

Site Plan Review Ordinance, Town of Cushing, Maine

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1. PURPOSE The purpose of this ordinance is to set standards and permitting procedures for non-residential land uses.

2. AUTHORITY

A. The authority for this Ordinance was conferred upon the states by the Home Rule Power of Article VIII, Part 2 of the Maine Constitution, and 30-A M.R.S.A., Section 3001.

B. The Cushing Planning Board shall administer this Ordinance.

3. APPLICATION & EXEMPTIONS

A. This Ordinance applies to commercial, industrial and institutional uses and activities, and to similar non-profit uses and activities, in all areas of the Town, specifically to:

1. New construction of buildings, structures, accessory buildings, and parking areas; and
2. Conversions of buildings, structures, accessory buildings, and parking areas from residential use to non-residential use, or from one non-residential use to another non-residential use; and
3. Expansions of buildings, structures, accessory buildings, and parking areas by more than 50% during a rolling five year period; and
4. Blasting.

B. Except for provisions 3.A.2 and 3.A.3 above, this ordinance does not apply to non-residential uses existing at the time of its adoption.

This Ordinance does not apply to agriculture, except the growing of hallucinogenic or narcotic plants, to forest management activities and timber harvesting and related activities, to residential subdivisions, to non-commercial boat storage facilities, to home occupations, to Fishing Home

Business and Commercial Fisheries/Marine Commercial uses, or to structures supporting antennas, wind turbines, or power lines.

For the purposes of this section, a non-residential use shall be considered an existing use for twelve months after its operation has ceased.

4. WAIVERS AND CONDITIONS

Where the Planning Board makes findings of facts that there are special circumstances of a particular site, it may waive portions of this ordinance or submittal requirements, provided that the public health, safety and welfare are protected. Any waiver of a standard shall be the least reasonable waiver, and shall not contravene the intent of the ordinance as applied to the specific site. The Planning Board shall require such conditions as will assure that the objectives of this ordinance are met, including, as appropriate, covenants with an abutter that specifies terms satisfactory to the Planning Board.

5. GENERAL PERFORMANCE STANDARDS

In reviewing site plan permit applications, the Planning Board shall consider the following general requirements, with such professional assistance as the Board deems warranted by the submittal. In all instances the burden of proof shall be upon the applicant that the proposed development is eligible for approval, complies with all requirements of Town ordinances and regulations, and that the applicant has obtained any required State and Federal approvals.

All required improvements, such as roads, storm water management and treatment systems, utilities, fire protection facilities, water supply and sanitary sewage system, together with the cost of such review and certification of completion as the Board may require, shall be provided at the expense of the applicant, as set forth in Division I.E.

Covenants, Conditions and Restrictions that are satisfactory to the Board and run with the land shall establish responsibilities for maintenance of existing vegetation and landscaping, storm water management and treatment systems, fire protection facilities, water supply and sanitary sewage systems; and in commercial subdivisions or condominiums, the maintenance of roads, parking areas, and utilities.

A. Land suitable for development. The Planning Board shall not approve for development such portions of a lot that:

1. Are located within the one hundred (100) year flood zone.
2. Do not comply with the uses permitted in a Resource Protection District.
3. Are in a right-of-way; or in an easement for transmission of electricity or electrical signals; or in an easement or common area containing fire ponds or storm water management improvements such as ponds and defined drainage ways.
4. Are within delineated wetlands, except as permitted by the Maine Natural Resources Protection Act (NRPA).
5. Are created by filling or draining a pond or wetland, except by NRPA permit.
6. Are in an area in which development is prohibited by order of the Maine Department of Inland Fisheries and Wildlife for protection of significant wildlife habitat, by order of the Maine

Department of Conservation for the protection of a rare or unique natural feature, or by order of the Maine Historic Preservation Commission for protection of a historic feature.

7. Have been found in violation of the rules of timber harvesting set out in Title 12 M.R.S.A. § 8869(14) within the previous five years, unless the citation, or an appeal thereof remains pending.

Where part of a property is located on soils listed in Division III, evaluation of the site's suitability for development shall be provided by a licensed professional with training and experience in land stability.

Where the Maine Department of Inland Fisheries and Wildlife has designated an area on or adjoining the proposed development as significant wildlife habitat, the plan shall incorporate measures required by the Department to protect an essential habitat.

