply from existing or potential land use threats, the landowner shall either—

(A) grant the Water District the right to install groundwater monitoring wells and maintain the right to sample such wells on the applicant's property; or

(B) install monitoring wells and implement a groundwater-monitoring program approved by the Code Enforcement Officer.

(5) Further, the Code Enforcement Officer or the Water District representative shall have the right, upon reasonable advance notice, to conduct such testing as the Code Enforcement Officer may deem appropriate to determine that groundwater pollution control devices are in good condition and are working properly, and that best management practices are being followed. Such testing shall be at the expense of the Water District. If testing indicates that the groundwater has been contaminated above the State Primary or Secondary Drinking Water Standards, then (A) further testing shall be at the expense of the landowner in question, and (B) the landowner shall reimburse the Water District for expenses incurred in the initial well installation and testing.

(c) The above procedures do not preclude or limit the Town's rights and remedies as specified in section 2308.

**SECTION 2307. APPEALS.** An appeal of any decision of the Planning Board or Code Enforcement Officer under this chapter shall be taken to the Board of Appeals in accordance with the Board of Appeals Ordinance.

**SECTION 2308. VIOLATIONS, ENFORCEMENT, LEGAL ACTION AND FINES.** Violations of this chapter may be enforced under part 4 (Enforcement) of chapter 7 (Review Procedures and Permit Administration).

### **PART 3. LAND USES**

**SECTION 2309. LAND USES PERMITTED IN ZONE 1.** Land uses that are permitted in Zone 1 include the following:

- (1) Uses related to well field operations: access roads, structures, power supply and water treatment strictly related to and essential to well field operations.
- (2) Timber planting, growth and harvesting.
- (3) Trails for non-motorized use (walking, skiing, biking, etc.).
- (4) Structures having no floor area, i.e., transmission towers, antennas, and windmills that are deemed to have no adverse effect on water quality as determined by the Planning Board.
- (5) Structures accessory to permitted uses

**SECTION 2310. LAND USES PERMITTED IN ZONE 2.** All land uses located within Zone 2 shall comply with best management practices as outlined in Part 4. In some instances, there may be more than one management practice needed to fully mitigate the problem. Therefore, discretion is needed by the Planning Board or the Code Enforcement Officer in determining which management practices to apply.

### **PART 4. BEST MANAGEMENT PRACTICES FOR WELLHEAD PROTECTION AREAS.**

**SECTION 2311. INFORMATION SOURCES.** The following documents contain best management practices for Wellhead Protection as applied in the State of Maine: “Source Protection: A Guidance Manual for Small Surface Water Supplies in New England,” 1996, by New England Interstate Water Pollution Control Commission; “Environmental Management; A Guide for Town Officials,” 1992, by Maine Department of Environmental Protection; and “Best Management Practices for Marinas and Boatyards,”

1999, by Maine Department of Environmental Protection. These shall be used as a guide in making a determination of the threat to the water supply and the remedial action necessary.

**SECTION 2312. GENERAL BEST MANAGEMENT PRACTICES TO BE APPLIED IN ALL WELLHEAD PROTECTION ZONES.**

(a) All federal and state laws pertaining to pesticides and chemicals shall be strictly adhered to.

(b) Use biodegradable chemicals and cleaning agents only.

(c) Restore vegetation, or mulch bare soil areas, before any storm or rainfall event.

**SECTION 2313. BEST MANAGEMENT PRACTICES TO BE APPLIED TO SPECIFIC LAND USES.**

(a) **AGRICULTURE/OPEN SPACE/UTILITY CORRIDORS/LANDSCAPING/LOGGING OPERATIONS.** Best management practices shall be followed according to those listed in “Source Protection: A Guidance Manual for Small Surface Water Supplies in New England.”

(b) **STORAGE, HANDLING, USE, AND DISPOSAL OF HAZARDOUS MATERIALS.** Commercial and municipal storage, handling, use and disposal of hazardous materials is prohibited within the WHPA Zones 1 and 2, with the exception of liquefied petroleum gas when used to fuel back up power supplies. Use of hazardous materials for domestic purposes will follow all applicable best management practices as described in “Environmental Management: A Guide for Town Officials, Best Management Practices to Control Nonpoint Source Pollution.”

(c) **SOLID WASTE DISPOSAL.** Storage, for more than three months, and disposal of solid waste is prohibited in WHPA Zones 1 and 2.

(d) **MINING.** Mining is prohibited in any wellhead protection area.

(e) **SEPTIC/SUBSURFACE WASTEWATER/SEWAGE DISPOSAL.**

(1) Sewer and septic systems shall be designed by registered professionals using sound engineering practices. On-site sewage disposal shall be according to the Maine Subsurface Wastewater Disposal Rules.

(2) Construction of sewers and septic systems shall be carefully inspected to assure proper installation.

(3) New sewer systems shall be tested for leakage, according to State standards.

(4) Sewers and drainage systems shall be designed to assure that stormwater does not enter sanitary sewers.

(5) For cluster systems, 1,000 gallon septic tank capacity shall be provided for each 300 gallons of flow.

(6) Chemicals, hazardous materials, floor drains and stormwater drains (i.e. roof drains) shall not be discharged to septic systems.

(7) Old (pre-1974) septic systems shall be inspected to locate signs of leakage and poor soil conditions on an annual basis.

(8) Malfunctioning systems shall be replaced or repaired.

(9) The level of septic tanks regularly shall be tested regularly (at least every 3 years), and tanks shall be pumped out as required.

(10) Additional septic system best management practices shall be followed according to those listed in "Source Protection: A Guidance Manual for Small Surface Water Supplies in New England".

**(f) STORMWATER RUNOFF/SNOW AND ICE CONTROL.**

(1) Drainage systems, including detention basins, drainage ways, and storm sewer systems, shall be maintained in order to assure they function properly.

(2) Chemicals and wastes shall be stored in such a manner to prevent rainfall from contacting them.

**(g) WELLS, ABANDONED, EXISTING AND NEW.**

(1) Abandoned wells must be filled with cement grout.

(2) Wells must be constructed according to the State of Maine Regulations. This will ensure that contamination cannot enter ground water via either the inside or outside of the well.

(3) No injection wells or dry wells except for infiltration of rainwater from roof drains are permitted in the WHPA.

**(h) CONSTRUCTION SITES.**

(1) Erosion control plans for any construction sites must be approved by the Planning Board or Code Enforcement Officer prior to the start of any construction.

(2) Erosion control plans must include a buffer strip of vegetation between construction sites and bodies of water, and the mulching and re-seeding of cleared areas.

**(i) SALT PILES OR SAND/SALT PILES.** All salt and sand/salt piles shall be located or placed on an impervious surface and shall be covered or protected from precipitation

**(j) BOATYARDS AND BOAT STORAGE.**

(1) Only 50 percent of the total storage area may be covered with impervious surfaces.

(2) All bilge water from boat pump-out facilities will be routed through an oil-water separator.

(3) All pumps, lines and fueling equipment shall be inspected annually.

(4) Fuel spills shall be prevented by using backpressure and automatic shut-off valves on fuel pumps.

(5) Waste oil shall be disposed of at the Town's Waste Transfer Station.

(6) Waste from sand blasting and paint stripping shall be collected and disposed of at the Town's Waste Transfer Station.

(7) Propylene (instead of ethylene) glycol antifreeze shall be used. Used antifreeze shall be disposed of at the Town's Waste Transfer Station.

(8) Used batteries shall be disposed of at the Town's Waste Transfer Station.

(9) Boats shall be washed down only with water and mild detergents.

(10) Tributyltin (TBT) paint shall not be used on boat hulls.

(11) Untreated sanitary waste shall be discharged to an onsite septic system or holding tank.

(12) Additional best management practices for boat yards and marinas shall be followed according to those listed in “Best Management Practices for Marinas and Boatyards.”

## **PART 5. DEFINITIONS**

**SECTION 2314. DEFINITIONS.** In this chapter, the following terms have the following meanings unless the context requires otherwise. Other terms are defined in section 3101. Any term defined in both this section and in section 3101 is used in this chapter with the meaning given in this section, and any such term used elsewhere in this ordinance is used there with the meaning given in section 3101.

“Aquifer” means a permeable geologic formation, either rock or sediment, that when saturated with ground water is capable of transporting water through the formation.

“Best management practices” means procedures designed to minimize the effect of certain activities or land uses on ground water quality and quantity.

“Buffer strip” means a natural, undisturbed strip of vegetation or a planted strip of close-growing vegetation adjacent to developed areas. As stormwater travels over the buffer area, vegetation (or mulch) slows the runoff and traps particulate pollution.

“Construction” includes building, erecting, moving, or any physical operations on the premises required for construction. The term includes excavation, fill, paving, and the like.

“Drinking Water Standards, Primary and Secondary” means standards for drinking water as stated in the “State of Maine Rules Relating to Drinking Water” with the Maine Department of Human Services.

“Excavation.” See the definition of “construction.”

“Fill.” See the definition of “construction.”

“Floor drain” means an opening in the floor that leads to the ground, or is not permitted under other state, federal, or local regulations; work sinks that lead to such drains are included.

“Ground water” the water contained within the interconnected pores, cracks or fractures located below the water table of a confined or unconfined aquifer.

“Hazardous material” means any gaseous, liquid, or solid materials or substances designated as hazardous by the Environmental Protection Agency or the Maine Department of Environmental Protection, specifically including petroleum products.

“Hazardous waste” means any substance identified under Chapter 850, Identification of Hazardous Wastes, of the rules of the Maine Department of Environmental Protection, effective date July 1, 1980, including revisions or amendments thereto, and any radioactive waste material. The term includes any solid, liquid, or gas residue, including but not limited to spent fuel assemblies prior to processing, remaining after the primary usefulness of the radioactive material has been exhausted and containing nuclides that spontaneously disintegrate or exhibit ionizing radiation.

“Industrial waste” means wastes resulting from the processes employed in industrial manufacturing, trade, or business establishments.

“Inert fill” means material placed on or into the ground as fill that will not react chemically with soil, geologic material, or groundwater.

“Mining” or “mineral extraction” means any operation within a 12-month period which removes more than 100 cubic yards of soil, topsoil, loam, sand, gravel, clay, rock, peat, or other like material from its natural location and its transportation away from the extraction site.

“Mulch” means a composted or man-made material used to help stabilize open, exposed areas of soil. This nutrient-rich substrate is used in control prevention plans to re-establish vegetation in cleared areas.

“Paving.” See the definition of construction.

“PCWD” means the Port Clyde Water District.

“Public water system” means any publicly or privately owned system of pipes, structures, and facilities through which water is obtained for or sold, furnished, or distributed to the public for human consumption, and serving at least 25 service connections used by year-round or seasonal residences. The term “public water system” is also any collection, treatment, storage, or distribution pipes, structures, or facilities under the control of the supplier of water. The “public water system” is used primarily in connection with such a system, and any collection or pretreatment storage facilities not under that control that are used primarily in connection with such a system. The term



does not include the portion of service pipe owned and maintained by a customer of the public water system.

“Salt or sand/salt piles (covered)” means storage of salt or sand/salt mix intended for municipal, commercial, or other use except for homeowner sidewalks, steps, or driveways, beneath a roof or other structure capable of preventing precipitation from reaching the salt or sand/salt.

“Salt or sand/salt piles (uncovered)” means storage of any amount of salt or sand/salt, for any purpose, without a roof or other structure capable of preventing precipitation from reaching the salt or sand/salt.

“Service connection” means a physical pipe connection to the water distribution system that serves one end user or customer.

“Solid waste” means discarded solid material with insufficient liquid content to be free flowing. This includes but is not limited to rubbish, garbage, scrap materials, junk, refuse, inert fill materials, and landscape refuse.

“Subsurface wastewater disposal system” means a collection of treatment tank(s), disposal area(s), holding tank(s) and pond(s), surface spray system(s), cesspool(s), well(s), surface ditch(es), alternative toilet(s), or other devices and associated piping designed to function as a unit for the purpose of disposing of wastes or wastewater on or beneath the surface of the earth. The term shall not include any wastewater discharge system licensed under 38 M.R.S. § 414, any surface wastewater disposal system licensed under 38 M.R.S. § 414, any surface wastewater disposal system licensed under 38 M.R.S. § 413, subsection 1-A, or any public sewer or sewerage system.

“THWD” means the Tenants Harbor Water District.

“Timber harvesting” means the cutting and removal of trees from their growing site, and the attendant operation of cutting and skidding machinery, but not the construction or creation of roads. Timber harvesting does not include the clearing of land for approved construction.

“Utility corridor” means a right-of way, easement, or other corridor for transmission wires, pipes, or other facilities for conveying energy, communication signals, fuel, water, wastewater, etc.

“Wastewater” means any combination of water-carried wastes from institutional, commercial and industrial establishments, and residences together with any storm, surface or ground water as may be present.

“Wellhead” means the specific location of a well (a hole or shaft dug or drilled to obtain water) and any structure built over or extending from a well.

“Wellhead protection area” means an area, consisting of 2 zones, described in section 2303.

“Well, abandoned” means a shaft, casing, tile, hole, or pipe placed, drilled, or dug in the ground for the extraction or monitoring of ground water that has not been used for a period of two consecutive years.

“Well, existing or new” means a shaft, casing, tile, hole, or pipe placed, drilled, or dug in the ground for extraction, injection or monitoring of ground water.

“WHPA” means a wellhead protection area.

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## **CHAPTER 25**

### **FLOODPLAIN MANAGEMENT**

#### **PART 1. PRELIMINARY PROVISIONS**

##### **SECTION 2501. DEFINITIONS.**

(a) Certain terms used in this chapter are defined in sections 2528 and 3101. Any term defined in both of those sections is used in this chapter with the meaning given in section 2528, and any such term used elsewhere in this ordinance is used there with the meaning given in section 3101.

##### **SECTION 2502. PURPOSE AND ESTABLISHMENT.**

(a) Certain areas of the Town are subject to periodic flooding, causing serious damages to properties within these areas. Relief is available in the form of flood insurance as authorized by the National Flood Insurance Act of 1968.

(b) Therefore, the Town has chosen to become a participating community in the National Flood Insurance Program, and agrees to comply with the requirements of the National Flood Insurance Act of 1968 (P.L. 90-488, as amended) as delineated in this chapter.

(c) It is the intent of the Town to require the recognition and evaluation of flood hazards in all official actions relating to land use in the floodplain areas having special flood hazards.

(d) The Town has the legal authority to adopt land use and control measures to reduce future flood losses pursuant to 30-A M.R.S. §§ 3001-3007, 4352, and 4401-4407, and 38 M.R.S. § 440.

(e) The National Flood Insurance Program, established in the National Flood Insurance Act of 1968, provides that areas of the Town having a special flood hazard be identified by the Federal Emergency Management Agency and that floodplain management measures be applied in such flood hazard areas. This chapter establishes a flood hazard development permit system and review procedure for development activities in the designated flood hazard areas of the Town.

(f) The areas of special flood hazard, Zones A, AE, AH, and VE for the Town, identified by the Federal Emergency Management Agency in a report entitled "Flood Insurance Study - Knox County, Maine," dated July 6, 2016, with accompanying "Flood

Insurance Rate Map” dated July 6, 2016, with panels: 337D, 338D, 339D, 341D, 342D, 343D, 344D, 532D, 533D, 534D, 537D, 538D, 539D, 541D, 542D, 543D, 544D, 551D, 552D, 553D, 554D, 556D, 557D, 558D, 561D, 562D, 576D, 707D, 726D, 727D, 731D, and 750D, derived from the county-wide digital Flood Insurance Rate Map entitled “Digital Flood Insurance Rate Map, Knox County, Maine,” are hereby adopted by reference and declared to be a part of this chapter.

## **PART 2. PERMITS.**

**SECTION 2503. PERMIT REQUIRED.** Before any construction or other development, including the placement of manufactured homes, begins within any areas of special flood hazard established in section 2502, a flood hazard development permit shall be obtained from the Code Enforcement Officer except as provided in section 2523. This permit shall be in addition to any other permits which may be required pursuant to this ordinance and other ordinances of the Town.

**SECTION 2504. APPLICATION FOR PERMIT.** The application for a flood hazard development permit shall be submitted to the Code Enforcement Officer and shall include the following.

- (a) The name, address and phone number of the applicant, owner, and contractor.
- (b) An address and a map indicating the location of the construction site.
- (c) A site plan showing location of existing and/or proposed development, including but not limited to structures, sewage disposal facilities, water supply facilities, areas to be cut and filled, and lot dimensions.
- (d) A statement of the intended use of the structure and/or development.
- (e) A statement of the cost of the development including all materials and labor.
- (f) A statement as to the type of sewage system proposed.
- (g) Specification of dimensions of the proposed structure and/or development.
- (h) For new construction and substantial improvements only, the elevation in relation to the National Geodetic Vertical Datum (NGVD), North American Vertical Datum (NAVD), or to a locally established datum in Zone A only, of—

- (1) the base flood at the proposed site of all new or substantially improved structures, which is determined—

(A) in Zones AE, AH, and VE from data contained in the “Flood Insurance Study – Knox County, Maine,” as described in section 2502; or

(B) in Zone A—

(i) from any base flood elevation data from federal, state, or other technical sources (such as FEMA’s Quick-2 model, FEMA 265), including information obtained pursuant to sections 2517 and 2525(d);

(ii) from the contour elevation extrapolated from a best fit analysis of the floodplain boundary when overlaid onto a USGS Quadrangle Map or other topographic map prepared by a professional land surveyor or registered professional engineer, if the floodplain boundary has a significant correlation to the elevation contour line or lines; or,

(iii) in the absence of all other data, to be the elevation of the ground at the intersection of the floodplain boundary and a line perpendicular to the shoreline which passes along the ground through the site of the proposed building.

(2) the highest and lowest grades at the site adjacent to the walls of the proposed building;

(3) the lowest floor, including basement; and whether or not such structures contain a basement; and

(4) the level, in the case of nonresidential structures only, to which the structure will be floodproofed.

(i) For new construction and substantial improvements only, a description of an elevation reference point established on the site of all developments for which elevation standards apply as required in part 3 (Development Standards).

(j) For new construction and substantial improvements only, a written certification by a professional land surveyor, registered professional engineer, or architect, that the base flood elevation and grade elevations shown on the application are accurate.

(k) The following certifications as required in part 3 (Development Standards) by a registered professional engineer or architect:

(1) for new construction and substantial improvements only, a floodproofing certificate (FEMA Form 81-65, as amended), to verify that the floodproofing methods for any nonresidential structures will meet the floodproofing criteria of paragraph (h)(4), 2513, and other applicable development standards in part 3;

(2) for new construction and substantial improvements only, a V-Zone certificate to verify that the construction in coastal high hazard areas, Zone VE, will meet the criteria of section 2522 and other applicable standards in part 3;

(3) for new construction and substantial improvements only, a hydraulic openings certificate to verify that engineered hydraulic openings in foundation walls will meet the standards of section 2518(2);

(4) a certified statement that bridges will meet the standards of section 2519; and

(5) a certified statement that containment walls will meet the standards of section 2520.

(l) A description of the extent to which any water course will be altered or relocated as a result of the proposed development.

(m) A statement of construction plans describing in detail how each applicable development standard in part 3 will be met.

#### **SECTION 2505. APPLICATION FEE AND EXPERT'S FEE.**

(a) A non-refundable application fee, to be set by the Select Board, shall be paid to the Town and a copy of a receipt for the same shall accompany the application.