Where the Department of Conservation has designated a natural area on or adjoining the site rare and irreplaceable, the plan shall incorporate measures required by the Department to protect certain designations.

Where the Maine Historic Preservation Commission has designated an historic or prehistoric resource on or adjoining the proposed development for protection, the plan shall incorporate measures required by the Department.

B. Site disturbance. Site disturbance by clearing, grading, disturbance or removal of topsoil, and cutting of trees or brush shall be limited to what is permitted in the approved plan, and shall not begin until a site plan has been approved and recorded in the Knox County Registry of Deeds. Topsoil may be removed from the property only in areas approved for construction.

C. Water responsibilities. The burden is on the applicant to demonstrate that there is sufficient water for the reasonably foreseeable needs of the development, and that the development will not alone or in conjunction with existing activities adversely affect the quality or quantity of groundwater, or cause an unreasonable burden on existing water supplies serving adjacent areas. See the Emery & Garrett Hydrogeological Report of May 2006 for likely areas of salt water intrusion.

No activity shall deposit on or into the ground or discharge to the waters of the State, 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.

D. Waste disposal.

1. All wastes shall be disposed of in a timely and environmentally safe manner and in conformance with applicable Landfill, State and Federal regulations. Types of anticipated chemical and industrial wastes shall be stipulated to the Planning Board.
2. A sufficient subsurface sewage disposal capability shall be demonstrated.
3. Discharge of airborne pollutants shall conform to State and Federal limitations.

E. Erosion & sediment control. An erosion and sediment control plan shall comply with the latest edition of *Maine Erosion and Sediment Control Best Management Practices* (BMPs).

F. **Storm water management.** Management of storm water shall meet the applicable standards and practices set forth in the latest edition of *Chapter 500 Stormwater Management Rules and Stormwater Management for Maine* as amended, Maine Department of Environmental Protection publications, and the standards of professional engineering practice. Storm water run-off shall be treated by the use of best management practices equivalent to those set forth in *Stormwater Management for Maine*. The natural state of watercourses, swales, and floodways shall be preserved to the extent practicable.

G. **Access.**

A. No development shall cause the level of service of any public road to fall below category C, or to lower the level of service if it is already below level C.

B. Access to the site shall comply with the Town of Cushing Road Access Ordinance and provide safe access for fire, emergency, maintenance, delivery, employee and visitor vehicles.

C. Access drives shall be set back at least 50 feet from an abutting non-commercial property line, and shall be not less than 18 feet wide.

H. **Utility easements.** Utility easements shall provide access from public roads for installation and maintenance of electric, telephone, and cable services, stormwater management, fire protection facilities, or erosion and sediment control facilities.

I. **Buildings & parking** These standards apply to all new development. Additional standards for specific uses are in Section 6.

1. Abutting non-commercial uses, setbacks from property lines shall be as follows:

- a. Exterior building wall height less than 20 feet above grade.....50 feet
- b. Exterior building wall height more than 20 feet above grade.....75 feet
- c. Parking area.....50 feet
- d. Storage area, mechanical equipment or campsite.....50 feet

Where the above dimensions cannot be accommodated on a property owing to its lot width, the Planning Board may approve a waiver if it finds that additional conditions will satisfy the intent of these dimensions.

2. Where the Planning Board makes a finding that existing trees in setback areas abutting non-commercial uses will not provide an adequate visual buffer, the Board’s approval may be conditional on additional plantings or setback dimensions.

3. Buildings, parking, storage areas, mechanical equipment and campsites shall be set back 75 feet from public rights of way.

4. Building height shall not exceed 35 feet.

5. Motorized rooftop mechanical equipment shall not be visible to a person standing at a property line.

6. Parking for staff, activities and visitors shall be provided on site. Parking shall be sufficient to accommodate peak business activity.

7. Parking spaces shall be 9 feet by 18 feet. An unobstructed 24-foot back-up area shall be provided for each parking space. Parking area slopes shall not exceed 5%.

J. Signs

1. Each site may have one single free-standing commercial sign to identify its address, name and uses. Sign structures shall be six feet or less in height. Sign faces shall not exceed 20 s.f. Signs may be illuminated only by non-flashing sources that are not part of the sign. Signs shall be unlit from two hours past sunset to sunrise, except for premises open to the public, where lighting is permitted until one hour past closing.