(b) An additional fee maybe charged if the Code Enforcement Officer or the Board of Appeals needs the assistance of a professional engineer or other expert. The expert's fee shall be paid in full by the applicant within ten days after the town submits a bill to the applicant. Failure to pay the bill shall constitute a violation of this ordinance and be grounds for the issuance of a stop work order. An expert shall not be hired by the municipality at the expense of an applicant until the applicant has either consented to such hiring in writing or been given an opportunity to be heard on the subject. An applicant who is dissatisfied with a decision to hire expert assistance may appeal that decision to the Board of Appeals in accordance with the Board of Appeals Ordinance.

**SECTION 2506. REVIEW STANDARDS FOR FLOOD HAZARD DEVELOPMENT PERMIT APPLICATIONS.**

(a) The Code Enforcement Officer shall review all applications for the flood hazard development permit to assure that proposed developments are reasonably safe from flooding and to determine that all pertinent requirements of part 3 (Development Standards) have been, or will be met.

(b) In the review of all Flood Hazard Development Permit applications—

(1) the Code Enforcement Officer shall the base flood and floodway data contained in the “Flood Insurance Study - Knox County, Maine,” as described in section 2502;

(2) in special flood hazard areas where base flood elevation and floodway data are not provided, the Code Enforcement Officer shall obtain, review, and reasonably utilize any base flood elevation and floodway data from federal, state, or other technical sources, including information obtained pursuant to section 2504(h)(1)(B), 2917, and 2925(b)(4), in order to administer part 3; and,

(3) when the Town establishes a base flood elevation in a Zone A by methods outlined in section 2504(h)(1)(B), the Town shall submit that data to the Maine Floodplain Management Program.

(c) The Code Enforcement Officer shall make interpretations of the location of boundaries of special flood hazard areas shown on the maps described in section 2502.

(d) The Code Enforcement Officer shall, in the review of Flood Hazard Development Permit applications, determine that all necessary permits have been obtained from those federal, state, and local government agencies from which prior approval is required by federal or state law, including but not limited to Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. § 1344.

(e) The Code Enforcement Officer shall notify adjacent municipalities, the Department of Environmental Protection, and the Maine Floodplain Management Program prior to any alteration or relocation of a water course and submit copies of such notifications to the Federal Emergency Management Agency.

(f) If the application satisfies the requirements of this chapter, the Code Enforcement Officer shall approve the issuance of one of the following flood hazard development permits, based on the type of development:



(1) A two-part Flood Hazard Development Permit for elevated structures. Part I shall authorize the applicant to build a structure to and including the first horizontal floor only above the base flood level. At that time the applicant shall provide the Code Enforcement Officer with an elevation certificate completed by a professional land surveyor, registered professional engineer, or architect based on the Part I permit construction, “as built,” for verifying compliance with the elevation requirements of section 2512, 2913, 2914, or 2922. Following review of the elevation certificate data, which shall take place within three business days after receipt of the application, the Code Enforcement Officer shall issue Part II of the flood hazard development permit. Part II shall authorize the applicant to complete the construction project.

(2) A Flood Hazard Development Permit for floodproofing of nonresidential structures that are new construction or substantially improved nonresidential structures that are not being elevated but that meet the floodproofing standards of section 2513(a)(1), (2), and (3). The application for this permit shall include a floodproofing certificate signed by a registered professional engineer or architect.

(3) A Flood Hazard Development Permit for minor development for all development that is not new construction or a substantial improvement, such as repairs, maintenance, renovations, or additions, whose value is less than 50 percent of the market value of the structure. Minor development also includes, but is not limited to, accessory structures as provided for in section 2516, mining, dredging, filling, grading, paving, excavation, drilling operations, storage of equipment or materials, deposition or extraction of materials, public or private sewage disposal systems or water supply facilities that do not involve structures; and nonstructural projects such as bridges, dams, towers, fencing, pipelines, wharves, and piers. For development that requires review and approval as a conditional use, the flood hazard development permit application shall be acted upon by the Planning Board as required in section 2523.

(g) The Code Enforcement Officer shall maintain, as a permanent record, copies of all flood hazard development permit applications, corresponding permits issued, and data relevant thereto, including reports of the Board of Appeals on variances granted under the provisions of section 2526, and copies of elevation certificates, floodproofing certificates, certificates of compliance and certifications of design standards required under the provisions of section 2504 and part 3 (Development Standards).

### **PART 3. DEVELOPMENT STANDARDS**

All developments in areas of special flood hazard shall meet the applicable standards of this part.

**SECTION 2507. ALL DEVELOPMENT.** All development shall—

- (1) be designed or modified and adequately anchored to prevent flotation (excluding piers and docks), collapse or lateral movement of the development resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;
- (2) use construction materials that are resistant to flood damage;
- (3) use construction methods and practices that will minimize flood damage; and
- (4) use electrical, heating, ventilation, plumbing, and air conditioning equipment, and other service facilities that are designed and located so as to prevent water from entering or accumulating within the components during flooding conditions.

**SECTION 2508. WATER SUPPLY.** All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the systems.

**SECTION 2509. SANITARY SEWAGE SYSTEMS.** All new and replacement sanitary sewage systems shall be designed and located to minimize or eliminate infiltration of flood waters into the system and discharges from the system into flood waters.

**SECTION 2510. ON-SITE WASTE DISPOSAL SYSTEMS.** On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during floods.

**SECTION 2511. WATERCOURSE CARRYING CAPACITY.** All development associated with altered or relocated portions of a watercourse shall be constructed and maintained in such a manner that no reduction occurs in the flood carrying capacity of the watercourse.

**SECTION 2512. RESIDENTIAL.**

(a) New construction or substantial improvement of any residential structure located within Zone AE and AH shall have the lowest floor (including basement) elevated to at least one foot above the base flood elevation.

(b) New construction or substantial improvement of any residential structure located within Zone AH shall have adequate drainage paths around structures on slopes, to guide floodwater away from the proposed structures.

(c) New construction or substantial improvement of any residential structure located within Zone A shall have the lowest floor (including basement) elevated to at least one foot above the base flood elevation utilizing information obtained pursuant to section 2504(h)(1)(B), 2906(b), or 2925(b)(4).

(4) New construction or substantial improvement of any residential structure located within Zone VE shall meet the requirements of section 2522.

### **SECTION 2513. NONRESIDENTIAL.**

(a) New construction or substantial improvement of any nonresidential structure located within Zone AE and AH shall have the lowest floor (including basement) elevated to at least one foot above the base flood elevation, or together with attendant utility and sanitary facilities shall—

(1) be floodproofed to at least one foot above the base flood elevation so that below that elevation the structure is watertight with walls substantially impermeable to the passage of water;

(2) have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and

(3) be certified by a registered professional engineer or architect that the floodproofing design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this section.

The certification described in paragraph (3) shall be provided with the application for a flood hazard development permit, as required by section 2504(k) and shall include a record of the elevation above mean sea level to which the structure is floodproofed.

(b) New construction or substantial improvement of any nonresidential structure located within Zone AH shall have adequate drainage paths around structures on slopes, to guide floodwater away from the proposed structures.

(c) New construction or substantial improvement of any nonresidential structure located within Zone A shall—

(1) have the lowest floor (including basement) elevated to at least one foot above the base flood elevation utilizing information obtained pursuant to section 2504(h)(1)(b), 2906(b), or 2925(b)(4) or

(2) together with attendant utility and sanitary facilities, meet the floodproofing standards of subsection (a).

(d) New construction or substantial improvement of any nonresidential structure located within Zone VE shall meet the requirements of section 2522.

#### **SECTION 2514. MANUFACTURED HOMES.**

(a) New or substantially improved manufactured homes located within Zone AE and AH shall—

(1) be elevated such that the lowest floor (including basement) of the manufactured home is at least one foot above the base flood elevation;

(2) be on a permanent foundation, which may be poured masonry slab or foundation walls, with hydraulic openings, or maybe reinforced piers or block supports, any of which support the manufactured home so that no weight is supported by its wheels and axles; and

(3) be securely anchored to an adequately anchored foundation system to resist flotation, collapse, or lateral movement, which may be accomplished by, without limitation—

(A) over-the-top ties anchored to the ground at the four corners of the manufactured home, plus two additional ties per side at intermediate points (manufactured homes less than 50 feet long require only one additional tie per side); or

(B) frame ties at each corner of the home, plus five additional ties along each side at intermediate points (manufactured homes less than 50 feet long require only four additional ties per side).

All components of the anchoring system described in subparagraphs (A) and (B) shall be capable of carrying a force of 4800 pounds.

(b) New or substantially improved manufactured homes located within Zone AH shall have adequate drainage paths around structures on slopes, to guide floodwater away from the proposed structures.

(c) New or substantially improved manufactured homes located within Zone A shall—

(1) be elevated on a permanent foundation, as described in paragraph (a)(2), such that the lowest floor (including basement) of the manufactured home is at least one foot above the base flood elevation utilizing information obtained pursuant to section 2504(h)(1)(B), 2906(b), or 2925(d); and

(2) meet the anchoring requirements of paragraph (a)(3).

(d) New or substantially improved manufactured homes located within Zone VE shall meet the requirements of section 2522.

#### **SECTION 2515. RECREATIONAL VEHICLES.**

(a) In addition to complying with sections 911(6) and 912, recreational vehicles located within Zone A, AE, and AH shall either—

(1) be on the site for fewer than 120 consecutive days during any period of 365 consecutive days;

(2) be fully licensed and ready for highway use, meaning that it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions; or

(3) be permitted in accordance with the elevation and anchoring requirements for “manufactured homes” in section 2514(a).

(b) Recreational vehicles located within Zone VE shall meet the requirements of either paragraph (a)(2) or 2122.

**SECTION 2516. ACCESSORY STRUCTURES.** Accessory structures located within Zones A, AH, and AE shall be exempt from the elevation criteria required in sections 2512 and 2513 if all other requirements of this part and all the following requirements are met. Accessory structures shall—

(1) have unfinished interiors and not be used for human habitation;

(2) have hydraulic openings, as specified in 2918(b), in at least two different walls of the accessory structure;

(3) be located outside the floodway;

(4) when possible be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters and be placed further from the source of flooding than is the primary structure; and

(5) have only ground fault interrupt electrical outlets.

The electric service disconnect serving an accessory structure shall be located above the base flood elevation and when possible outside the special flood hazard area.

#### **SECTION 2517. FLOODWAYS.**

(a) In Zone AE riverine areas, encroachments, including fill, new construction, substantial improvement, and other development shall not be permitted within a regulatory floodway which is designated on the Town's Flood Insurance Rate Map, unless a technical evaluation certified by a registered professional engineer is provided demonstrating that such encroachments will not result in any increase in flood levels within the Town during the occurrence of the base flood discharge.

(b) In Zones AE and A riverine areas, for which no regulatory floodway is designated, encroachments, including fill, new construction, substantial improvement, and other development shall not be permitted in the floodway as determined in subsection (c) unless a technical evaluation certified by a registered professional engineer is provided demonstrating that the cumulative effect of the proposed development, when combined with all other existing development and anticipated development—

(1) will not increase the water surface elevation of the base flood more than one foot at any point within the Town; and

(2) is consistent with the technical criteria contained in FEMA's guidelines and standards for flood risk analysis and mapping.

(c) In Zones AE and A riverine areas for which no regulatory floodway is designated, the regulatory floodway is determined to be the channel of the river or other water course and the adjacent land areas to a distance of one-half the width of the floodplain as measured from the normal high water mark to the upland limit of the floodplain.

**SECTION 2518. ENCLOSED AREAS BELOW THE LOWEST FLOOR.** New construction or substantial improvement of any structure in Zones AE, AH, and A that meets the development standards of this part, including the elevation requirements of sections 2512, 2513, or 2514, and is elevated on posts, columns, piers, piles, "stilts," or crawl spaces may be enclosed below the base flood elevation requirements provided all the following criteria are met or exceeded:

(1) Enclosed areas are not basements.

(2) Enclosed areas shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of flood water; designs for meeting this requirement must either—

(A) be engineered and certified by a registered professional engineer or architect; or

(B) meet or exceed the following minimum criteria:

(i) a minimum of two openings having a total net area of not less than one square inch for every square foot of the enclosed area;

(ii) the bottom of all openings shall be below the base flood elevation and no higher than one foot above the lowest grade; and

(iii) openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the entry and exit of flood waters automatically without any external influence or control such as human intervention, including the use of electrical and other non-automatic mechanical means.

3. The enclosed area shall not be used for human habitation.

4. The enclosed areas are usable solely for building access, parking of vehicles, or storage.

**SECTION 2519. BRIDGES.** New construction or substantial improvement of any bridge in Zones A, AH, AE, and VE shall be designed such that—

(1) when possible, the lowest horizontal member (excluding the pilings or columns) is elevated to at least one foot above the base flood elevation; and

(2) a registered professional engineer shall certify that—

(A) the structural design and methods of construction shall meet the elevation requirements of this section and the floodway standards of section 2517; and

(B) the foundation and superstructure attached thereto are designed to resist flotation, collapse, and lateral movement due to the effects of wind

and water loads acting simultaneously on all structural components, and water loading values used shall be those associated with the base flood.

**SECTION 2520. CONTAINMENT WALLS.**

(a) New construction or substantial improvement of any containment wall located within Zones A, AH, AE, and VE shall—

(1) have the containment wall elevated to at least one foot above the base flood elevation;

(2) have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and

(3) be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this section, and such certification shall be provided with the application for a flood hazard development permit, as required by section 2504(k).

(b) New construction or substantial improvement of any containment wall located within Zone AH shall have adequate drainage paths around containment walls on slopes, to guide floodwater away from the proposed walls.

**SECTION 2521. WHARVES, PIERS AND DOCKS.** New construction or substantial improvement of wharves, piers, and docks are permitted in Zones A, AH, AE, and VE, in and over water and seaward of the mean high tide if the following requirements are met:

(1) wharves, piers, and docks shall comply with all applicable local, state, and federal regulations; and

(2) for commercial wharves, piers, and docks, a registered professional engineer shall develop or review the structural design, specifications, and plans for the construction.

**SECTION 2522. COASTAL FLOODPLAINS.**

(a) All new construction located within Zones AE and VE shall be located landward of the reach of mean high tide except as provided in subsection (f).

(b) New construction or substantial improvement of any structure located within Zone VE shall—



(1) be elevated on posts or columns such that—

(A) the bottom of the lowest horizontal structural member of the lowest floor (excluding the pilings or columns) is elevated to one foot above the base flood elevation;

(B) the pile or column foundation and the elevated portion of the structure attached thereto is anchored to resist flotation, collapse, and lateral movement due to the effects of wind and water loads acting simultaneously on all building components; and

(C) water loading values used shall be those associated with the base flood. Wind loading values used shall be those required by applicable state and local building standards.

(2) have the space below the lowest floor—

(A) free of obstructions; or

(B) constructed with open wood lattice-work, or insect screening intended to collapse under wind and water without causing collapse, displacement, or other structural damage to the elevated portion of the building or supporting piles or columns; or

(C) constructed to enclose less than 300 square feet of area with non-supporting breakaway walls which have a design safe loading resistance of not less than ten or more than 20 pounds per square foot.

(3) require a registered professional engineer or architect to—

(A) develop or review the structural design, specifications, and plans for the construction, which must meet or exceed the technical criteria contained in the Coastal Construction Manual, (FEMA-55); and

(B) certify that the design and methods of construction to be used are in accordance with accepted standards of practice for meeting the criteria of this subsection.

(c) The use of fill for structural support in Zone VE is prohibited.

(d) Human alteration of sand dunes within Zone VE is prohibited unless it can be demonstrated that such alterations will not increase potential flood damage.

(e) The areas below the lowest floor shall be used solely for parking vehicles, building access, and storage.

(f) Lobster sheds and fishing sheds may be located seaward of mean high tide and shall be exempt from the elevation requirement in section 2513 only if permitted as a conditional use following review and approval by the Planning Board, as provided in section 2523, and if all the following requirements and those of sections 2507, 2517, and 2518 are met:

(1) The conditional use shall be limited to low value structures such as metal or wood sheds 200 square feet or less and shall not exceed more than one story.

(2) The structure shall be securely anchored to the wharf or pier to resist flotation, collapse, and lateral movement due to the effect of wind and water loads acting simultaneously on all building components.

(3) The structure will not adversely increase wave or debris effect forces affecting nearby buildings.

(4) The structure shall have unfinished interiors and shall not be used for human habitation.

(5) Any mechanical, utility equipment and fuel storage tanks must be anchored and either elevated or floodproofed to one foot above the base flood elevation.

(6) All electrical outlets shall be ground fault interrupt type. The electrical service disconnect shall be located on shore above the base flood elevation and when possible outside the special flood hazard area.

#### **SECTION 2523. CONDITIONAL USE REVIEW.**

(a) **JURISDICTION.** The Planning Board shall hear and decide applications for conditional uses provided for in this chapter. The Planning Board shall hear and approve, approve with conditions, or disapprove all applications for conditional uses. An applicant informed by the Code Enforcement Officer that a Conditional Use Permit is required shall file an application for the permit with the Planning Board.

#### **(b) REVIEW PROCEDURE FOR A CONDITIONAL USE FLOOD HAZARD DEVELOPMENT PERMIT.**

(1) The flood hazard development permit application with additional information attached addressing how each of the conditional use criteria specified in this chapter will be satisfied, may serve as the permit application for the conditional use permit.

(2) Before deciding any application, the Planning Board shall hold a public hearing on the application within 30 days after their receipt of the application.

(3) If the Planning Board finds that the application satisfies all relevant requirements of this chapter, the Planning Board must approve the application or approve with conditions within 45 days after the date of the public hearing.

(4) A conditional use permit issued under the provisions of this section shall expire if the work or change involved is not commenced within 180 days after the issuance of the permit by the Planning Board.

(5) The applicant shall be notified by the Planning Board in writing over the signature of the Chair of the Planning Board that flood insurance is not available for structures located entirely over water or seaward of mean high tide.

(c) **EXPANSION OF CONDITIONAL USES.** No existing building or use of premises may be expanded or enlarged without a permit issued under this section if that building or use was established or constructed under a previously issued conditional use permit or if it is a building or use which would require a conditional use permit if being newly established or constructed under this chapter.

#### **SECTION 2524. CERTIFICATE OF COMPLIANCE.**

(a) No land in a special flood hazard area shall be occupied or used and no structure which is constructed or substantially improved shall be occupied until a certificate of compliance is issued by the Code Enforcement Officer subject to the provisions of this section.

(b) For new construction or substantial improvement of any elevated structure the applicant shall submit to the Code Enforcement Officer—

(1) an elevation certificate completed by a professional land surveyor, registered professional engineer, or architect, for compliance with sections 5912, 2513, 2514, and 2522; and

(2) for structures in Zone VE, a certification by a registered professional engineer or architect that the design and methods of construction used are in compliance with section 2522(b).

(c) The applicant shall submit written notification to the Code Enforcement Officer that the development is complete and complies with the provisions of this chapter.

(d) Within ten working days thereafter, the Code Enforcement Officer—

(1) shall review the required certificate(s) and the applicant's written notification; and,

(2) upon determination that the development conforms with the provisions of this chapter, shall issue a Certificate of Compliance.

#### **SECTION 2525. REVIEW OF SUBDIVISION AND DEVELOPMENT PROPOSALS.**

(a) This section applies to subdivisions and other proposed developments that require review under other federal law, state law, or local ordinances or regulations and all projects on five or more disturbed acres, or in the case of manufactured home parks divided into two or more lots.

(b) The Planning Board, shall approve a proposed development described in subsection (a) only if—

(1) the proposal is consistent with the need to minimize flood damage;

(2) all public utilities and facilities, such as sewer, gas, electrical, and water systems are located and constructed to minimize or eliminate flood damages;

(3) adequate drainage is provided so as to reduce exposure to flood hazards;

(4) the proposal includes base flood elevations, flood boundaries, and, in a riverine floodplain, floodway data, and these determinations shall be based on engineering practices recognized by the Federal Emergency Management Agency; and

(5) the requirement in subsection (c) is met.

(c) Every proposed development described in subsection (a) shall include in its development plan a condition of plan approval that structures on any lot in the

development having any portion of its land within a special flood hazard area, are to be constructed in accordance with this part. Such requirement will be included in any deed, lease, purchase and sale agreement, or document transferring or expressing an intent to transfer any interest in real estate or structure, including but not limited to a time-share interest. The condition shall clearly articulate that the municipality may enforce any violation of the construction requirement and that fact shall also be included in the deed or any other document previously described. The construction requirement shall also be clearly stated on any map, plat, or plan to be signed by the Planning Board or local reviewing authority as part of the approval process.

#### **PART 4. MISCELLANEOUS PROVISIONS**

##### **SECTION 2526. APPEALS AND VARIANCES.**

(a) The Board of Appeals shall, upon written application of an aggrieved party, hear and decide administrative appeals in accordance with the Board of Appeals Ordinance from any action of, or failure to act by, the Code Enforcement Officer or Planning Board in the administration or enforcement of this chapter, but only if such an administrative appeal is within the jurisdiction of the Board of Appeals under the Board of Appeals Ordinance.

(b) The Board of Appeals may grant a variance from the requirements of this chapter in accordance with the Board of Appeals Ordinance and consistent with state law and the following criteria:

(1) Variances shall not be granted within any designated regulatory floodway if any increase in flood levels during the base flood discharge would result.

(2) Variances shall be granted only upon—

(A) a showing of good and sufficient cause;

(B) a determination by the Board of Appeals that should a flood comparable to the base flood occur, the granting of a variance will not result in increased flood heights, additional threats to public safety, public expense, or create nuisances, cause fraud or victimization of the public or conflict with existing local laws or ordinances; and

(C) a showing that the issuance of the variance will not conflict with other state, federal or local laws ordinances.

(3) Variances shall be issued only upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief, and the Board of Appeals may impose such conditions to a variance as it deems necessary.

(4) Variances may be issued for new construction, substantial improvements, or other development for the conduct of a functionally dependent use provided that:

(A) other criteria of this section, section 2517, and the Board of Appeals Ordinance are met; and

(B) the structure or other development is protected by methods that minimize flood damage during the base flood and create no additional threats to public safety.

(5) Variances may be issued for the repair, reconstruction, rehabilitation, or restoration of historic structures upon the determination that—

(A) the development meets the criteria of paragraphs (1) through (4); and

(B) the proposed repair, reconstruction, rehabilitation, or restoration will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.

(6) Any applicant who meets the criteria of paragraphs (1) through (5) shall be notified by the Board of Appeals in writing over the signature of the Chair of the Board of Appeals that—

(A) the issuance of a variance to construct a structure below the base flood level will result in greatly increased premium rates for flood insurance up to amounts as high as \$25 per \$100 of insurance coverage; and

(B) such construction below the base flood level increases risks to life and property.

(7) The applicant shall agree in writing before the permit is issued that the applicant is fully aware of all the risks inherent in the use of land subject to flooding, assumes those risks, and agrees to indemnify and defend the Town against any claims filed against it that are related to the applicant's decision to use land located in a floodplain and that the applicant individually releases the Town

from any claims the applicant may have against the municipality that are related to the use of land located in a floodplain.

(c) Administrative appeals and variance applications shall be conducted in accordance with the procedures set forth in the Board of Appeals Ordinance.

(d) The Board of Appeals shall submit to the Code Enforcement Officer a report of all variance actions, including justification for the granting of the variance and an authorization for the Code Enforcement Officer to issue a Flood Hazard Development Permit, which includes any conditions to be attached to said permit.

(e) Any aggrieved party who participated as a party during a proceeding before the Board of Appeals may take an appeal to the Superior Court in accordance with Maine law and the rules of that court.

#### **SECTION 2527. ENFORCEMENT AND PENALTIES.**

(a) Part 4 (Enforcement) of chapter 7 (Review Procedures and Permit Administration) shall apply to the enforcement of this chapter and the penalties that can be imposed for violations thereof.

(b) In addition to any actions that may be taken under subsection (a), the Code Enforcement Officer, upon determination that a violation of this chapter exists, shall submit a declaration to the Administrator of the Federal Insurance Administration requesting a denial of flood insurance. The valid declaration shall consist of—

(1) the name of the property owner and address or legal description of the property sufficient to confirm its identity or location;

(2) a clear and unequivocal declaration that the property is in violation of a cited State or local law, regulation, or ordinance;

(3) a clear statement that the public body making the declaration has authority to do so and a citation to that authority;

(4) evidence that the property owner has been provided notice of the violation and the prospective denial of insurance; and,

(5) a clear statement that the declaration is being submitted pursuant to Section 1296 of the National Flood Insurance Act of 1968, as amended.

## **PART 5. DEFINITIONS**

**SECTION 2528. DEFINITIONS.** In this chapter, the following terms have the following meanings unless the context requires otherwise. Other terms are defined in section 3101. Any term defined in both this section and in section 3701 is used in this chapter with the meaning given in this section, and any such term used elsewhere in this ordinance is used there with the meaning given in section 3101.

“100-year flood” means a base flood.

“Adjacent grade” means the natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

“Area of shallow flooding” means a designated AH zone on a community’s Flood Insurance Rate Map (FIRM) with a one percent or greater annual chance of flooding to an average depth of one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

“Area of special flood hazard” means the land in the floodplain having a one percent or greater chance of flooding in any given year, as specifically identified in the Flood Insurance Study cited in section 2502.

“Base flood” means the flood having a one percent chance of being equaled or exceeded in any given year, commonly called the 100-year flood.

“Basement” means any area of the building having its floor subgrade (below ground level) on all sides.

“Breakaway wall” means a wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces, without causing damage to the elevated portion of the building or supporting foundation system.

“Building” means a structure.

“Certificate of compliance” means a document signed by the Code Enforcement Officer stating that a structure is in compliance with all of the provisions of this chapter.

“Conditional use” means a use that because of its potential effect on surrounding areas and structures, is permitted only upon review and approval by the Planning Board pursuant to section 2523.



“Containment wall” means a wall used to convey or direct stormwater or sanitary water from the initial source to the final destination.

“Development” means a man-made change to improved or unimproved real estate. The term includes, but is not limited to, structures, mining, dredging, filling, grading, paving, excavation, drilling operations, storage of equipment or materials, and the storage, deposition, or extraction of materials.

“Digital Flood Insurance Rate Map (FIRM)” means a Flood Insurance Rate Map in digital form.

“Elevated building” means a non-basement building—

(1) built, in the case of a building in Zones A, AH, or AE, so that the top of the elevated floor, or in the case of a building in Zone VE, to have the bottom of the lowest horizontal structural member of the elevated floor, elevated above the ground level by means of pilings, columns, post, piers, or “stilts”; and

(2) adequately anchored so as not to impair the structural integrity of the building during a flood of up to one foot above the magnitude of the base flood.

In the case of Zones A, AH, or AE, the term also includes a building elevated by means of fill or solid foundation perimeter walls with hydraulic openings sufficient to facilitate the unimpeded movement of flood waters, as required in section 2519. In the case of Zone VE, Elevated Building also includes a building otherwise meeting the definition of elevated building, even though the lower area is enclosed by means of breakaway walls, if the breakaway walls meet the standards of section 2522(b)(2)(C).

“Elevation certificate” means an official form (FEMA Form 81-31, as amended) that (1) is used to verify compliance with the floodplain management regulations of the National Flood Insurance Program, and (2) is required for purchasing flood insurance.

“FEMA” means the Federal Emergency Management Agency.

“Flood” or “flooding” means—

(1) a general and temporary condition of partial or complete inundation of normally dry land areas from (A) the overflow of inland or tidal waters or (B) the unusual and rapid accumulation or runoff of surface waters from any source, and

(2) the collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually

high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in paragraph (1)(A) of this definition.

“Flood elevation study” means an examination, evaluation, and determination of flood hazards and, if appropriate, corresponding water surface elevations.

“Flood Insurance Rate Map (FIRM)” means an official map of a community, on which the Federal Insurance Administrator has delineated both the special hazard areas and the risk premium zones applicable to the community.

“Flood insurance study” means a flood elevation study.

“Floodplain” or “Flood-prone area means any land area susceptible to being inundated by flooding.

“Floodplain management” means the operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works, and floodplain management regulations.

“Floodplain management regulations” means zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as a floodplain ordinance, grading ordinance, and erosion control ordinance), and other applications of police power. The term describes such state or local regulations, in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.

“Floodproofing” means any combination of structural and nonstructural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and contents.

“Floodway” means a regulatory floodway.

“Floodway encroachment lines” means the lines marking the limits of floodways on federal, state, and local floodplain maps.

“Freeboard” means a factor of safety usually expressed in feet above a flood level for purposes of floodplain management. Freeboard tends to compensate for the many unknown factors, such as wave action, bridge openings, and the hydrological effect of urbanization of the watershed that could contribute to flood heights greater than the height calculated for a selected site flood and floodway conditions.

“Functionally dependent use” means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities.

“Historic structure” means any structure that is—

(1) listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;

(2) certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary of the Interior to qualify as a registered historic district;

(3) individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or

(4) individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified, either (A) by an approved state program as determined by the Secretary of the Interior, or (B) directly by the Secretary of the Interior in states without approved programs.

“Locally established datum” means an elevation established for a specific site to which all other elevations at the site are referenced. This elevation is generally not referenced to the National Geodetic Vertical Datum (NGVD), North American Vertical Datum (NAVD), or any other established datum and is used in areas where mean sea level data is too far from a specific site to be practically used.

“Lowest floor” means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building’s lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements described in section 2518.

“Manufactured home” means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For floodplain management purposes the term manufactured home also includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than 180 consecutive days.

“Manufactured home park or subdivision” means a lot (or contiguous lots) divided into two or more manufactured home lots for rent or sale.

“Mean sea level” means when related of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929, North American Vertical Datum (NAVD) or other datum, to which base flood elevations shown on a community’s Flood Insurance Rate Map are referenced.

“Minor development” means all development that is not new construction or a substantial improvement, such as repairs, maintenance, renovations, or additions, whose value is less than 50 percent of the market value of the structure. It also includes, but is not limited to accessory structures as provided for in section 2516, mining, dredging, filling, grading, paving, excavation, drilling operations, storage of equipment or materials, deposition or extraction of materials, public or private sewage disposal systems or water supply facilities that do not involve structures, and nonstructural projects such as bridges, dams, towers, fencing, pipelines, wharves, and piers.

“National Geodetic Vertical Datum (NGVD)” means the national vertical datum, whose standard was established in 1929, which is used by the National Flood Insurance Program (NFIP). NGVD was based upon mean sea level in 1929 and also has been called “1929 Mean Sea Level (MSL).”

“New Construction” means structures for which the start of construction commenced on or after the effective date of the initial floodplain management regulations adopted by a community and includes any subsequent improvements to such structures.

“North American Vertical Datum (NAVD)” means the national datum whose standard was established in 1988, which is the new vertical datum used by the National Flood Insurance Program (NFIP) for all new Flood Insurance Rate Maps. NAVD is based upon vertical datum used by other North American countries such as Canada and Mexico and was established to replace NGVD because of constant movement of the earth’s crust, glacial rebound, and subsidence and the increasing use of satellite technology.

“Recreational Vehicle” means a vehicle which is—

- (1) built on a single chassis;

(2) 400 square feet or less when measured at the largest horizontal projection, not including slideouts;

(3) designed to be self-propelled or permanently towable by a motor vehicle; and

(4) designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

“Regulatory floodway” means—

(1) the channel of a river or other water course and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot, and

(2) when not designated on the Town’s Flood Insurance Rate Map, the channel of a river or other water course and the adjacent land areas to a distance of one-half the width of the floodplain, as measured from the normal high water mark to the upland limit of the floodplain.

“River” has the meaning assigned to that term in common English usage.

“Riverine” means relating to, formed by, or resembling a river (including tributaries), stream, brook, or the like.

“Special flood hazard area” means an area of special flood hazard.

“Spring” has the meaning assigned to that term in common English usage.

“Start of construction” means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, substantial improvement or other improvement was within 180 days after the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets or walkways; nor does it include excavation for basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part

of a building, or modification of any construction element, whether or not that alteration affects the external dimensions of the building.

“Structure” means, for floodplain management purposes, a walled and roofed building. A gas or liquid storage tank that is principally above ground is also a structure.

“Substantial damage” means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damage condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

“Substantial improvement” means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the start of construction of the improvement. This term includes structures which have incurred substantial damage, regardless of the actual repair work performed. The term does not, however, include either—

(1) any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the Code Enforcement Officer and which are the minimum necessary to assure safe living conditions; or

(2) any alteration of a historic structure, provided that the alteration will not preclude the structure’s continued designation as a historic structure, and a variance is obtained from the Board of Appeals.

“Variance” means a grant of relief by the Town from the terms of this chapter or a floodplain management regulation.

“Violation” means the failure of a structure or development to comply with this chapter or the Town’s floodplain management regulations.

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## **CHAPTER 27**

### **MANUFACTURED HOUSING AND MOBILE HOME PARKS**

**SECTION 2701. DEFINITIONS.** Certain terms used in this chapter are defined in section 2709.

**SECTION 2702. MANUFACTURED HOUSING UNITS.** Any manufactured housing unit placed on an individual lot on or after the effective date of this ordinance shall have a pitched, shingled roof, shall rest on a permanent foundation, shall have exterior siding that is residential in appearance, and shall conform to the setback requirements of chapter 9 (Dimensional Standards and Other Requirements).

#### **SECTION 2703. SIZE AND DENSITY OF MOBILE HOME PARK LOTS.**

(a) A mobile home park lot served by a public sewer system shall be no smaller than 6,500 square feet.

(b) A mobile home park lot with on-site subsurface waste water disposal shall be no smaller than 20,000 square feet.

(c) A mobile home park lot served by a central on-site subsurface waste water disposal system approved by the Maine Department of Health and Human Services shall be no smaller than 12,000 square feet.

(d) The density of a mobile home park shall be no greater than one home per 20,000 square feet.

**SECTION 2704. OVERALL AREA OF MOBILE HOME PARKS.** The overall area of a mobile home park shall not exceed the combined area of its mobile home park lots plus—

(1) the area required for road rights-of-way under section 2706; and

(2) the area required for buffer strips under section 2707; and

**SECTION 2705. SETBACKS AND ROAD FRONTAGE IN MOBILE HOME PARKS.** Manufactured housing units in a mobile home park shall conform to the setback requirements of chapter 9 (Dimensional Standards and Other Requirements) and shall not be subject to a minimum road frontage requirement.



**SECTION 2706. INTERIOR ROADS IN MOBILE HOME PARKS.** Privately owned roads within a mobile home park shall—

(1) be built according to acceptable engineering standards and with a professional engineer’s seal as required by the Maine Manufactured Housing Board;

(2) have a right-of-way of 23 feet in width; and

(3) conform to safety standard applicable to intersections with public ways adjacent to the mobile home park.

**SECTION 2707. BUFFER STRIPS IN MOBILE HOME PARKS.**

(a) A mobile home park shall establish and maintain a buffer strip 50 feet wide along each boundary of the mobile home park that abuts land used for residential use if the per-acre density of homes within the mobile home park is at least two times greater than—

(1) the density of the residential development on immediately adjacent lots,  
or

(2) if the immediately adjacent lots are undeveloped, an assumed density of one residence per (A) 50,000 square feet for each lot located in the shoreland zone and (B) one acre for each lots located elsewhere.

(b) No structures, streets, or utilities maybe placed in the buffer strip required by subsection (a), except that utilities may cross it to provide services to the mobile home park.

(c) The first 25 feet of the buffer strip required by subsection (a), as measured from the exterior boundaries of the mobile home park, shall be vegetated to create a visual and actual buffer between the mobile home park and surrounding lots.

**SECTION 2708. SITE PLAN REVIEW.** The establishment or expansion of a mobile home park is subject to site plan approval under chapter 11.

**SECTION 2709. DEFINITIONS.** In this chapter, the following terms have the following meanings unless the context requires otherwise.

“Manufactured housing unit” means a structural unit designed for occupancy and constructed in a manufacturing facility and transported, by the use of its own chassis or an independent chassis, to a building site. The term includes any type of building that is

constructed at a manufacturing facility and transported to a building site where it is used for housing and may be purchased or sold by a dealer in the interim.

“Modular home” means a manufactured housing unit that the manufacturer certifies is constructed in compliance with 10 M.R.S. chapter 951, and rules adopted under that chapter, meaning structures, transportable in one or more sections, that are not constructed on a permanent chassis and are designed to be used as dwellings on foundations when connected to required utilities, including the plumbing, heating, air-conditioning or electrical systems contained in the unit.

“Mobile home park” means a parcel of land under unified ownership approved by the Town for the placement of three or more manufactured homes.

“Mobile home park lot” means the area of land on which an individual manufactured housing unit is situated within a mobile home park and which is reserved for use by the occupants of that unit.

“Permanent foundation” means—

(1) for a newer mobile home, a foundation that conforms to the installation standards established by the Maine Manufactured Housing Board; or

(2) for a “modular home, a foundation that conforms to the Building Officials and Code Administrators National Code (1990).

“Pitched, shingled roof” means a roof with a pitch of two or more vertical units for every 12 horizontal units of measurement and which is covered with asphalt or fiberglass composition shingles or other materials, but specifically excludes corrugated metal roofing material.

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**CHAPTER 29**  
**SUBDIVISIONS**

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## **CHAPTER 31**

### **DEFINITIONS AND RULES OF INTERPRETATION**

#### **PART 1. DEFINITIONS**

**SECTION 3101. DEFINITIONS.** In this ordinance the following terms have the following meanings unless the context requires otherwise. Chapters 17 (Signs), 23 (Wellhead Protection), 25 (Floodplain Management), and 27 (Manufactured Housing and Mobile Home Parks) contain additional definitions of terms used in those chapters.

“Abutting property” means any lot that is physically contiguous to the subject lot, even if only at a point, and any lot that is located directly across a road or right-of-way from the subject lot such that the extension of any side lot line of the subject lot would touch the other property or any of its side lot lines. “Abut” has the correlative meaning.

“Accessory structure” means a structure that is incidental and subordinate to the principal structure. A deck or similar extension of the principal structure or a garage attached to the principal structure by a roof or a common wall is part of the principal structure.

“Accessory use” means a use that is incidental and subordinate to the principal use.

“Aggrieved party” has the meaning given to that term in the Board of Appeals Ordinance.

“Agricultural land management practices” means those devices and procedures utilized in the cultivation of land to further crop and livestock production.

“Agriculture” means the production, keeping, or maintenance for sale or lease of plants or animals, including but not limited to: forages and sod crops; grains and seed crops; dairy animals and dairy products; poultry and poultry products; livestock; fruits and vegetables; and ornamental and greenhouse products. The term does not include forest management activities or timber harvesting activities.