2. A free-standing sign shall be set back not less than 15 feet from a right-of-way and not less than 75 feet from other property lines. Signs applied to buildings shall not exceed 20 s.f. in area, and shall be unlit.

K. Lighting. Exterior lighting fixtures shall direct light to grade within the property, not beyond it. Only self-extinguishing movement-actuated lighting is permitted between sunset and sunrise, except when the premises are open to the public, where lighting is permitted until one hour past closing.

L. Fire Protection Submittals shall comply with applicable NFPA requirements to the satisfaction of the Fire Chief.

6. PERFORMANCE STANDARDS FOR SPECIFIC USES

A. Medical Marijuana Dispensary and Cultivation Facility

Notwithstanding the provisions of 1 M.R.S.A. § 302 or any other law to the contrary, this Section 6.A, when enacted, shall govern any proposed medical marijuana dispensary for which an application has not been submitted and acted on by the Planning Board prior to September 1, 2011. The following standards apply to all medical marijuana dispensaries:

1. Location Criteria. No medical marijuana dispensary shall be sited within 500 feet of the lot lines of any of the following:

- a. a church, synagogue or other house of religious worship;
- b. a public or private school;
- c. a lot not currently in commercial or industrial use;
- d. an athletic field, park, playground or recreational facility;
- e. any juvenile or adult halfway house, correctional facility, methadone clinic, or substance abuse rehabilitation or treatment center;
- f. a licensed child care facility; or
- g. a lot on which another medical marijuana dispensary is sited.

The distance cited in this subsection shall be measured between the lot line of the proposed site for the medical marijuana dispensary and the lot line of the site of the use listed in (a) through (g) above at their closest points.

2. Hours of Operation. Medical marijuana dispensaries may be open for business only between the hours of 8:00 a.m. and 8:00 p.m., locally prevailing time.

3. Parking. Medical marijuana dispensaries shall have five (5) parking spaces per one thousand (1,000) square feet of total floor area, plus one additional space for every two (2) employees.

4. Signage and Advertising. All signage and advertising for a medical marijuana dispensary shall comply with Section 5.J. above. In addition, no signage or advertising shall use the word "marijuana" or "cannabis," or any other word, phrase or symbol commonly understood to refer to marijuana unless such word, phrase or symbol is immediately preceded by the word "medical" in type and font that is at least as readily discernible as all other words, phrases or symbols on the sign. Such signage and advertising must clearly indicate that the products and services are offered only for medical marijuana qualifying patients and primary caregivers.

5. Security Requirements. Security measures at a medical marijuana dispensary and any associated cultivation facility shall include, at a minimum, the following:

a. security surveillance cameras installed and operating 24 hours a day, 7 days a week to monitor all entrances, along with the interior and exterior of the premises, to discourage and facilitate the reporting of criminal acts and nuisance activities occurring at the premises;

b. door and window intrusion robbery and burglary alarm systems with audible and Sheriff's Department or State Police notification components that are professionally monitored and maintained in good working condition;

c. a locking safe permanently affixed to the premises that is suitable for storage of all prepared marijuana and cash stored overnight on the licensed premises;

d. exterior lighting that illuminates the exterior walls of the licensed premises and complies with Section 5.K of this Ordinance; and

e. deadbolt locks on all exterior doors and locks or bars on any other access points (e.g., windows).

All security recordings shall be preserved for at least seventy-two (72) hours by the medical marijuana dispensary. The medical marijuana dispensary shall provide the County Sheriff or Commander of the local State Police barracks or his designee with the name and functioning telephone number of a 24-hour on-call staff person to whom the Town may provide notice of any operating problems associated with the medical marijuana dispensary.

6. Fire Safety. All buildings associated with a medical marijuana dispensary, including any associated cultivation facility, shall be protected by use of fire suppression sprinkler systems or such other effective fire suppression system as may be approved by the Fire Chief. A medical marijuana dispensary shall have a Knox Box or shall provide the Fire Department with the necessary information to allow entry by Fire Department personnel in the event of an emergency at the location.

7. Cultivation. If there is both the cultivation and dispensation of marijuana occurring on the same site, the cultivation area shall not be greater than 25% of the total floor area of the portion of the building used for dispensation of marijuana.