“Approving authority” has the meaning given to that term in section 304.

“Aquaculture” means the growing or propagation of harvestable freshwater, estuarine, or marine plant or animal species.

“Associated facilities” means elements of an offshore energy project, other than its generating facilities, that are necessary to the proper operation and maintenance of the

project, including but not limited to cables, poles, transformers, other electrical equipment, connection vaults, buildings and other structures, and access roads. The term does not include (1) equipment that is part of the electrical grid of a transmission and distribution utility licensed by the Maine Public Utilities Commission or (2) anything located in submerged lands.

“Basal area” means the area of the cross-section of a tree stem at 4.5 feet above ground level, inclusive of bark.

“Basement” means any portion of a structure with a floor-to-ceiling height of six feet or more and having more than 50 percent of its volume below the existing ground level.

“Bed and breakfast” means a private residence that rents on a nightly or weekly basis up to five rooms that are located in the same building as the living quarters of the operator or the operator’s agent and that contain no kitchen facilities other than one or more of an electric coffee maker, an electric tea kettle, a microwave oven, and a mini-refrigerator.

“Boarding house” means any residential structure where lodging or lodging and meals are provided for compensation for a period of at least two weeks, where a family residing in the building acts as proprietor or owner, and where there are no provisions for cooking in any individual room other than the main kitchen, other than one or more of an electric coffee maker, an electric tea kettle, a microwave oven, and a mini-refrigerator.

“Boat house” means a nonresidential structure designed for the purpose of protecting and storing boats.

“Boat launching facility” means a facility designed primarily for the launching and landing of watercraft, and which may include an access ramp, docking area, and parking spaces for vehicles and trailers.

“Bridge.” See “Pier” in these definitions.

“Building” means any permanent structure having one or more floors and a roof, which is used for the housing or enclosure of persons, animals, or property, excluding mobile homes. When any portion of a structure is separated from another portion by a division wall without opening, then each such portion is a separate building.

“Bureau of Forestry” means the Bureau of Forestry of the Maine Department of Agriculture, Conservation and Forestry.

“Campground” means any lot or lots used, with or without compensation to the owner or operator, for the accommodation of two or more parties in living quarters that do not constitute residential dwelling units and are not located in the same structure as living quarters occupied by the campground operator or the operator’s agent, including but not limited to tents, recreational vehicles, or other shelters established for camping, whether supplied by the operator or the guests and whether or not constituting permanent structures.

“Canopy” means the more or less continuous cover formed by tree crowns in a wooded area.

“C.M.R” means the Code of Maine Rules.

“Coastal bluff” means an area identified as being a “highly unstable” or “unstable” coastal bluff by the Maine Geological Survey pursuant to its classification of coastal bluffs and published on the most recent coastal bluff maps.

“Coastal wetland” means all tidal and sub-tidal lands; all lands with vegetation present that is tolerant of salt water and occurs primarily in a salt water or estuarine habitat; and any swamp, marsh, bog, beach, flat, or other contiguous low land that is subject to tidal action during the highest tide level for the year in which an activity is proposed as identified in tide tables published by the National Ocean Service. Coastal wetlands may include portions of coastal sand dunes. All areas below the highest annual tide level are coastal wetlands. These areas may consist of rocky ledges, sand and cobble beaches, mud flats, etc., in addition to salt marshes and salt meadows.

“Commercial use” means the use of lands, buildings, or structures the intent of which is to produce income from selling goods at retail or wholesale or performing services. The term includes hotels, motels, inns, bed and breakfasts, boarding houses, mobile home parks and campgrounds, but does not include (1) agriculture, (2) the rental of real estate, or (3) home occupations.

“Comprehensive Plan” means the Town’s Comprehensive Plan as in effect from time to time.

“Contiguous lots” means abutting properties in the same ownership, except that lots on opposite sides of a public or private road shall not be considered contiguous unless the road was established by the owner of the land on both sides thereof.

“Cupola, dome, widow’s walk, or other similar feature” means a non-habitable building feature mounted on a building roof for observation or aesthetic purposes.



“Currently developed” refers to an area that has at least two dwellings per 1,000 feet of shore frontage.

“DBH” (as used in Appendix A) means the diameter of a standing tree measured 4.5 feet from ground level.

“Developed area” means any area on which a site improvement or change is made, including buildings, landscaping, parking areas, roads, and other areas not revegetated.

“Development” means a change in land use involving alteration of land, water, or vegetation, the addition or alteration of structures, or other construction not naturally occurring.

“Dimensional requirements” means numerical requirements in this ordinance relating to lot area, lot coverage, road frontage, shore frontage, setback, and structure height.

“District” means a district in the shoreland zone established by chapter 11 (Shoreland Zoning) or its predecessor ordinance.

“Dock.” See “Pier” in these definitions.

“Driveway” means a vehicular access-way less than 500 feet in length serving not more than two single-family dwellings or one two-family dwelling.

“Electrical grid” means cables, poles, transformers, other electrical equipment, connection vaults, structures, and access roads that collectively constitute an electrical transmission or distribution system that carries electricity other than, or in addition to, electricity generated by an offshore energy project.

“Emergency operations” means operations conducted for the public health, safety or general welfare, such as protection of resources from immediate destruction or loss, law enforcement, and operations to rescue human beings, property, or livestock from the threat of destruction or injury.

“Essential services” means gas, electrical, or communication facilities; steam, fuel, electric power or water transmission or distribution lines, towers, and related equipment; telephone cables or lines, poles, and related equipment; gas, oil, water, slurry, or other similar pipelines; municipal sewage lines, collection or supply systems; and associated storage tanks. The term may include towers, poles, wires, mains, drains, pipes, conduits, cables, fire alarms, police call boxes, traffic signals, hydrants, and similar accessories, but does not include service drops or buildings which are necessary for the furnishing of such services.

“Expansion” means—

(1) when used with reference to a structure, an increase in the footprint of the structure, including all extensions, such as but not limited to attached decks, garages, porches, and greenhouses, or in the height of the structure beyond its highest existing point; and

(2) when used with reference to a nonresidential use, the addition of more than four weeks to the use’s operating season; the addition of one or more days (or portion thereof) per week to the days of regular operation; the addition of one or more hours (or portion thereof) of regular operation to a business day; the addition of floor area or ground area devoted to the use; or the provision of additional seats or seating capacity by an amount that, when combined with any expansions made the preceding five years, for which a permit was not required, exceeds 25 percent of the seats or seating capacity that existed at the beginning of the five-year period.

“Expand” has a correlative meaning.

“Family” means one or more persons occupying a premises and living as a single housekeeping unit.

“Floodway” means the channel of a river or other watercourse and adjacent land areas that shall be reserved in order to discharge the 100-year flood without cumulatively increasing the water surface elevation by more than one foot in height.

“Floor area” means the sum of the horizontal areas of the floors of a structure enclosed by exterior walls, plus the horizontal area of any unenclosed portions of a structure such as porches and decks.

“Footprint” means the entire area of ground covered by any structure, including but not limited to cantilevered or similar overhanging extensions, as well as unenclosed structures such as patios and decks, above-ground heating, cooling, and solar equipment, and paved parking areas.

“Forest management activities” means timber cruising and other forest resource evaluation activities, pesticide or fertilizer application, management planning activities, timber stand improvement, pruning, regeneration of forest stands, and other similar or associated activities, exclusive of timber harvesting and the construction, creation, and maintenance of roads.

“Forested wetland” means a freshwater wetland dominated by woody vegetation that is six meters (approximately 20 feet) tall or taller.

“Forest stand” means a contiguous group of trees sufficiently uniform in age class distribution, composition, and structure, and growing on a site of sufficiently uniform quality, to be a distinguishable unit.

“Foundation” means the supporting substructure of a building or other structure, excluding wooden sills and post supports, but including basements, slabs, frost walls, or other base consisting of concrete, block, brick, or similar material.

“Freshwater wetland” means a freshwater swamp, marsh, bog, or similar area that—

(1) either—

(A) consists of ten or more contiguous acres, or

(B) consists of less than ten contiguous acres and is adjacent to a surface water body, excluding any river, stream, or brook, such that in a natural state the combined surface area is in excess of ten acres as shown by the National Wetlands Inventory map; and

(2) is inundated or saturated by surface or ground water at a frequency and for a duration sufficient to support, and which under normal circumstances does support, a prevalence of wetland vegetation typically adapted for life in saturated soils.

An area that meets this definition is a freshwater wetland even though it contains small stream channels or inclusions of land that do not themselves conform to the criteria of this definition.

“Functionally water-dependent use” means any use that requires, for its primary purpose, location on submerged lands or that requires direct access to, or location in, coastal or inland waters and which cannot be located away from these waters. The term includes, but is not limited to, commercial and recreational fishing and boating facilities, fish processing, fish-related storage, retail and wholesale fish marketing facilities, waterfront dock and port facilities, shipyards and boat-building facilities, marinas, navigation aids, basins and channels, structures on a shoreline or a bank of a water body or tributary stream necessary for erosion control purposes, industrial uses dependent upon water-borne transportation or requiring large volumes of cooling or processing water that cannot reasonably be located or operated at an inland site, and uses that primarily provide general public access to coastal or inland waters. A recreational boat storage building is

not considered to be a functionally water-dependent use. “Fish,” in this definition, includes fin fish and shellfish.

“Great pond” means (1) any inland body of water that in a natural state has a surface area in excess of ten acres, and (2) any inland body of water artificially formed or increased that has a surface area in excess of 30 acres unless the artificially formed or increased inland body of water is completely surrounded by land held of record in identical ownership.

“Great pond classified GPA” means any great pond classified GPA pursuant to 38 M.R.S. § 465-A. This classification includes some, but not all, impoundments of rivers that are defined as great ponds.

“Ground cover” means small plants, fallen leaves, needles, twigs, and the partially decayed organic matter of the forest floor.

“Hazard tree” means a tree with a structural defect, combination of defects, or disease resulting in a structural defect that, under the normal range of environmental conditions at the site, exhibits a high probability of failure and loss of a major structural component of the tree in a manner that will strike a target. A normal range of environmental conditions does not include meteorological anomalies such as, but not limited to, hurricanes; hurricane-force winds; tornados; microbursts; or significant ice storm events. Hazard trees also include those trees that pose a serious and imminent risk to shoreline or bank stability. A “target” is the area where personal injury or property damage could occur if the tree or a portion of the tree fails. Targets include roads, driveways, parking areas, structures, campsites, and any other developed area where people frequently gather or linger.

“Height” of a structure means—

(1) with respect to existing principal or accessory structures, including legally existing nonconforming structures, located within an area of special flood hazard (as defined in section 2528) that have been or are proposed to be relocated, reconstructed, replaced, or elevated to be consistent with the minimum elevation required by chapter 25, the vertical distance between the bottom of the sill of the structure to the highest point of the structure, excluding chimneys, steeples, antennas and similar appurtenances that have no floor area; and

(2) with respect to new principal or accessory structures and to existing principal or accessory structures other than those described in paragraph (1), including legally existing nonconforming structures, the vertical distance between the mean original (preconstruction) grade at the downhill side of the structure and

the highest point of the structure, excluding chimneys, steeples, antennas, and similar appurtenances that have no floor area.

“Home occupation” means an occupation or profession that (1) is customarily conducted in or on a residential structure or property, (2) is clearly incidental to and compatible with the residential use of the property and surrounding residential uses, and (3) employs not more than two persons other than family members residing in the home.

“Increase in nonconformity,” with reference to a structure, means a change in a structure or property that causes further deviation from any dimensional requirement creating the nonconformity, such as but not limited to reduction in water-body, tributary-stream, or wetland setback distance, reduction in setback distances from lot lines and road rights-of-way, increase in lot coverage, or increase in height of a structure. Property changes or structure expansions that either meet the dimensional standard or that cause no further increase in the linear extent of nonconformity of the existing structure shall not be considered to increase nonconformity. For example, there is no increase in nonconformity with a setback requirement if the expansion extends no further into the required setback area than does any portion of the existing nonconforming structure. Hence, a structure may be expanded laterally provided that the expansion extends no closer to the water body, tributary stream, wetland, lot line, or road right-of-way than the closest portion of the existing structure from that water body, tributary stream, wetland, lot line, or road right-of way. Included in this allowance are expansions which in-fill irregularly shaped structures, such as L-shaped and U-shaped structures.

“Individual private campsite” means an area of land that is not associated with a campground, but which is developed for repeated recreational camping by only one group not to exceed ten individuals and that involves site improvements, which may include but not be limited to a gravel pad, parking area, fire place, or tent platform.

“Industrial” means connected with the assembling, fabrication, finishing, manufacturing, packaging, or processing of goods or the extraction of minerals.

“Institutional” refers to (1) a nonprofit or quasi-public use or institution, such as a church, library, public or private school, hospital, or municipally owned or operated building or structure, and (2) land used for public purposes.

“Issuing authority” has the meaning given to that term in section 305.

“Licensed forester” means a forester licensed under 23 M.R.S. chapter 76.

“Lot” means all contiguous land in a parcel in single or joint ownership described on a deed, plot plan, or similar legal document recorded at the Knox County Registry of Deeds, and having frontage upon an approved street or private right-of-way. Lots located

on opposite sides of a public or private road shall each be considered a separate lot, but may be considered as contiguous lots according to the definition of that term.

“Lot area” means the area of land enclosed within the boundary lines of a lot, exclusive of—

- (1) land below the normal high-water line of a water body or upland edge of a wetland;
- (2) areas beneath roads serving more than two lots;
- (3) land beneath any public or private right-of-way; and
- (4) land not suitable for development in accordance with Maine state law or any Town ordinance.

“Maine Minimum Lot Size Law” means 12 M.R.S. chapter 423-A.

“Maine Minimum Lot Size Rules” means 10-144 C.M.R. chapter 243.

“Maine Subsurface Wastewater Disposal Rules” means 10-144 C.M.R. chapter 241.

“Marina” means a business establishment having frontage on navigable water and, as its principal use, providing for hire offshore moorings or docking facilities for boats, and which may also provide accessory services such as boat and related sales, boat repair and construction, indoor and outdoor storage of boats and marine equipment, bait and tackle shops, and marine fuel service facilities.

“Market value” means the estimated price a property will bring in the open market and under prevailing market conditions in a sale between a willing seller and a willing buyer, both conversant with the property and with prevailing general price levels.

“Mineral exploration” means hand sampling, test boring, or other methods of determining the nature or extent of mineral resources that create minimal disturbance to the land and that include reasonable measures to restore the land to its original condition.

“Mineral extraction” means any operation within any 12-month period that removes more than 100 cubic yards of soil, topsoil, loam, sand, gravel, clay, rock, peat, or other like material from its natural location and transports the product removed away from the extraction site.

“Mobile home” means a structure, transportable in one or two sections constructed in a manufacturing facility and transported to a building site, that is designed to be used as a dwelling when connected to the required utilities, including the plumbing, heating, air conditioning, and electrical systems contained therein. The term does not include a recreational vehicle.

“Mobile home park” means any land upon which three or more occupied mobile homes or recreational vehicles used for habitation are parked, whether free of charge or for income producing purposes, including any roadway, building, structure, vehicle, or enclosed used or intended for use as part of the facilities of the park.

“M.R.S.” means the Maine Revised Statutes, as in effect from time to time.

“Multi-unit residential” refers to one or more residential buildings on a single lot containing in the aggregate three or more residential dwelling units.

“Nacelle” means the generator housing located at the top of a tower.

“Native” means indigenous to the locality in question.

“Natural areas,” “natural communities,” “unique natural areas,” and “unique natural communities” mean (1) areas identified as having significant value as a natural area by a governmental agency such as the Maine Department of Agriculture, Conservation and Forestry’s natural areas program and (2) areas similarly identified in the Comprehensive Plan.

“Nonconforming condition” means a nonconforming lot, structure, or use that is allowed solely because it was in lawful existence at the effective date of the relevant provision of this ordinance or any relevant amendment.

“Nonconforming lot” means a single lot that, at the effective date of the relevant provision of this ordinance or any relevant amendment, does not meet the area, frontage, or width requirements of this ordinance.

“Nonconforming structure” means a structure that does not meet one or more of the setback, height, lot coverage, or footprint requirements, or that is located on a lot that does not meet the lot coverage requirement, but that is allowed solely because it was in lawful existence at the effective date of the relevant provision of this ordinance or any relevant amendment.

“Nonconforming use” means a use of buildings, structures, premises, land, or parts thereof that is not allowed in the district in which it is situated, but that is allowed to

remain solely because it was in lawful existence at the effective date of the relevant provision of this ordinance or any relevant amendment.

“Non-native invasive species of vegetation” means species of vegetation listed by the Maine Department of Agriculture, Conservation and Forestry as being invasive in Maine ecosystems and not native to Maine ecosystems.

“Nonstructural maintenance and repair” includes work such as painting, roofing, the replacement of interior and exterior doors or windows that does not change their openings, the repair, replacement, or refurbishing of flooring and tiling, and the like. The term does not include work that changes the footprint or floor area of a structure or involves the addition or removal of an interior wall, the addition or sealing up of a door opening, or any change to plumbing (other than the replacement of fixtures) or electrical wiring.

“Normal high-water line,” as applied to non-tidal waters, means the line that is apparent from visible markings, changes in the character of soils due to prolonged action of the water, or changes in vegetation and that distinguishes between predominantly aquatic and predominantly terrestrial land. Areas contiguous to a river or a great pond 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. The comparable term applied to tidal waters is “upland edge.”

“Offshore energy project” means a project for the generation or transmission of electrical energy from generating facilities in, over, or on the coastal waters of Maine (including islands located in those waters), whether from conventional, nuclear, or renewable sources.

“Permanent,” with reference to a pier, dock, wharf, or bridge, has the meaning given to that term in the definition of those terms.

“Person” means an individual, government, governmental agency, municipality, trust, estate, corporation, general or limited partnership, limited liability company, association, other legal entity, or two or more individuals having a joint or common interest.

“Pier,” “dock,” “wharf,” and “bridge” refer to structures and uses extending over or beyond the normal high-water line or within a wetland. Such a structure is—

(1) “temporary” if it remains in or over the water for less than seven months in any period of twelve consecutive months, and



(2) “permanent” if it remains in or over the water for seven months or more in any period of twelve consecutive months.

“Principal structure” means a structure other than an accessory structure on the same lot.

“Principal use” means a use other than an accessory use on the same lot.

“Public facility” means any facility, including but not limited to buildings, property, recreation areas, and roads, which are owned, leased, or otherwise operated, or funded by a governmental body or public entity.

“Recent flood plain soils” means the following soil series as described and identified by the National Cooperative Soil Survey:

Alluvial	Cornish	Charles
Fryeburg	Hadley	Limerick
Lovewell	Medomak	Ondawa
Podunk	Rumney	Saco
Suncook	Sunday	Winooski

“Recreational facility” means a place designed and equipped for the conduct of sports, leisure time activities, and other customary and usual recreational activities, excluding boat launching facilities.

“Recreational vehicle” means a vehicle, or an attachment to a vehicle designed to be towed, designed for temporary sleeping or living quarters for one or more persons, The term includes without limitation a pick-up camper, travel trailer, tent trailer, camp trailer, and motor home. In order to be considered as a vehicle and not as a structure, the unit shall remain with its tires on the ground and shall be registered with the Maine Bureau of Motor Vehicles or the comparable agency of another jurisdiction.

“Residential dwelling unit” means a room or group of rooms designed and equipped exclusively for use as permanent, seasonal, or temporary living quarters for only one family at a time, and containing cooking, sleeping, and toilet facilities. The term includes mobile homes and rental units that contain cooking, sleeping, and toilet facilities regardless of the time-period rented. An electric coffeemaker, electric tea kettle, microwave oven or a mini-refrigerator, alone or in combination, do not constitute cooking facilities. Recreational vehicles are not residential dwelling units.

“Right-of-way” means a road or other area over which is given legal right of passage. A public right-of-way is a right-of-way dedicated to the use of the public and

accepted for ownership by the Town or other governmental body, and a private right-of-way is any other right-of-way.

“Riprap” means rocks, irregularly shaped and at least six inches in diameter, used for erosion control and soil stabilization, typically used on ground slopes of two units horizontal to one unit vertical or less.

“River” means a free-flowing body of water, including its associated flood plain wetlands, from that point at which it provides drainage for a watershed of 25 square miles to its mouth; but the portion of a river that is subject to tidal action is a coastal wetland.

“Road” means a route or track consisting of a bed of exposed mineral soil, gravel, asphalt, or other surfacing material constructed for or created by the repeated passage of motorized vehicles, excluding a driveway.

“Road frontage” means the linear distance between the sidelines of a lot, measured along the line that borders upon whatever right-of-way serves as legal access to the lot.

“Road right-of-way” means a right-of-way intended for use as a road.

“Rotor diameter” means the cross-sectional dimension of the circle swept by rotating blades.

“Salt marsh” means an area of a coastal wetland (most often along a coastal bay) that supports salt-tolerant species, and where at average high tide during the growing season, the soil is irregularly inundated by tidal waters. The predominant species is salt marsh cordgrass (*Spartina alterniflora*). More open areas often support widgeon grass (*Ruppia cirrhosa*), eel grass (*Zostera marina*), and Sago pond weed (*Stuknia pectintata*).

“Salt meadow” means an area of a coastal wetland that supports salt-tolerant plant species bordering the landward side of salt marshes or open coastal water, where the soil is saturated during the growing season, but which is rarely inundated by tidal water. Indigenous plant species include salt meadow cordgrass (*Spartina patens*) and black rush (*Juncus roemerianus*); common three square (*Schoeoplectus pungens*) occurs in fresher areas.

“Sapling” means a tree species that is less than two inches in diameter at 4.5 feet above ground level.

“Seedling” means a young tree species that is less than 4.5 feet in height above the ground level.

“Service drop” means any utility line extension that does not cross or run beneath any portion of a water body, provided that—

(1) in the case of electric service—

(A) the placement of wires and the installation of utility poles is located entirely upon the premises of the customer requesting service or upon a roadway right-of-way; and

(B) the total length of the extension is less than 1,000 feet; and

(2) in the case of other services, such as telephone, cable television, and internet—

(A) the extension, regardless of length, is made by the installation of telephone wires to existing utility poles, or

(B) the extension requiring the installation of new utility poles or placement underground is less than 1,000 feet in length.

“Setback” means—

(1) with reference to a water body, tributary stream, or wetland, the nearest horizontal distance from the normal high-water line of a water body or tributary stream, or the upland edge of a wetland, to the nearest part of a structure, road, parking space, or other regulated object or area;

(2) with reference to “front,” “front yard,” or “right-of-way,” an area extending the entire width of a lot from lot sideline to lot sideline and extending in depth at a right angle the shortest distance from any point on the edge of the road right-of-way to the nearest part of a structure, road, parking space, or other regulated object or area;

(3) with reference to “rear,” “back,” or “back yard,” except where paragraph (1) applies, an area extending the entire width of a lot from lot sideline to lot sideline and extending at a right angle the shortest distance from any point on the rear property line to the nearest part of a structure, road, parking space, or other regulated object or area; and

(4) with reference to “side” or “side yard,” except where paragraph (1) applies, an area extending along a sideline of a lot between the front and rear lot lines and extending at a right angle the shortest distance from any point on the

sideline of such lot to the nearest part of a structure, road, parking space, or other regulated object or area.

“Shore frontage” means the length of a lot bordering on a water body or wetland measured in a straight line between the intersections of the lot lines with the shoreline.

“Shoreland zone” means the land area located within 250 feet, horizontal distance, of the normal high-water line of any great pond or river; within 250 feet, horizontal distance, of the upland edge of a coastal wetland, including all areas affected by tidal action; within 250 feet, horizontal distance of the upland edge of a freshwater wetland; or within 75 feet, horizontal distance, of the normal high-water line of a stream.

“Shoreline” means the normal high-water line of a water body or tributary stream or the upland edge of a freshwater or coastal wetland.

“Significant River Segment” means a location identified in 38 M.R.S. § 437.

“Site plan” means a plan prepared in accordance with the requirements of chapter 11 (Site Plan Review), showing the proposed layout of buildings, structures, roads, parking, landscaping, and other site improvements and features.

“Solar energy system” means a system designed and used to obtain energy from the sun in order to supply energy. A solar energy system may include solar hot water or air conditioning or photovoltaic systems.

“Storm-damaged tree” means a tree that, as a result of a storm event, has been uprooted or blown down, or is lying on the ground, or remains standing and is damaged beyond the point of recovery.

“Stream” means a free-flowing body of water from the outlet of a great pond or the confluence of two perennial streams, as depicted on the most recent highest resolution version of the national hydrography dataset available from the United States Geological Survey on the website of the United States Geological Survey or the national map, to the point where the stream becomes a river or where the stream meets the shoreland zone of another water body or a wetland. When a stream meets the shoreland zone of a water body or wetland and a channel forms downstream of the water body or wetland as an outlet, the channel is also a stream.

“Structure” means anything temporarily or permanently located, built, constructed or erected for the support, shelter, or enclosure of persons, animals, goods, or property of

any kind and anything constructed or erected on or in the ground. The term does not include—

- (1) fences;
- (2) poles, wiring, and other aerial equipment normally associated with service drops, including guy wires and guy anchors;
- (3) subsurface sewage disposal systems;
- (4) geothermal heat exchange wells as defined in 32 M.R.S. § 4700-E, subsection 3-C; or
- (5) wells or water wells as defined in 32 M.R.S. § 4700-E, subsection 8.

The term does not include driveways but includes paved parking areas.

“Submerged lands” has the meaning given to that term in 12 M.R.S. § 1801, subsection 9.

“Substantially completed,” with reference to a structure or use, means completed to the point where normal functioning, use, or occupancy can occur without concern for the general health, safety, and welfare of the occupant and the general public. At a minimum it includes the completion of work representing not less than 70 percent of the costs of the proposed improvements within a development and the completion of permanent stabilization and revegetation of areas of the site that were disturbed during construction.

“Substantial start” means completion of 30 percent of a permitted structure or use, measured as a percentage of estimated total cost paid or earned by performance.

“Subsurface sewage disposal system” means any system designed to dispose of waste or waste water on or beneath the surface of the earth, including but not limited to septic tanks; disposal fields; grandfathered cesspools; holding tanks; and pretreatment filter, piping, or any other fixture, mechanism, or apparatus used for those purposes. The term does not include any discharge system licensed under 38 M.R.S. § 414, any surface waste water disposal system, or any municipal or quasi-municipal sewer or waste water treatment system.

“Sustained slope” a change in elevation where the referenced percent grade is substantially maintained or exceeded throughout the measured area.

“Table of Land Uses” means the table in section 1310(c), including the notes thereto.

“Temporary,” with reference to a pier, dock, wharf, or bridge, has the meaning given to that term in the definition of those terms.

“Tidal waters” means all waters affected by tidal action during the maximum spring tide.

“Timber harvesting” means the cutting and removal of timber for the primary purpose of selling or processing forest products. “Timber harvesting” does not include the cutting or removal of vegetation within the shoreland zone when associated with any other land use activities. The cutting or removal of trees in the shoreland zone on a lot that has less than two acres within the shoreland zone shall not be considered timber harvesting. Such cutting or removal of trees shall be regulated pursuant to section 1335 (Clearing or Removal of Vegetation for Activities Other Than Timber Harvesting).

“Timber harvesting and related activities” means timber harvesting, the construction and maintenance of roads used primarily for timber harvesting and other activities conducted to facilitate timber harvesting.

“Tower” means a structure such as a transmission tower, wind energy system, antenna, or similar structure having no floor area.

“Tower height” means the height above grade of the fixed portion of a tower, at the furthest most reaching point of the structure.

“Transmission and distribution utility” has the meaning given to that term in 35-A M.R.S. § 102, subsection 20-B.

“Tree” means a woody perennial plant with one or more well-defined trunks at least two inches in diameter at 4.5 feet above the ground, with a more or less definite crown, and of a type that normally reaches a height of at least ten feet at maturity.

“Tributary stream” means a channel between defined banks created by the action of surface water, which is characterized by the lack of terrestrial vegetation or by the presence of a bed, devoid of topsoil, containing waterborne deposits or exposed soil, parent material, or bedrock, and which is connected hydrologically with one or more water bodies. The term does not include rills or gullies forming because of accelerated erosion in disturbed soils where the natural vegetation cover has been removed by human activity. This definition does not include the term “stream” as defined elsewhere in this section, and applies only to that portion of the tributary stream located within the shoreland zone of the receiving water body or wetland.

“Upland edge of a wetland” means the boundary between upland and wetland. For purposes of a coastal wetland, this boundary is the line formed by the landward limits of the salt tolerant vegetation or the highest annual tide level, including all areas affected by tidal action. For purposes of a freshwater wetland, the upland edge is formed where the soils are not saturated for a duration sufficient to support wetland vegetation; or where the soils support the growth of wetland vegetation, but such vegetation is dominated by woody stems that are six meters (approximately 20 feet) tall or taller. The comparable term applied to a water body or tributary stream is “normal high-water line.”

“Use” means the purpose for which land or a building is arranged, designed, or intended, or for which either land or a structure is or may be occupied or maintained.

“Vegetation” means all live trees, shrubs, and other plants, including without limitation trees both over and under four inches in diameter, measured at 4.5 feet above ground level.

“Velocity zone” means an area of special flood hazard extending from offshore to the inland limit of the primary frontal dune along an open coast and any other area subject to high-velocity wave action from storms or seismic sources.

“Water body” means any great pond, river, or stream.

“Water crossing” means any project extending from one bank to the opposite bank of a river, stream, tributary stream, or wetland, whether under, through, or over the water or wetland. Such projects include but may not be limited to roads, fords, bridges, culverts, water lines, sewer lines, and cables, as well as maintenance work on these crossings. The term includes crossings for timber harvesting equipment and related activities.

“Wetland” means a freshwater wetland or a coastal wetland.

“Wharf.” See “Pier” in these definitions.

“Width,” when used with reference to a lot, means the closest distance between the side lot lines of the lot. When only two lot lines extend into the shoreland zone, both lot lines shall be considered to be side lot lines.

“Wind energy system” means a system of equipment located on a single lot that converts and then stores or transfers energy from the wind into usable forms of energy. This equipment includes the base, blade, foundation, generator, nacelle, rotor, tower, transformer vane, wire, inverter, batteries, or other components used in the system.

“Wind energy system height” means the height above grade to the top of the turbine blade when it reaches its highest elevation.

“Woody vegetation” means live trees and woody, non-herbaceous shrubs.

“Working waterfront activity” means an activity that qualifies land as working waterfront land. The term includes commercial fishing activities; commercial boat building and repair; commercial hauling, launching, storage, and berthing of boats; marine construction; marine freight and passenger transportation; and other similar commercial activities that are dependent on the waterfront. As used in this definition, “commercial fishing activities” has the meaning given to that term in 36 M.R.S § 1132.

“Working waterfront land” means a parcel of land, or a portion thereof, abutting water to the head of tide, land located in the intertidal zone, or submerged land that, in any such case, is used primarily or predominantly to provide access to or support the conduct of a working waterfront activity.

## **PART 2. RULES OF INTERPRETATION**

### **SECTION 3102. REFERENCES WITHIN THIS ORDINANCE.**

(a) Sections in this ordinance may be divided into subsections identified by lower-case letters in parentheses, or into paragraphs identified by Arabic numerals in parentheses. Subsections in this ordinance may also be divided into paragraphs identified by Arabic numerals in parentheses. Paragraphs in this ordinance may be divided into subparagraphs identified by upper-case letters in parentheses.

(b) Whenever this ordinance refers to a “chapter” or “section” without further definite reference, it refers to a chapter or section of this ordinance. Whenever this ordinance refers to a “part” without further definite reference, it refers to a part of the chapter in which the reference occurs. Whenever this ordinance refers to a “subsection,” a “paragraph,” or a “subparagraph” without further definite reference, it refers, respectively, to a subsection of the section in which the reference occurs, a paragraph of the section or subsection in which the reference occurs, or a subparagraph of the paragraph in which the reference occurs.

### **SECTION 3103. REFERENCES TO OTHER LAWS.**

(a) Whenever this ordinance refers to a named ordinance without further definite reference, it refers to an ordinance of the Town by that name.



(b) Whenever this ordinance refers to a law or regulation of the United States or the State of Maine, or an ordinance of the Town, the reference is to that law, regulation, or ordinance as in effect on the effective date of this ordinance and as it may be amended thereafter, and to any law or regulation that replaces that ordinance.

**SECTION 3104. GRAMMATICAL MATTERS.** In this ordinance—

- (1) “or” is not exclusive; it refers to one or more or all of the listed items;
- (2) references in the singular include the plural, and *vice versa*;
- (3) references to one gender include all other genders;
- (4) “shall” and “must” are equivalent and indicate a mandatory duty, action, or requirement; and
- (5) “may” indicates authorization or permission to act, but “may not” is mandatory and prohibits the taking of the specified act.

**SECTION 3105. COUNTING DAYS.** When this ordinance specifies a number of days after a specified event in which an action must or may be taken—

- (1) the first day of the specified number is the day immediately following the day the specified event occurred;
- (2) the action is timely only if taken not later than the close of regular business hours on the last day at the place where the action is to be taken;
- (3) all days between the first and last day are counted, including days that are not business days, unless the period is stated to be a specified number of business days; and
- (4) if the last day for the action to be taken would fall on a day that is not a business day, the period is extended to the next following business day.

A “business day” is a day other than a Saturday, a Sunday, a legal holiday in the State of Maine or the Town, or any other day on which the place of business day at which the place where action is to be taken is not open for business.

# # #

## **CHAPTER 33**

### **REPEALS OF AND AMENDMENTS TO OTHER ORDINANCES**

#### **SECTION 3301. REPEALS.**

(a) On the effective date of the portions of this ordinance specified in section 109(a), the following ordinances of the Town are repealed:

- (1) The Minimum Lot Size Ordinance.
- (2) The Site Plan Review Ordinance.
- (3) The Sign Ordinance, except as it applies to signs within the shoreland zone.
- (4) The Wellhead Protection Ordinance.
- (5) The Housing Conversion Ordinance.
- (6) The Floodplain Management Ordinance.

(b) On the effective date of the portions of this ordinance specified in section 109(b), the following ordinances of the Town are repealed:

- (1) The Shoreland Zoning Ordinance.
- (2) The Sign Ordinance, as it applies to signs within the shoreland zone.

(c) Notwithstanding subsections (a) and (b), but subject to section 109(c), any application that has been filed before the relevant portion of this ordinance takes effect shall continue to be governed by the applicable repealed ordinance or ordinances.

#### **SECTION 3302. AMENDMENTS TO BOARD OF APPEALS ORDINANCE.**

(a) On the effective date of the portions of this ordinance specified in section 109(a), the definition of “land use ordinance” in section 30 of the Board of Appeals Ordinance is amended in its entirety to read as follows:

“Land use ordinance” means the Land Use Ordinance, the Shoreland Zoning Ordinance, and the Subdivision Ordinance.”.

(b) On the effective date of the portions of this ordinance specified in section 109(b), the definition of “land use ordinance” in section 30 of the Board of Appeals Ordinance (as amended by subsection (a)) is further amended by striking out “, the Shoreland Zoning Ordinance,”.

# # #

## ST. GEORGE LAND USE ORDINANCE

### APPENDIX A

#### STATE TIMBER HARVESTING STANDARDS

**This appendix contains the statewide standards for timber harvesting in the shoreland zone adopted by the Maine Bureau of Forestry (Maine Forest Service) and set forth in 01-669 C.M.R. chapter 21, as in effect on May 8, 2023. If the Maine Forest Service modifies those standards after that date, the Town will be required to make the same modifications to this appendix. Until the Town does so, the modified statewide standards, rather than the standards in this appendix, will govern timber harvesting in the shoreland zone. Persons intending to conduct timber harvesting activities are therefore advised to consult the current version of the statewide standards, which can be found by visiting**

**<https://www.maine.gov/sos/cec/rules/01/chaps01.htm>**

**and navigating to the group of rules under “01 669 Maine Forest Service,” and clicking on “Ch. 21.”**

<b>01</b>	<b>DEPARTMENT OF AGRICULTURE, CONSERVATION AND</b>
<b>FORESTRY</b>	
<b>669</b>	<b>BUREAU OF FORESTRY (MAINE FOREST SERVICE)</b>
<b>Chapter 21:</b>	<b>STATEWIDE STANDARDS FOR TIMBER HARVESTING AND RELATED ACTIVITIES IN SHORELAND AREAS</b>

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**Chapter 21:    STATEWIDE STANDARDS FOR TIMBER HARVESTING AND RELATED  
ACTIVITIES IN SHORELAND AREAS**

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**AUTHORITY:** 12 M.R.S., chapter 805, subchapter 3-A; Public Laws 2003, chapter 335; Public Laws 2013, chapter 570

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**Summary:** This rule establishes statewide standards for timber harvesting and related activities in shoreland areas. In general, timber harvesting activities in shoreland areas must protect shoreline integrity and not expose mineral soil that can be washed into water bodies, including nonforested freshwater and coastal wetlands and tidal waters. Timber harvesting and related activities in shoreland areas below the 300 acre drainage point must leave windfirm stands of trees that provide adequate shade. If located in shoreland areas, roads used primarily for timber harvesting and related activities must be constructed and maintained to standards designed to minimize the chance of exposed soil washing into water bodies, including wetlands. Stream crossings must not disrupt the natural flow of water and must not allow sediment into water bodies.

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**SECTION 1.    PURPOSES**

The purposes of this rule include the following: to establish statewide standards for timber harvesting and related activities in shoreland areas; to resolve inconsistencies among existing standards; to provide maximum opportunity for flexibility; to protect public resources while minimizing impacts on private resources; to further the maintenance of safe and healthful conditions; prevent and control water pollution from various agents, including sediment, temperature, toxic materials, and excessive nutrient inputs; to maintain shoreline stability; to protect fish spawning grounds, aquatic life, bird and other wildlife habitat; to protect freshwater and coastal wetlands; and to conserve natural beauty, open space, and public recreational values.

**SECTION 2.    AMENDMENTS TO MAINE FOREST SERVICE CHAPTER 20 RULE (FOREST  
REGENERATION AND CLEARCUTTING STANDARDS)**

*(Repealed)*

**SECTION 3.    SCOPE AND APPLICABILITY**

- A.     **SCOPE.** This rule governs all timber harvesting and related activities conducted in, over, or near water bodies, including rivers, streams, brooks, ponds, lakes, Great Ponds, freshwater and coastal wetlands, throughout the state, unless exempted in Section 3.C. of this rule.
- B.     **EXCLUSIONS.** The activities described in this subsection are not considered timber harvesting and must comply with the requirements for clearing or removal of vegetation

for activities other than timber harvesting under rules promulgated by the Department of Environmental Protection, Municipal Shoreland Zoning Ordinance or the Land Use Planning Commission, depending on which entity has jurisdiction.