8. On-site Consumption of Medical Marijuana. The consumption, ingestion or inhalation of medical marijuana on or within the premises of a medical marijuana dispensary or cultivation facility is prohibited; provided, however, that a medical marijuana dispensary employee who is also a qualifying patient, as that term is defined in 22 M.R.S.A. § 2422(9), as may be amended, may consume medical marijuana within the enclosed building area of the premises if such consumption occurs via oral consumption (*i.e.*, eating only). For purposes of this subsection, the term “premises” includes the actual building, as well as any accessory structures, parking lot or parking areas, or other surroundings within 200 feet of the medical marijuana dispensary’s entrance.

9. Visibility of Activities; Control of Emissions; Disposal Plan.

a. All activities of medical marijuana dispensaries and cultivation facilities, including, without limitation, cultivating, growing, processing, displaying, selling and storage, shall be conducted indoors in an enclosed, locked facility.

b. No marijuana or paraphernalia shall be displayed or kept in a dispensary or cultivation facility so as to be visible from outside the premises.

c. Sufficient measures and means of preventing smoke, odors, debris, dust, fluids and other substances from exiting a dispensary or cultivation facility must be provided at all times. Sufficient measures shall be provided for the proper disposal of all such materials, items and other substances in a safe, sanitary and secure manner and in accordance with all applicable federal, state and local laws and regulations.

d. All medical marijuana dispensaries shall have in place an operational plan for proper disposal of marijuana and related byproducts.

10. Sale of Edible Products. No food products shall be sold, prepared, produced or assembled by a medical marijuana dispensary except in compliance with all operating and other requirements of state and local law and regulation, including, without limitation, food establishment licensing requirements. Any goods containing marijuana for human consumption shall be stored in a secure area.

11. Other Laws Remain Applicable. A medical marijuana dispensary shall meet all operating and other requirements of state and local law and regulation. To the extent the State of Maine has adopted or adopts in the future any stricter law or regulation governing medical marijuana dispensaries, the stricter law or regulation shall control.

12. Maximum Number. The maximum number of medical marijuana dispensaries in the Town shall be capped at one (1).

B. Methadone Clinic

Notwithstanding the provisions of 1 M.R.S.A. § 302 or any other law to the contrary, this Section 6(B), when enacted, shall govern any proposed methadone clinic for which an application has not been submitted and acted on by the Planning Board prior to September 1, 2011. The following standards apply to all methadone clinics:

1. Location Criteria. No methadone clinic shall be sited within 500 feet of the lot lines of any of the following:

- a. a church, synagogue or other house of religious worship;
- b. a public or private school;
- c. a lot not currently in commercial or industrial use;
- d. an athletic field, park, playground or recreational facility;
- e. any juvenile or adult halfway house, correctional facility, medical marijuana dispensary, or substance abuse rehabilitation or treatment center other than a methadone clinic;
- f. a licensed child care facility; or
- g. a lot on which another methadone clinic is sited.

The distance cited in this subsection shall be measured between the lot line of the proposed site for the methadone clinic and the lot line of the site of the use listed in (a) through (g) above at their closest points.

2. Hours of Operation. Methadone clinics may be open for business only between the hours of 8:00 a.m. and 8:00 p.m., locally prevailing time.

3. Parking. Methadone clinics shall have five (5) parking spaces per one thousand (1,000) square feet of total floor area, plus one additional space for every two (2) employees.

4. Security Requirements. Security measures at a methadone clinic shall include, at a minimum, the following:

- a. security surveillance cameras installed and operating 24 hours a day, 7 days a week to monitor all entrances, along with the interior and exterior of the premises, to discourage and facilitate the reporting of criminal acts and nuisance activities occurring at the premises;
- b. door and window intrusion robbery and burglary alarm systems with audible and Sheriff's Department or State Police notification components that are professionally monitored and maintained in good working condition;
- c. a locking safe permanently affixed to the premises that is suitable for storage of all drugs and cash stored overnight on the licensed premises;
- d. exterior lighting that illuminates the exterior walls of the licensed premises and complies with applicable provisions of this Ordinance; and
- e. deadbolt locks on all exterior doors and locks or bars on any other access points (e.g., windows).

All security recordings shall be preserved for at least seventy-two (72) hours by the methadone clinic. The methadone clinic shall provide the County Sheriff or Commander of the local State Police barracks or his designee with the name and functioning telephone number of a 24-hour on-call staff person to whom the Town may provide notice of any operating problems associated with the methadone clinic.