1. Removal of vegetation in proximity to an existing developed area. For purposes of this provision, “developed area” means a footprint encompassing structures, access roads (other than land management roads), and maintained non-forested areas, on a lot with shore frontage on any great pond, stream, pond, river, or freshwater or coastal wetland. “In proximity to” describes an envelope around a developed area, and includes all areas that:
  - a. are within 50 feet of the developed area,
  - b. are between the developed area and the water body,
  - c. occupy an area whose width in parallel with the shoreline extends 50 feet beyond each end of the footprint of the developed area at its widest point.

In no case shall the envelope in proximity to a developed area be less than 20,000 square feet or less than 100 feet along the shoreline.

2. Removal of vegetation in the shoreland area from parcels less than two acres in size.
3. Removal of vegetation for the primary purpose of converting the land to a use other than forestland. If a change of land use occurs on the parcel or on any portion thereof within five years of the expiration of the Forest Operations Notification or the cessation of timber harvesting and related activities, whichever is later, the residual stand must comply with the requirements for clearing or removal of vegetation for activities other than timber harvesting under rules promulgated by the Department of Environmental Protection, Municipal Shoreland Zoning Ordinance or the Land Use Planning Commission, depending on which entity has jurisdiction. If the residual stand does not comply with these requirements after the change of land use, it constitutes prima facie evidence that a violation of the MFS Chapter 21 rule has occurred.

C. **EXEMPTION.** This rule does not govern timber harvesting and related activities in forested wetlands, unless the forested wetlands lie within a shoreland area.

D. **RELATIONSHIP TO OTHER LEGAL REQUIREMENTS.** Whenever provisions of this rule are less stringent than corresponding provisions of applicable federal, state, or municipal legal requirements, the more stringent provisions shall apply.

#### SECTION 4. DEFINITIONS

Unless otherwise provided herein, this rule incorporates by reference the definitions contained in MFS Rule Chapter 20 (*Forest Regeneration and Clearcutting Standards*). For the purpose of 12 M.R.S., chapter 805, subchapter 3-A and this rule, the following terms are defined as follows.

- A. **Brook:** See “Stream Channel.”
- B. **Coastal Wetland** is defined by 38 M.R.S. §480-B (2) (Supp. 2013).
- C. **Change of Land Use** means that following timber harvesting the subsequent primary use for a particular area is not growing forest products. Change of land use may include, but is not limited to, conversion to farm pasture, site for growing agricultural crops, residential dwelling unit, development site, or gravel pit. The division of forest land into smaller units does not by itself automatically constitute a change of land use.
- D. **Cross-sectional area of a stream channel** is determined by multiplying the stream channel width by the average stream channel depth. The stream channel width is the straight line distance from the normal high water line on one side of the channel to the normal high water line on the opposite side of the channel. The average stream channel depth is the average of the vertical distances from a straight line between the normal high water lines of the stream channel to the bottom of the channel.
- E. **Crossing** means any timber harvesting and related activity involving the passage of ground-based equipment from one side to the opposite side of a water body, or to an island or upland within a water body. Such activities include, but are not limited to construction of roads, fords, bridges, and culverts, as well as maintenance work on these crossings.
- F. **Designated Agent** means a person, company or other entity that is authorized by the landowner to act on the landowner's behalf for timber harvesting and related activities on the landowner's property.
- G. **Disruption of shoreline integrity** means the alteration of the physical shape, properties, or condition of a shoreline at any location by timber harvesting and related activities. A shoreline where shoreline integrity has been disrupted is recognized by compacted, scarified and/or rutted soil, an abnormal channel or shoreline cross-section, and in the case of flowing waters, a profile and character altered from natural conditions.
- H. **Essential Wildlife Habitat** means areas identified by the Commissioner, Maine Department of Inland Fisheries and Wildlife in accordance with the provisions of 12 M.R.S., §§12801 *et seq.* (2005 and Supp. 2013) and any Department of Inland Fisheries and Wildlife rules implementing that subchapter.
- I. **Forested Wetland** means a freshwater wetland dominated by woody vegetation that is at least 20 feet tall.
- J. **Forest Stand** means a contiguous group of trees sufficiently uniform in age class distribution, composition, and structure, and growing on a site of sufficiently uniform quality, to be a distinguishable unit.
- K. **Freshwater Wetland** means ponds, freshwater swamps, marshes, bogs and similar areas that are:



1. Inundated or saturated by surface or groundwater at a frequency and for a duration sufficient to support, and which under normal circumstances do support, a prevalence of wetland vegetation typically adapted for life in saturated soils; and,
  2. Not part of a Great Pond, coastal wetland, stream, or river.
- L. **Great Pond** means any inland body of water which in a natural state has a surface area in excess of 10 acres, and any inland body of water artificially formed or increased which has a surface area in excess of 30 acres.
- M. **Harvest Area** means the area where timber harvesting and related activities, including the cutting of trees, skidding, yarding, and associated road construction take place. The area affected by a harvest encompasses the area within the outer boundaries of these activities, excepting unharvested areas greater than 10 acres within the area affected by a harvest.
- N. **Landowner** means a person, company, or other legal entity which holds title to land, including as a joint ownership or as tenants in common. Where the ownership of the timber located on the land is different than the fee ownership of the land itself, the owners of the timber are deemed a landowner and are jointly and severally responsible with the fee landowner to comply with this rule. Where a corporate landowner is a wholly owned subsidiary of another corporation, both parent and subsidiary are deemed the same landowner.
- O. **Land Management Road** means a route or track consisting of a bed of exposed mineral soil, gravel, or other surfacing materials constructed for, or created by, the passage of motorized vehicles and used primarily for timber harvesting and related activities, including associated log yards, but not including skid trails or skid roads.
- P. **Licensed Forester** means a forester licensed under 32 M.R.S. §5501(3) (Supp. 2013).
- Q. **Normal High Water Line** means 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. In the case of nonforested freshwater wetlands adjacent to streams and other water bodies, the normal high water line is the upland edge of the freshwater wetland, not the edge of the open water.
- R. **Permanent crossing** means any structure constructed or erected with a fixed location, in, on, or over a water body for a period exceeding 7 months in any 12 month period, including, but not limited to, culverts and bridges.
- S. **Pond** means any inland body of water which in a natural state has a surface area between 4,300 square feet and 10 acres.
- T. **Responsible party** means all of the following persons or entities, jointly and severally:
1. The landowner, or landowners, who owned the property at the time a timber harvest subject to this rule was conducted;

2. The landowner's designated agent at the time a timber harvest subject to this rule was conducted;
  3. The Licensed Forester and/or the employer of the Licensed Forester who supervised a timber harvest subject to this rule; and
  4. The timber harvester who conducted a timber harvest subject to this rule.
- U. **Residual Stand** means a stand of trees remaining in the forest following timber harvesting and related activities.
- V. **River** means a free-flowing body of water, including its associated flood plain wetlands, from that point at which it provides drainage for a watershed of:
1. fifty square miles to its mouth in the jurisdiction of the Land Use Planning Commission; and,
  2. twenty-five square miles to its mouth in municipalities not subject to the jurisdiction of the Land Use Planning Commission.
- W. **Shoreland area** means all land areas within:
1. 250 feet, horizontal distance, of the normal high water line of:
    - a. Rivers below the 50 square mile drainage point in the jurisdiction of the Land Use Planning Commission;
    - b. Rivers below the 25 square mile drainage point in municipalities not subject to the jurisdiction of the Land Use Planning Commission;
    - c. Great Ponds and nonforested freshwater wetlands 10 acres or larger;
    - d. Any coastal wetland;
    - e. Any size pond or freshwater wetland identified by the Department of Inland Fisheries and Wildlife as significant wildlife habitat or essential wildlife habitat;
  2. 75 feet, horizontal distance, of the normal high water line of:
    - a. Streams between the 300 acre drainage point and the 50 square mile drainage point in the jurisdiction of the Land Use Planning Commission;
    - b. Streams between the 300 acre drainage point and the 25 square mile drainage point in municipalities not subject to the jurisdiction of the Land Use Planning Commission;
  3. Adjacent to:
    - a. The normal high water line of streams above the 300 acre drainage point; and,

- b. Ponds or freshwater wetlands larger than 4,300 square feet but less than 10 acres that are not identified by the Department of Inland Fisheries and Wildlife as significant wildlife habitat or essential wildlife habitat.
- X. **Shoreline:** See “Normal High Water Line” and “Coastal Wetland.”
- Y. **Significant wildlife habitat** is defined by 38 M.R.S §480-B (10) (Pamph. 2013).
- Z. **Skid Road or Skid Trail** means a route repeatedly used by forwarding machinery or animal to haul or drag forest products from the stump to the yard or landing, the construction of which requires minimal excavation.
- AA. **Slash** means the residue, e.g., treetops and branches, left on the ground after a timber harvest.
- BB. **Stand:** see "Forest Stand."
- CC. **Stream:** means a stream channel upstream from the point at which it becomes a river.
- DD. **Stream channel** means a channel between defined banks created by the action of surface water, which is characterized by the lack of terrestrial vegetation or by the presence of a bed, devoid of topsoil, containing waterborne deposits or exposed soil parent material or bedrock; and which is connected hydrologically with other water bodies. “Stream channel” does not include rills or gullies forming because of accelerated erosion in disturbed soils where the natural vegetative cover has been removed by human activity.
- EE. **Timber harvesting** means the cutting or removing of timber for the primary purpose of selling or processing forest products.
- FF. **Timber harvesting and related activities** means timber harvesting, the construction and maintenance of roads used primarily for timber harvesting, and other activities conducted to facilitate timber harvesting.
- GG. **Used for navigation** means those rivers, streams or brooks used by motorized watercraft.
- HH. **Water body** means any river, stream, stream channel, brook, freshwater wetland, coastal wetland, pond, lake, Great Pond, or any other hydrological feature regulated by this rule.
- II. **Woody Vegetation** means live trees or woody, non-herbaceous shrubs.
- JJ. **Windfirm** means the ability of a forest stand to withstand strong winds and resist windthrow, wind rocking, and major breakage.

**NOTE:** In the context of this definition, an assessment of windfirmness will include assessment of soil conditions, depth to bedrock, and live crown ratios and height/diameter ratios on residual trees. Trees with live crown ratios of 30 percent or greater and/or trees with height/diameter ratios of 90 or less could be considered indicators of windfirmness.

## SECTION 5. SHORELINE INTEGRITY AND SEDIMENTATION

- A. **APPLICABILITY.** The requirements of Section 5 apply to all timber harvesting and related activities conducted in all shoreland areas as defined in this rule.
- B. **STANDARDS.** Persons conducting timber harvesting and related activities in shoreland areas must take reasonable measures to avoid the disruption of shoreline integrity, the occurrence of sedimentation of water, and the disturbance of stream banks, stream channels, shorelines, and soil lying within ponds and wetlands. If, despite such precautions, the disruption of shoreline integrity, sedimentation of water, or the disturbance of stream banks, stream channels, shorelines, and soil lying within ponds and wetlands occurs, such conditions must be corrected. This section does not apply to crossings of water bodies conducted in compliance with Section 11 of this rule.

**NOTE:** For guidance on reasonable measures, consult the Bureau publication, “Best Management Practices for Forestry: Protecting Maine’s Water Quality” (2004). This publication is available from the Bureau and on the Bureau’s website, [www.maineforestservice.gov](http://www.maineforestservice.gov).

## **SECTION 6. SLASH TREATMENT**

- A. Timber harvesting and related activities shall be conducted such that slash or debris is not left below the normal high water line of any water body. This section does not apply to minor, incidental amounts of slash that result from timber harvesting and related activities otherwise conducted in compliance with this section.
- B. No accumulation of slash shall be left within 50 feet of:
  - 1. the normal high water line of Great Ponds, rivers, non-forested wetlands larger than 10 acres, and tidal waters in the jurisdiction of the Land Use Planning Commission; and,
  - 2. the normal high water line of Great Ponds, rivers, non-forested wetlands larger than 10 acres, and tidal waters in municipalities not subject to the jurisdiction of the Land Use Planning Commission.

Slash actively used to protect soil from disturbance by equipment or to stabilize exposed soil may be left in place, provided no part thereof extends more than 4 feet above the ground.

- C. Between 50 feet and 250 feet of the normal high water line of a water body identified in subsection 6.B. above, all slash larger than 3 inches in diameter must be disposed of in such a manner that no part thereof extends more than 4 feet above the ground.

## **SECTION 7. STANDARDS FOR TIMBER HARVESTING AND RELATED ACTIVITIES IN SHORELAND AREAS REQUIRING A 250-FOOT ZONE**

- A. **APPLICABILITY.** The requirements of Section 7 apply to all timber harvesting and related activities in shoreland areas within 250 feet, horizontal distance, of the normal high water line of:

1. Rivers below the 50 square mile drainage point in the jurisdiction of the Land Use Planning Commission
2. Rivers below the 25 square mile drainage point in municipalities not subject to the jurisdiction of the Land Use Planning Commission;
3. Great Ponds and nonforested freshwater wetlands 10 acres or larger;
4. Any coastal wetland; and,
5. Any size pond or freshwater wetland identified by the Department of Inland Fisheries and Wildlife as significant wildlife habitat or essential wildlife habitat.

**B. SHADE AND TREE RETENTION STANDARDS**

Timber harvesting and related activities in shoreland areas subject to the requirements of Section 7 must leave adequate tree cover and shall be conducted so that a well-distributed stand of trees is retained. The requirements of this section may be satisfied by following one of the following three options:

1. **Option 1 (40% volume removal)**, which requires:
  - a. Harvesting of no more than 40 percent of the total volume on each acre involved of trees 4.5 inches DBH or greater in any 10 year period is permitted. For the purposes of these standards volume may be considered to be equivalent to basal area;
  - b. A well-distributed stand of trees which is windfirm, and other vegetation including existing ground cover, must be maintained; and,
  - c. Within 75 feet, horizontal distance, of the normal high water line of shoreland areas regulated under this section, there must be no cleared openings. At distances greater than 75 feet, horizontal distance, of the normal high water line, timber harvesting and related activities must not create single cleared openings greater than 14,000 square feet in the forest canopy. Where such openings exceed 10,000 square feet, they must be at least 100 feet apart. Such cleared openings will be included in the calculation of total volume removal. For the purposes of these standards, volume may be considered equivalent to basal area.
2. **Option 2 (60 square foot basal area retention)**, which requires:
  - a. The residual stand must contain an average basal area of at least 60 square feet per acre of woody vegetation greater than or equal to 1.0 inch DBH, of which 40 square feet per acre must be greater than or equal to 4.5 inches DBH;
  - b. A well-distributed stand of trees which is windfirm, and other vegetation including existing ground cover, must be maintained; and,

- c. Within 75 feet, horizontal distance, of the normal high water line of shoreland areas regulated under this section, there must be no cleared openings. At distances greater than 75 feet, horizontal distance, of the normal high water line, timber harvesting and related activities must not create single cleared openings greater than 14,000 square feet in the forest canopy. Where such openings exceed 10,000 square feet, they must be at least 100 feet apart. Such cleared openings will be included in the calculation of total volume removal. For the purposes of these standards, volume may be considered equivalent to basal area.
- 3. **Option 3 (outcome based)**, which requires: An alternative method proposed in an application, signed by a Licensed Forester or certified wildlife professional, submitted by the landowner or designated agent to the Bureau and approved by the Bureau, which provides equal or better protection of the shoreland area than this rule.

Landowners must designate on the Forest Operations Notification form required by 12 M.R.S. §§8881 *et seq.* (Supp. 2013) which option they choose to use. If landowners choose Option 1 or Option 2, compliance with this section will be determined solely on the criteria for the option chosen. If landowners choose Option 3, timber harvesting and related activities may not begin until the Bureau has approved the required application.

The Bureau may verify that adequate tree cover and a well-distributed stand of trees is retained through a field procedure that uses sample plots that are located randomly or systematically to provide a fair representation of the harvest area.

## **SECTION 8. STANDARDS FOR TIMBER HARVESTING AND RELATED ACTIVITIES IN SHORELAND AREAS REQUIRING A 75-FOOT ZONE**

- A. **APPLICABILITY.** The requirements of Section 8 apply to all timber harvesting and related activities in shoreland areas within 75 feet, horizontal distance, of the normal high water line of:
  - 1. Streams between the 300 acre drainage point and the 50 square mile drainage point in the jurisdiction of the Land Use Planning Commission; and,
  - 2. Between the 300 acre drainage point and the 25 square mile drainage point in municipalities not subject to the jurisdiction of the Land Use Planning Commission.

### **B. SHADE AND TREE RETENTION STANDARDS**

Timber harvesting and related activities in shoreland areas subject to the requirements of Section 8 must leave adequate tree cover and shall be conducted so that a well-distributed stand of trees is retained. The requirements of this section may be satisfied by following one of the following three options:

- 1. **Option 1 (40% volume removal)**, which requires:

- a. Harvesting of no more than 40 percent of the total volume on each acre involved of trees 4.5 inches DBH or greater in any 10 year period is permitted. For the purposes of these standards volume may be considered to be equivalent to basal area;
  - b. A well-distributed stand of trees which is windfirm, and other vegetation including existing ground cover, must be maintained; and,
  - c. There must be no cleared openings.
2. **Option 2 (60 square foot basal area retention)**, which requires:
  - a. The residual stand must contain an average basal area of at least 60 square feet per acre of woody vegetation greater than or equal to 1.0 inch DBH, of which 40 square feet per acre must be greater than or equal to 4.5 inches DBH;
  - b. A well-distributed stand of trees which is windfirm, and other vegetation including existing ground cover, must be maintained; and,
  - c. There must be no cleared openings.
3. **Option 3 (outcome based)**, which requires: An alternative method proposed in an application, signed by a Licensed Forester or certified wildlife professional, submitted by the landowner or designated agent to the Bureau and approved by the Bureau, which provides equal or better protection of the shoreland area than this rule.
 

Landowners must designate on the Forest Operations Notification form required by 12 M.R.S. §§8881 *et seq.* (Supp. 2013) which option they choose to use. If landowners choose Option 1 or Option 2, compliance with this section will be determined solely on the criteria for the option chosen. If landowners choose Option 3, timber harvesting and related activities may not begin until the Bureau has approved the required application.

The Bureau may verify that adequate tree cover and a well-distributed stand of trees is retained through a field procedure that uses sample plots that are located randomly or systematically to provide a fair representation of the harvest area.
4. **Exception.** Timber harvesting and related activities conducted in the jurisdiction of the Land Use Planning Commission between the 300 acre drainage point and the 25 square mile drainage point are not subject to the requirements of Section 8.B. of this rule, but must be conducted to retain sufficient vegetation to maintain shading of surface waters.

## SECTION 9. SKID TRAILS, YARDS, AND EQUIPMENT OPERATION

- A. **APPLICABILITY.** The requirements of Section 9 apply to the construction, maintenance, and use of skid trails and yards in shoreland areas. This section does not apply to crossings of water bodies conducted in compliance with Section 11 of this rule.