5. Fire Safety. All buildings associated with a methadone clinic shall be protected by use of fire suppression sprinkler systems or such other effective fire suppression system as may be approved by the Fire Chief. A methadone clinic shall have a Knox Box or shall provide the Fire Department with the necessary information to allow entry by Fire Department personnel in the event of an emergency at the location.

C. **Blasting**

1. Blasting procedures shall comply with the requirements of 38 M.R.S.A. § 490.Z (14) except as modified below.
2. Approval of a blasting permit application is conditional on receipt of a plan to provide 7-day written notice to residents within 2000 feet of the blast site signed by the owner and operator of the property. Failure to comply shall nullify the permit.

7. **ENFORCEMENT**

A. Any violation of this Ordinance shall be deemed a nuisance.

B. The Code Enforcement Officer shall conduct on-site inspections to insure compliance with all applicable laws, regulations, ordinances and approvals. The Code Enforcement Officer shall also investigate all complaints of alleged violations of this Ordinance. If the Code Enforcement Officer shall find 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, or work being done, removal of illegal buildings or structures, and abatement of nuisance conditions. A copy of such notices shall be submitted to the municipal officers and be maintained as a permanent record. The Code Enforcement Officer shall keep a complete record of all essential transactions of the office.

C. When the above action does not result in the correction or abatement of the violation or nuisance condition, the Municipal Officers, upon notice from the Code Enforcement Officer, are hereby directed to institute 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 in the name of the municipality. The municipal officers, or their authorized agent, 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.

D. Any person, including but not limited to a landowner, a landowner's agent or a contractor, who orders or conducts an activity in violation of any provision or requirement of this Ordinance shall be penalized in accordance with 30-A, M.R.S.A. Section 4452.

8. **CONFLICT OF REGULATIONS** Whenever a provision of this ordinance conflicts with or is inconsistent with another provision of this ordinance, or is inconsistent with a provision of any other ordinance, regulation or statute administered by the Town or State, the more restrictive provision shall control.

9. **SEVERABILITY** The invalidity of any section, subsection, clause, phrase or word of this ordinance

shall not be held to invalidate any other section, subsection, paragraph, sentence, clause, phrase or word of this ordinance.

10. **AMENDMENT** This ordinance may be amended by the voters of Cushing following a public hearing.

Certificate of adoption

I hereby attest that this is a true copy of the Site Plan Review Ordinance of the Town of Cushing, Maine, duly adopted by the legislative body of the Town of Cushing, Maine, on November 8, 2011.

Town Clerk

Date

DIVISION I. ADMINISTRATION

A. Permits.

1. A Planning Board permit shall be required to initiate any commercial, industrial or institutional use of land or structure; or build, construct, set, install, establish, expand, relocate, or substantially alter any structure; or convert, expand, change or replace an existing use or structure;
2. A permit shall be issued for any application found to comply with the standards of this ordinance.
3. Any permit required by this ordinance shall be in addition to any other required permit. An application made in the Shoreland Zone shall also be reviewed under the Shoreland Zoning Ordinance.
4. Permits shall expire one year from 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 of the issuance of the permit, the applicant shall have one additional year to complete the project, at which time the permit shall expire.
5. A public utility, or any utility company of any kind may not install services to any new commercial use unless written authorization attesting to the validity and currency of all local permits required under this Ordinance has been issued by the Code Enforcement Officer.

B. Pre-application.

1. The prospective applicant should consult the Code Enforcement Officer to discuss general requirements and procedures for permitting.
2. The Board shall schedule a meeting to clarify the scope of the project, for which the applicant should prepare a scaled sketch plan drawn on Town topography and lotting. The sketch plan should show site conditions such as steep or wet areas and woodlines.
3. Fourteen days before the scheduled Board meeting, the applicant shall submit eight (8) copies of the sketch plan, the prescribed fee, a copy of the property deed and any covenants, and if applicable a letter of authorization from the owner and any purchase and sale agreement, together with a thorough description of the proposed development and how infrastructure will be owned and maintained.

C. Capacity. To determine financial capacity, the Planning Board may require the applicant to provide such documentation as a statement of assets and liabilities, one or more bank statements, a credit history report, and as a final condition of approval, a funding commitment letter from a bank. To determine technical capacity, the Planning Board may require the applicant to provide references that support qualification to undertake the proposed development.