- B. **STREAM CHANNELS.** Equipment used in timber harvesting and related activities shall not use stream channels as travel routes except when:
1. surface waters are frozen and snow covered; and,
  2. the activity will not result in any ground disturbance.
- C. **DESIGN, CONSTRUCTION, AND CLOSEOUT.** Skid trails and yards must be designed and constructed to prevent sediment and concentrated water runoff from entering a water body. Upon termination of their use, skid trails and yards must be stabilized.
- D. **SETBACKS**
1. Except for crossings of stream channels or freshwater wetlands, equipment used in timber harvesting and related activities, including but not limited to the use of skid trails and yards, must be operated to avoid the exposure of mineral soil within 25 feet of any water body or wetland regulated by this rule. On slopes of 10 percent or greater, the setback for equipment operation must be increased by 20 feet, plus an additional 10 feet for each 5 percent increase in slope above 10 percent. These requirements are presented in an alternative format in the slope table in Section 12 of this rule.
  2. The provisions of this subsection apply only to a face sloping toward the water body or freshwater or coastal wetland, provided, however, that no portion of such exposed mineral soil on a back face is closer than 25 feet from the normal high water line of a water body or upland edge of a freshwater or coastal wetland. The setback requirements of this subsection shall not apply to skid trail approaches to crossings of stream channels or freshwater wetlands.
  3. Where such setbacks are impracticable, appropriate techniques shall be used to avoid sedimentation of the water body or wetland. Such techniques may include the installation of sump holes or settling basins, and/or the effective use of additional ditch relief culverts and ditch water turnouts placed to avoid sedimentation of the water body or wetland. If, despite such precautions, sedimentation or the disruption of shoreline integrity occurs, such conditions must be corrected.
- E. **Exception.** Timber harvesting and related activities in shoreland areas of streams draining less than 300 acres and wetlands adjacent to such streams may be conducted in a manner not in conformity with the setback requirements of the foregoing subsections provided persons conducting such activities take reasonable measures to avoid the disruption of shoreline integrity, the occurrence of sedimentation of water, and the disturbance of stream banks, stream channels, shorelines, and soil lying within ponds and wetlands. If, despite such precautions, the disruption of shoreline integrity, sedimentation of water, or the disturbance of stream banks, stream channels, shorelines, and soil lying within ponds and wetlands occurs, such conditions must be corrected.

**NOTE:** For guidance on reasonable measures, consult the Bureau publication, “Best Management Practices for Forestry: Protecting Maine’s Water Quality” (2004). This publication is available from the Bureau and on the Bureau’s website, [www.maineforestservice.gov](http://www.maineforestservice.gov).



## SECTION 10. LAND MANAGEMENT ROAD CONSTRUCTION AND MAINTENANCE STANDARDS

- A. **APPLICABILITY.** The requirements of Section 10 apply to the construction, maintenance, and use of land management roads in shoreland areas. This section does not apply to crossings of water bodies conducted in compliance with Section 11 of this rule.
- B. **ROAD DESIGN, CONSTRUCTION, AND MAINTENANCE.** Land management roads, including approaches to crossings of stream channels and freshwater wetlands, ditches and other related structures, must be designed, constructed, and maintained to prevent sediment and concentrated water runoff from directly entering the water body. Surface water on or adjacent to crossing approaches must be diverted through vegetative filter strips to avoid sedimentation of the watercourse. Because roadside ditches may not extend to the resource being crossed, filter strips must be established in accordance with the slope table in Section 12 of this rule.
- C. **SETBACKS.** Land management roads and associated ditches, excavation, and fill must be set back at least:
  - 1. 100 feet from the normal high-water line of a Great Pond or a river that flows to a Great Pond, rivers draining more than 50 square miles in the jurisdiction of the Land Use Planning Commission, rivers draining more than 25 square miles in municipalities not subject to the jurisdiction of the Land Use Planning Commission, nonforested freshwater wetlands 10 acres or larger, any coastal wetland, and any pond or freshwater wetland identified by the Department of Inland Fisheries and Wildlife as significant wildlife habitat or essential wildlife habitat;
  - 2. 50 feet from the normal high water line of streams draining more than 300 acres but less than 50 square miles in the jurisdiction of the Land Use Planning Commission and streams below the 300 acre drainage but above the 25 square mile drainage point in municipalities not subject to the jurisdiction of the Land Use Planning Commission; and,
  - 3. 25 feet from the normal high water line of streams draining less than 300 acres and ponds or freshwater wetlands larger than 4,300 square feet but less than 10 acres that are not identified by the Department of Inland Fisheries and Wildlife as significant wildlife habitat or essential wildlife habitat.
  - 4. **Exceptions**
    - a. The minimum 100 foot setback specified in subsection 1 above may be reduced to no less than 50 feet, if, prior to construction, the landowner or the landowner's designated agent demonstrates to the Bureau's satisfaction that no reasonable alternative exists and that appropriate techniques will be used to prevent sedimentation of the water body. Such techniques may include, but are not limited to, the installation of settling basins, and/or the effective use of additional ditch relief culverts and turnouts placed to avoid sedimentation of the water body. If, despite such

precautions, sedimentation or the disruption of shoreline integrity occurs, such conditions must be corrected.

- b. The minimum 50 foot setback specified in subsection 2 above may be reduced to no less than 25 feet, if, prior to construction, the landowner or the landowner's designated agent demonstrates to the Bureau's satisfaction that no reasonable alternative exists and that appropriate techniques will be used to prevent sedimentation of the water body. Such techniques may include, but are not limited to, the installation of settling basins, and/or the effective use of additional ditch relief culverts and turnouts placed to avoid sedimentation of the water body or the disruption of shoreline integrity. If, despite such precautions, sedimentation or the disruption of shoreline integrity occurs, such conditions must be corrected.
  5. On slopes of 10 percent or greater, the land management road setback must be increased by at least 20 feet, plus an additional 10 feet for each 5 percent increase in slope above 10 percent, but in no case may the land management road setback be less than that indicated in the slope table presented in Section 12 of this rule.
  6. New land management roads are not permitted within the shoreland area along Significant River Segments as identified in 38 M.R.S. §437 (Supp. 2013), nor in Resource Protection Districts as identified in municipal shoreland zoning ordinances nor in Recreation Protection Subdistricts (P-RR) as identified by the Land Use Planning Commission, unless, prior to construction, the landowner or the landowner's designated agent makes a clear demonstration to the Bureau's satisfaction that no reasonable alternative route exists outside the shoreland zone, and that the new road must be set back as far as practicable from the normal high water line and screened from the river by existing vegetation.
- D. **MAINTENANCE.** Ditches, culverts, bridges, dips, water turnouts and other water control installations associated with roads must be maintained on a regular basis to assure effective functioning. Drainage structures shall deliver a dispersed flow of water into an unscarified filter strip no less than the width indicated in the slope table set forth in Section 12 of this rule. Where such filter strip is impracticable, appropriate techniques shall be used to avoid sedimentation of the water body or wetland. Such techniques may include the installation of sump holes or settling basins, and/or the effective use of additional ditch relief culverts and ditch water turnouts placed to avoid sedimentation of the water body or wetland. If, despite such precautions, sedimentation or the disruption of shoreline integrity occurs, such conditions must be corrected.
  - E. **ROAD CLOSEOUT AND DISCONTINUANCE.** Maintenance of the water control installations required above must continue until use of the road is discontinued and the road is put to bed by effective installation of water bars or other adequate road drainage structures at appropriate intervals, constructed to avoid surface water flowing over or under the water bar, and extending sufficient distance beyond the traveled way so that water does not reenter the road surface.
  - F. **UPGRADING EXISTING ROADS.** Extension or enlargement of presently existing roads must conform to the provisions of this section. Any nonconforming existing road

may continue to exist and to be maintained, as long as the nonconforming conditions are not made more nonconforming.

**Exception.** Extension or enlargement of presently existing roads need not conform to the setback requirements of Section 10.C if, prior to extension or enlargement, the landowner or the landowner's designated agent demonstrates to the Bureau's satisfaction that no reasonable alternative exists and that appropriate techniques will be used to prevent sedimentation of the water body. Such techniques may include, but are not limited to, the installation of settling basins, and/or the effective use of additional ditch relief culverts and turnouts placed to avoid sedimentation of the water body. If, despite such precautions, sedimentation or the disruption of shoreline integrity occurs, such conditions must be corrected.

- G. **ADDITIONAL MEASURES.** In addition to the foregoing minimum requirements, persons undertaking construction and maintenance of roads and stream crossings must take reasonable measures to avoid sedimentation of surface waters.

**NOTE:** For guidance on reasonable measures, consult the Bureau publication, "Best Management Practices for Forestry: Protecting Maine's Water Quality" (2004). This publication is available from the Bureau and on the Bureau's website, [www.maineforestservice.gov](http://www.maineforestservice.gov).

## SECTION 11. CROSSINGS OF WATER BODIES

- A. **APPLICABILITY.** The requirements of Section 11 apply to all crossings of stream channels, rivers, ponds, lakes, Great Ponds, nonforested freshwater wetlands, coastal wetlands, and freshwater wetlands identified by the Department of Inland Fisheries and Wildlife as significant wildlife habitat or essential wildlife habitat.
- B. **ALL CROSSINGS**
1. Crossings must allow for fish passage at all times of the year, must not impound water, and must allow for the maintenance of normal stream flows.
  2. **Determination of flow.** Provided they are properly applied and used for the circumstances for which they are designed, methods including but not limited to the following are acceptable to the Bureau as means of calculating the 10 year and 25 year frequency water flows and thereby determining crossing sizes as required in this section: The United States Geological Survey (USGS) Methods; specifically: Hodgkins, G. 1999. *Estimating the Magnitude of Peak Flows for Streams in Maine for Selected Recurrence Intervals*. U.S. Geological Survey. Water Resources Investigations Report 99-4008. 45 pp.
  3. **Upgrading existing crossings.** Extension or enlargement of presently existing crossings must conform to the provisions of this section. Any nonconforming existing crossing may continue to exist and be maintained, as long as the nonconforming conditions are not made more nonconforming; however, any maintenance or repair work done below the normal high water line must conform to the provisions of this section.
  4. **Bureau Permits and Permit by Rule**

- a. **Permits.** An application for a permit must be submitted to the Bureau at least 60 days prior to the construction of any new permanent crossing or the replacement of a permanent crossing of any waterbody subject to a 250' shoreland area as defined by §(4)(W)(1) of this rule, non-forested freshwater wetlands larger than 4,300 square feet and any crossing that will not conform to permit by rule standards. An individual permit application is required for each crossing. The permit application must contain all information required by the Bureau, including a description of how negative impacts to the resource will be avoided and minimized to the extent practicable. When granting a permit the Bureau may impose such reasonable terms and conditions as the Bureau considers appropriate in order to satisfy the purpose set forth in its governing statutes and rules.
- b. **Permit by Rule.** Crossings must conform to standards of this section to qualify for permit by rule. If a crossing does not conform to these standards an application for a full permit must be submitted per §(11)(B)(4)(a) above. A permit by rule must be submitted to the Bureau prior to construction, maintenance, alteration, and replacement of permanent crossings of waterbodies subject to a 75' shoreland area or adjacent shoreland area as defined by §(4)(W)(2) and (3) of this rule except all non-forested freshwater wetlands greater than 4,300 square feet which require a permit as described in §(11)(B)(4)(a). Multiple crossings within one township or municipality may be submitted on one permit by rule form. The permit by rule must contain all information required by the Bureau, including:
  - i. a map showing the location of all proposed permanent crossings. Maps must be of sufficient quality and scale for a person unfamiliar with the area to locate the crossing;
  - ii. for any temporary or permanent crossing that requires a permit from state or federal agencies, a copy of the approved permit or permits; and,
  - iii. a statement signed by the permit applicant that all temporary and permanent crossings will be constructed, maintained, and closed out in accordance with the requirements of this chapter.
- c. **Exception** A permit or permit by rule is not required for the repair and maintenance of an existing crossing or for the replacement of an existing crossing, including ancillary crossing installation activities such as excavation and filling, in any protected natural resource area, as long as:

- i. Erosion control measures are taken to prevent sedimentation of the water;
- ii. The crossing does not block passage for fish in the protected natural resource area;
- iii. For replacement crossings of a river, stream or brook:
  - a. The replacement crossing is designed, installed and maintained to match the natural stream grade to avoid drops or perching; and
  - b. As site conditions allow, crossing structures that are not open bottomed are embedded in the stream bottom at least 25% of the culvert or other structure's diameter, except that a crossing structure does not have to be embedded more than 2 feet.
- iv. The Bureau is notified prior to the activity in accordance with §(11)(B)(6) of this rule.

For purposes of this subsection, "repair and maintenance" includes but is not limited to the riprapping of side slopes or culvert ends; removing debris and blockages within the crossing structure and at its inlet and outlet; and installing or replacing culvert ends if less than 50% of the crossing structure is being replaced.

#### 5. **Other Agency Permits**

- a. Any timber harvesting and related activities involving the design, construction, and maintenance of crossings on water bodies other than a stream channel or river, including crossings of Significant River Segments and freshwater wetlands identified by the Department of Inland Fisheries and Wildlife as significant wildlife habitat or essential wildlife habitat, may require a permit from the US Army Corps of Engineers. When a permit is required, the crossing is not required to meet the standards of this section provided it conforms with all applicable state and federal requirements and any permit conditions.
- b. Any timber harvesting and related activities involving the design, construction, and maintenance of crossings of freshwater wetlands identified by the Department of Inland Fisheries and Wildlife as essential wildlife habitat require prior consultation with the Department of Inland Fisheries and Wildlife.

- 6. **Notice to Bureau.** Notification to the Bureau is required prior to construction, maintenance, alteration, and replacement of crossings. Written notice of all temporary and permanent water body crossing construction, maintenance, alteration, and replacement activities in shoreland areas regulated by this rule must be given to the Bureau prior to the commencement of such activities. Multiple crossings within one township or municipality may be submitted on one

notification form. Such notice must contain all information required by the Bureau, including:

- a. a map showing the location of all proposed permanent crossings. Maps must be of sufficient quality and scale for a person unfamiliar with the area to locate the crossing;
- b. for any temporary or permanent crossing that requires a permit from state or federal agencies, a copy of the approved permit or permits; and,
- c. a statement signed by the responsible party that all temporary and permanent crossings will be constructed, maintained, and closed out in accordance with the requirements of this chapter.

## **C. SKID TRAIL CROSSINGS**

### **1. Design and Construction**

- a. All skid trail crossings of streams and rivers below the 25 square mile drainage point require a bridge or culvert sized according to the requirements of subsection 2 below.
- b. Streams above the 25 square mile drainage point may be crossed using temporary structures that are not bridges or culverts but which meet the requirements of the following subsection c; or
  - i. when stream channels are frozen and snow-covered; or
  - ii. when stream channels are composed of a hard surface which will not be eroded or otherwise damaged.
- c. All skid trail crossings of streams must be designed, constructed, and maintained, such that:
  - i. sedimentation of surface waters is reasonably avoided;
  - ii. there is no substantial disturbance of the bank or stream channel;
  - iii. fish passage is not impeded; and,
  - iv. water flow is not unreasonably impeded.

**NOTE:** For guidance on reasonable measures, consult the Bureau publication, “Best Management Practices for Forestry: Protecting Maine’s Water Quality” (2004). This publication is available from the Bureau and on the Bureau’s website, [www.maineforestservice.gov](http://www.maineforestservice.gov).

- 2. **Bridge and Culvert Sizing.** The following requirements apply to skid trail crossings of stream channels when surface waters are unfrozen:

- a. Bridges and culverts must be installed and maintained to provide an opening sufficient in size and structure to accommodate 25 year frequency water flows or with a cross-sectional area at least equal to 3 times the cross-sectional area of the stream channel.
- b. Temporary bridge and culvert sizes may be smaller than provided in subsection a above if techniques are effectively employed such that in the event of culvert or bridge failure, the natural course of water flow is maintained and sedimentation of the water body is avoided. Such crossing structures must be at least as wide as the channel and, if not culverts, placed above the normal high water line. Techniques may include, but are not limited to, the effective use of any, a combination of, or all of the following:
  - i. use of temporary skidder bridges;
  - ii. removing culverts prior to the onset of frozen ground conditions;
  - iii. using water bars in conjunction with culverts;
  - iv. using road dips in conjunction with culverts.
- c. Culverts utilized in stream crossings must:
  - i. be installed at or below stream bed elevation;
  - ii. be seated on firm ground;
  - iii. have soil compacted at least halfway up the side of the culvert;
  - iv. be covered by soil to a minimum depth of 1 foot or according to the culvert manufacturer's specifications, whichever is greater; and
  - v. have a headwall at the inlet end which is adequately stabilized by rip-rap or other suitable means to reasonably avoid erosion of material around the culvert.

**NOTE:** For guidance on reasonable measures, consult the Bureau publication, "Best Management Practices for Forestry: Protecting Maine's Water Quality" (2004). This publication is available from the Bureau and on the Bureau's website, [www.maineforestservice.gov](http://www.maineforestservice.gov).

- d. Stream crossings allowed under this section, but located in flood hazard areas (i.e. A zones) as identified on a community's Flood Insurance Rate Maps (FIRM) or Flood Hazard Boundary Maps (FHBM), must be designed and constructed under the stricter standards contained in that community's National Flood Insurance Program (NFIP). For example, a crossing may be required to pass a 100-year flood event.

3. **Closeout.** Upon completion of timber harvesting and related activities, or upon the expiration of a Forest Operations Notification, whichever is earlier, the following requirements apply:
  - a. Bridges and culverts installed for stream crossings by skid trails must either:
    - i. comply with the standards for stream channel crossings by land management roads as set forth in this rule, or
    - ii. be removed and areas of exposed soil stabilized.
  - b. Crossing structures that are not bridges or culverts must either:
    - i. be removed immediately following timber harvesting and related activities, or,
    - ii. if frozen into the stream bed or bank, as soon as practical after snowmelt.
  - c. Stream channels, banks and approaches to crossings of water bodies must be immediately stabilized on completion of harvest, or if the ground is frozen and/or snow-covered, as soon as practical after snowmelt. If, despite such precautions, sedimentation or the disruption of shoreline integrity occurs, such conditions must be corrected.
4. **Freshwater wetlands.** Skid trail crossings, other than those areas below the normal high water line of water bodies, must avoid freshwater wetlands and must maintain the existing hydrology of such wetlands, unless there are no reasonable alternatives, as determined by the Bureau in a written decision prior to construction.
5. **Exception.** Timber harvesting and related activities in shoreland areas of streams draining less than 300 acres and wetlands adjacent to such streams may be conducted in a manner not in conformity with the requirements of the foregoing subsections provided persons conducting such activities take reasonable measures to avoid the disruption of shoreline integrity, the occurrence of sedimentation of water, and the disturbance of stream banks, stream channels, shorelines, and soil lying within ponds and wetlands. If, despite such precautions, the disruption of shoreline integrity, sedimentation of water, or the disturbance of stream banks, stream channels, shorelines, and soil lying within ponds and wetlands occurs, such conditions must be corrected

**NOTE:** For guidance on reasonable measures, consult the Bureau publication, “Best Management Practices for Forestry: Protecting Maine’s Water Quality” (2004). This publication is available from the Bureau and on the Bureau’s website, [www.maineforestservice.gov](http://www.maineforestservice.gov).

#### D. **LAND MANAGEMENT ROAD STREAM CROSSINGS**



1. **Design, construction, and maintenance.** Land management road stream channel crossings, including approaches to stream channel crossings, ditches and other related structures, must be designed, constructed, and maintained such that:
  - a. concentrated water runoff does not enter the water body or tributary stream;
  - b. sedimentation of surface waters is reasonably avoided;
  - c. there is no substantial disturbance of the stream bank or stream channel not directly associated with culvert or bridge installation;
  - d. fish passage is not impeded; and,
  - e. water flow is not unreasonably impeded.

**NOTE:** For guidance on reasonable measures, consult the Bureau publication, “Best Management Practices for Forestry: Protecting Maine’s Water Quality” (2004). This publication is available from the Bureau and on the Bureau’s website, [www.maineforestservice.gov](http://www.maineforestservice.gov).

2. **Bridge and culvert sizing.** The following requirements apply to land management road crossings of stream channels when surface waters are unfrozen:
  - a. Bridges and culverts must be installed and maintained to provide an opening sufficient in size and structure to accommodate 25 year frequency water flows or with a cross-sectional area at least equal to 3times the cross-sectional area of the stream channel.
  - b. Culverts utilized in stream crossings must:
    - i. be installed at or below stream bed elevation;
    - ii. be seated on firm ground;
    - iii. have soil compacted at least halfway up the side of the culvert;
    - iv. be covered by soil to a minimum depth of 1 foot or according to the culvert manufacturer's specifications, whichever is greater; and
    - v. have a headwall at the inlet end which is adequately stabilized by rip-rap or other suitable means to reasonably avoid erosion of material around the culvert.
  - c. If a perennial water course to be crossed is to be used for navigation, the crossing must consist of a bridge span or pipe arch with at least 4 feet of clearance during normal high water for boat traffic.
  - d. If the stream being crossed is a perennial watercourse and has a slope of more than 2%, a bridge or pipe arch must be used to maintain the natural streambed.

- e. Fill sideslopes in a stream or floodplain wetland must be maintained at a slope no shallower than 3 horizontal to 1 vertical and no steeper than 1.5 horizontal to 1 vertical. Fill side slopes must be stabilized at the completion of the activity.

**NOTE:** For guidance on reasonable measures, consult the Bureau publication, “Best Management Practices for Forestry: Protecting Maine’s Water Quality” (2004). This publication is available from the Bureau and on the Bureau’s website, [www.maineforestservice.gov](http://www.maineforestservice.gov).

- f. Temporary bridge and culvert sizes may be smaller than provided in subsection a above if techniques are effectively employed such that in the event of culvert or bridge failure, the natural course of water flow is maintained and sedimentation of the water body is avoided. Such crossing structures must be at least as wide as the channel and, if not culverts, placed above the normal high water line. Techniques may include, but are not limited to, the effective use of any, a combination of, or all of the following:

- i. use of temporary skidder bridges;
- ii. removing culverts prior to the onset of frozen ground conditions;
- iii. using water bars in conjunction with culverts; and/or,
- iv. using road dips in conjunction with culverts.

- 3. Stream crossings allowed under this section, but located in flood hazard areas (i.e. A zones) as identified on a community's Flood Insurance Rate Maps (FIRM) or Flood Hazard Boundary Maps (FHBM), must be designed and constructed under the stricter standards contained in that community's National Flood Insurance Program (NFIP). For example, a crossing may be required to pass a 100-year flood event.

- 4. **Road closeout and discontinuance.** Maintenance of the water control installations required above must continue until use of the road is discontinued and the road is put to bed by taking the following actions:

- a. Effective installation of water bars or other adequate road drainage structures at appropriate intervals, constructed to reasonably avoid surface water flowing over or under the water bar, and extending sufficient distance beyond the traveled way so that water does not reenter the road surface.
- b. Crossing structures must be appropriately sized or dismantled and removed in a manner that reasonably avoids sedimentation of the water body.
- c. Any bridge or water crossing culvert in roads to be discontinued shall satisfy one of the following requirements:

- i. it shall be designed to provide an opening sufficient in size and structure to accommodate 25 year frequency water flows;
- ii. it shall be designed to provide an opening with a cross-sectional area at least 3 1/2 times the cross-sectional area of the stream channel; or
- iii. it shall be dismantled and removed in a fashion to reasonably avoid sedimentation of the water body.

If, despite such precautions, sedimentation or the disruption of shoreline integrity occurs, such conditions must be corrected.

**NOTE:** For guidance on reasonable measures, consult the Bureau publication, “Best Management Practices for Forestry: Protecting Maine’s Water Quality” (2004). This publication is available from the Bureau and on the Bureau’s website, [www.maineforestservice.gov](http://www.maineforestservice.gov).

- 5. **Freshwater wetlands.** Land management road crossings, other than those areas below the normal high water line of water bodies, must avoid freshwater wetlands and must maintain the existing hydrology of such wetlands, unless there are no reasonable alternatives, as determined by the Bureau in a written decision.

## SECTION 12. SLOPE TABLE

Filter strips, skid trail setbacks, and land management road setbacks must be maintained as specified in the rule, but in no case shall be less than shown in the following table.

<b>Average slope of land between exposed mineral soil and normal high water line (percent)</b>	<b>Width of strip between exposed mineral soil and normal high water line (feet along surface of the ground)</b>
0	25
10	45
20	65
30	85
40	105
50	125
60	145
70	165

## SECTION 13. RESPONSIBILITY

All responsible parties as set forth in §(4)(T)(1)-(4) of this rule may be jointly and severally responsible for compliance with this rule, and liable for violations of this rule.

**SECTION 14. VARIANCE**

A variance to the strict application of this rule may be granted as specified in MFS Rule Chapter 20 ("Forest Regeneration and Clearcutting Standards", Section 6).

**SECTION 15. VIOLATIONS**

Any responsible party, including but not limited to a landowner, a landowner's agent or a contractor, who orders, contracts for, or conducts any activity in violation of this rule commits a civil violation, and shall be penalized in accordance with 12 M.R.S., chapter 809.

**SECTION 16. EFFECTIVE DATE**

- A. The effective date of this rule in organized municipalities that have either accepted the statewide standards in accordance with 38 M.R.S. §438-B, sub-§2 or have adopted an ordinance identical to the statewide standards in accordance with 38 M.R.S. §438-B, sub-§3 is January 1, 2016.
- B. The effective date of this rule in a municipality that either accepts the statewide standards in accordance with 38 M.R.S. §438-B, sub-§2 or adopts an ordinance identical to the statewide standards in accordance with 38 M.R.S. §438-B, sub-§3 after the effective date specified in subsection A is the date the municipality's shoreland zoning ordinance is certified by the Commissioner of the Department of Environmental Protection.
- C. The effective date of this rule in the jurisdiction of the Land Use Planning Commission is the first day of January of the second year following the year in which the Commissioner of Conservation Agriculture, Conservation and Forestry determines that at least 252 of the 336 municipalities identified by the Commissioner of Conservation as the municipalities with the highest acreage of timber harvesting activity on an annual basis for the period 1999-2003 have either accepted the statewide standards in accordance with 38 MRSA M.R.S. §438-B, sub-§2 or have adopted an ordinance identical to the statewide standards in accordance with 38 MRSA M.R.S. §438-B, sub-§3. Within 30 days of making the determination that the 252-municipality threshold has been met, the Commissioner of Conservation shall notify the Secretary of State in writing and advise the secretary of the effective date for the statewide standards.

Timber harvesting and related activities are not subject to this rule if, prior to the effective date of the rule, (1) notification has been filed with and accepted by the Bureau, and (2) timber harvesting has begun. Timber harvesting and related activities not subject to this rule are subject to the rules of the proper authority that were in effect at the time notification was filed and accepted by the Bureau and timber harvesting began.

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STATUTORY AUTHORITY: 12 M.R.S. ch. 805 sub-ch. 3-A; P.L. 2003 ch. 335; P.L. 2013, ch. 570

RECEIVED June 16, 2005 – filing 2005-235

CORRECTIONS:

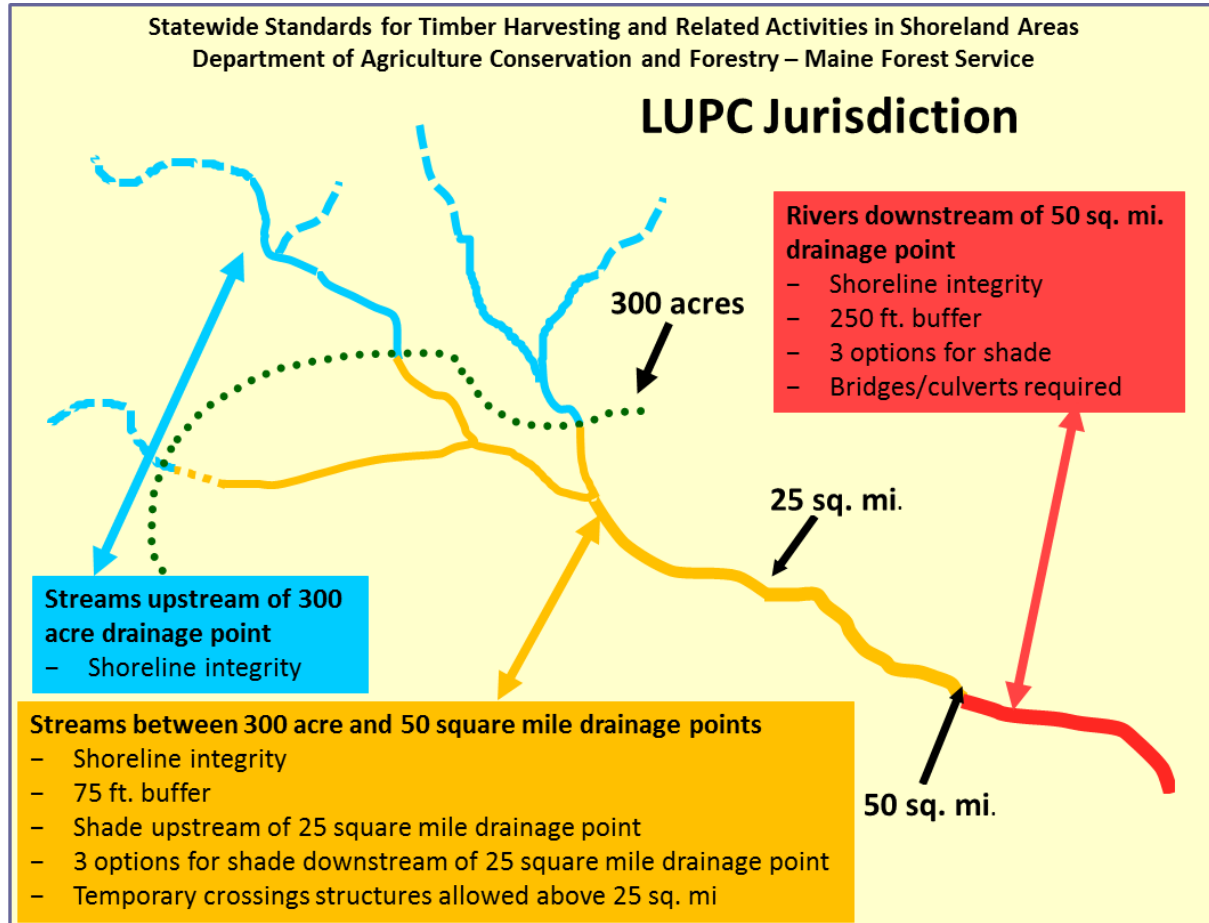
February, 2014 – agency names, formatting

AMENDED:

August 30, 2015 – filing 2015-139 (Final adoption, major substantive)

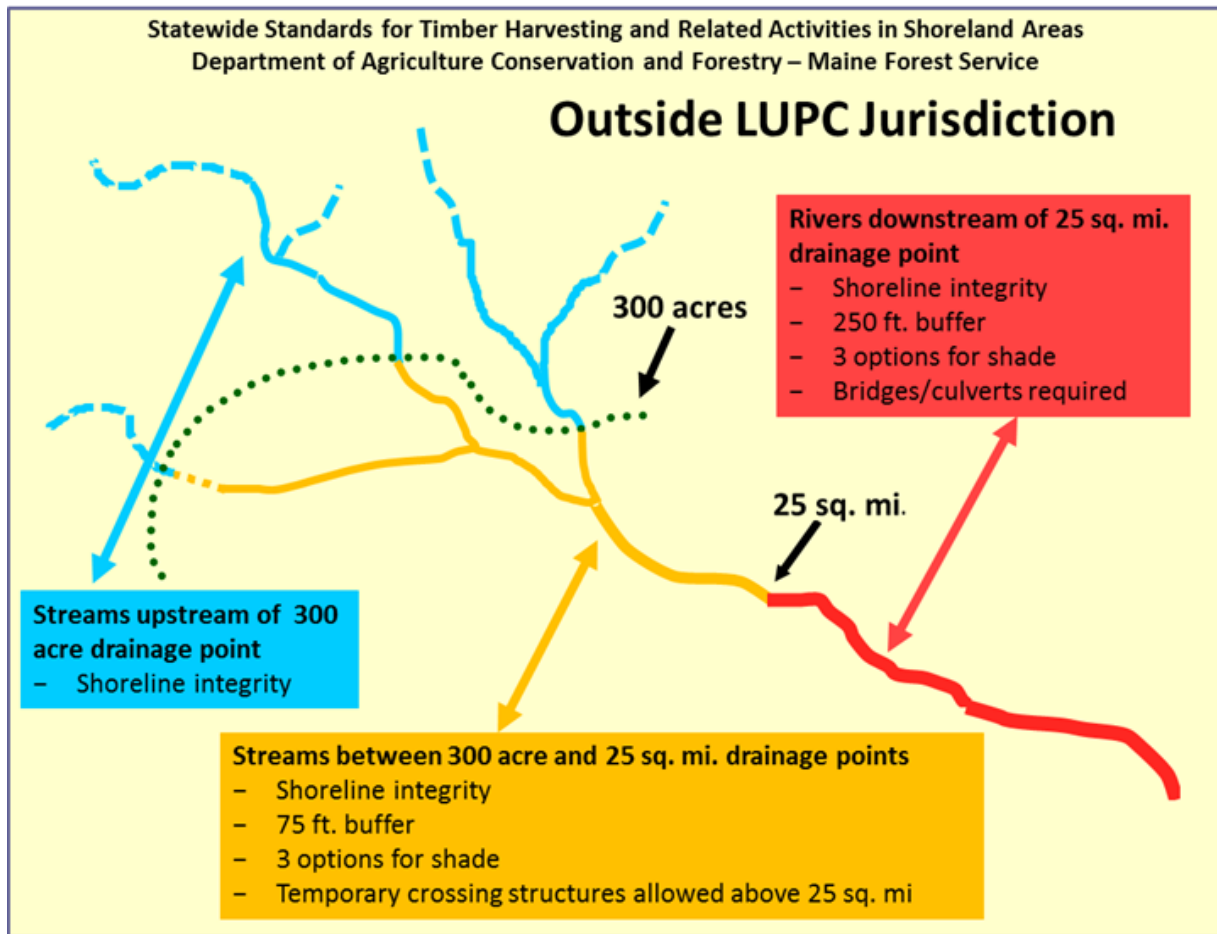
## APPENDIX 1. DIAGRAMS OF APPLICATION OF THIS RULE

**Figure 1. Application of this rule in the jurisdiction of the Land Use Planning Commission**



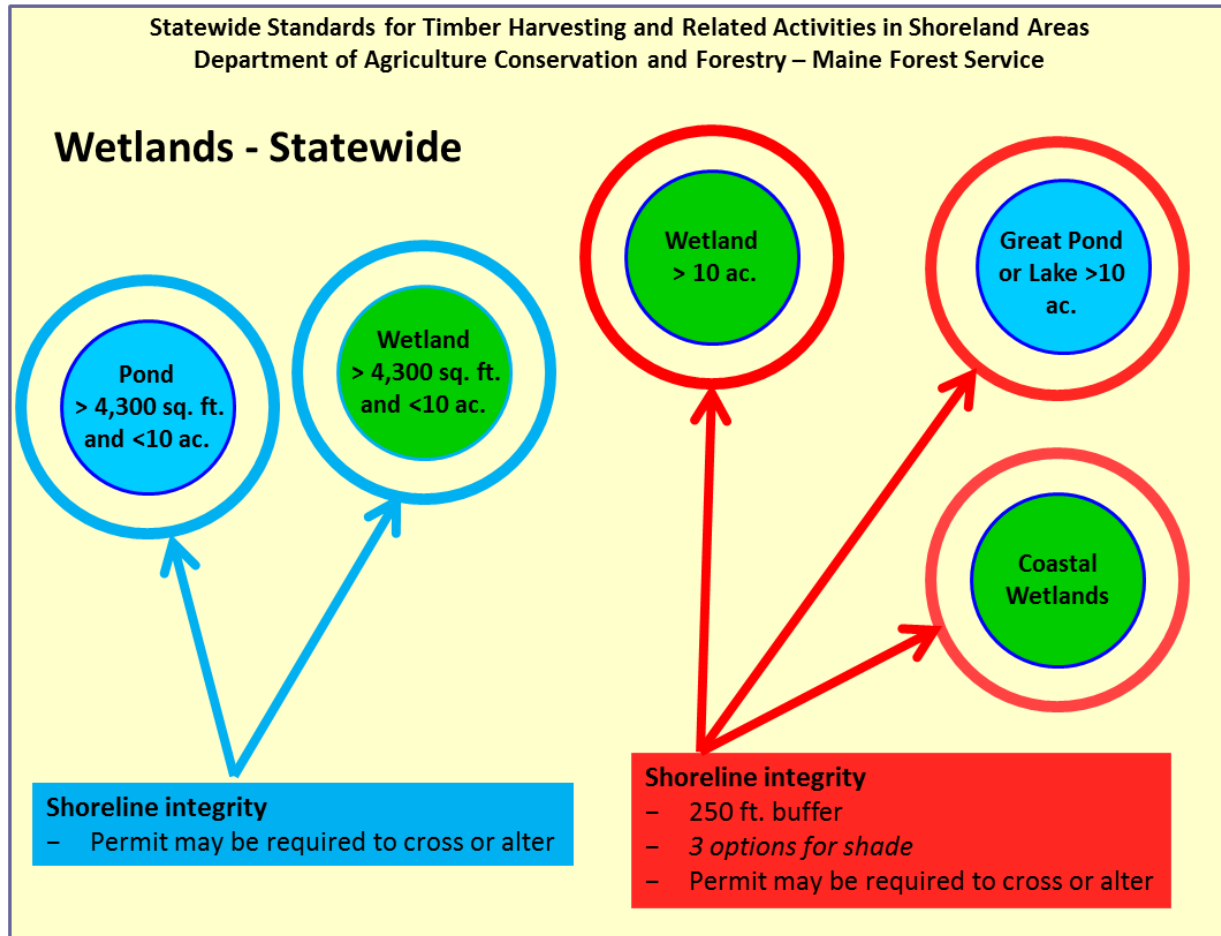
**NOTE: This diagram is for informational purposes only. In the case of discrepancies, the written rule shall govern.**

**Figure 2. Application of this rule in municipalities not subject to the jurisdiction of the Land Use Planning Commission**



**Note:** This diagram is for informational purposes only. In the case of discrepancies, the written rule shall govern.

**Figure 3. Application of this rule to wetlands statewide**



**Note:** This diagram is for informational purposes only. In the case of discrepancies, the written rule shall govern.