D. Performance guarantee.

1. For construction of improvements for stormwater management, erosion and sediment control, and any public roadway improvements, a performance guarantee is required in the

form of an irrevocable letter of credit from a financial institution acceptable to the Planning Board.

2. The amount of the guarantee shall be one hundred twenty five (125) percent of the cost of furnishing; installing, connecting and completing in good working condition any improvements noted in (1) above that are specified in the plan. The performance guarantee may be reduced in proportion to the construction completed.

E. Fees and escrow funds

1. The Planning Board may, following a public hearing and approval by the Selectmen, adopt a schedule of fees and escrow funds for administrative procedures. All fees collected shall be applied to Planning Board expenses and enforcement of land use ordinances and regulations. Fees and deposits shall be made to the Town clerk, payable to the Town of Cushing.

2. Fees and deposits shall be made to the Town clerk, payable to the Town of Cushing. If a required fee or escrow deposit is not received prior to a meeting at which the application is listed on the agenda, the application shall be tabled. If that required fee or deposit is not received within fourteen (14) days after that meeting, the application shall be considered to have been withdrawn.

3. Funds held in escrow shall be used to defray the cost of independent consulting services required by the Board for review of technical or legal aspects of an application; and for costs of notice, mailing, and copying of documents or maps. The original deposit shall be restored whenever the balance of the account goes below 25% of the original deposit. Whenever the balance in an escrow account is drawn down by 75%, the Board shall notify the applicant of the amount of funds to be deposited to restore the scheduled deposit. The Board shall furnish the applicant a record of the nature and amount of any expenditure made from the account. Unused funds shall be returned to the applicant within thirty (30) days after the later of final Board action on the application, or satisfaction of escrow obligations.

F. Application processing

1. Applications shall be submitted to the Town Clerk fourteen (14) calendar days before a regularly scheduled Planning Board meeting on a dated Town form with eight (8) copies of documents required for Preliminary Plan approval, and the scheduled fee and escrow deposit. Applications shall be signed by an owner or by an authorized agent who can provide evidence of right, title or interest in the property. When the nature of the use requires a subsurface sewage disposal system, a site evaluation approved by the Plumbing Inspector and a completed application for a septic system permit shall be submitted.

2. Upon receiving an application for preliminary plan approval at a regularly scheduled Planning Board meeting, the Planning Board shall issue the applicant a dated receipt; and require the applicant to notify property owners abutting or within 500 feet of the subject property by registered return-receipt-requested mail that an application for development approval has been submitted, specifying its location and a general description of the project on a form provided by the Town, and to provide the Board with the receipts; and to notify the review authority of a neighboring municipality if the proposed development abuts or crosses a municipal boundary.

3. Within thirty five (35) days of receipt of an application, the Planning Board shall determine whether the application is complete. If the application is incomplete, the Planning Board shall notify the applicant, in writing, of the specific deficiencies. Until a complete application has been received, the Planning Board shall not begin its review of the application.

4. The Planning Board Chairman may schedule a site visit, which shall be a formal meeting with notice and minutes.

5. The Code Enforcement Officer shall inspect the site and maintain a digital photographic record of site conditions before Board review, during approved work, and after its completion.

6. Upon finding an application complete, the Planning Board:

a. shall schedule a public hearing within thirty five (35) days, unless an extension of time has been agreed with the applicant or is required for independent professional review. The Planning Board shall give notice of its date, time and place, to be published twice in a local newspaper with the date of the first publication at least seven (7) days prior to the hearing. If any part of the subject property is located within the Shoreland Zone, the hearing shall include review of the application's compliance with the requirements of the Shoreland Zoning Ordinance; and

b. shall notify the Code Enforcement Officer, Road Commissioner, Addressing Officer, Fire Chief and Rescue Squad Director of the proposed development including the proposed square footage and proposed fire protection plans, requesting written comment on the application before the next regular Board meeting. Failure to respond to the Board's request shall be deemed to constitute review and approval.

c. may require independent review of submittals.

7. Unless an extension of time has been agreed between the applicant and the Planning Board, the Board shall, within thirty-five (35) days after the public hearing, either approve, approve with conditions, or disapprove the application.

a. Approval shall be based on compliance of the application with the standards of this ordinance, and with any conditions imposed by the Board to assure compliance. The Board shall specify its reasons for approval or denial of the application, for approval or denial of any request for a waiver of any standard, and for any condition imposed.

b. In issuing its decision the Planning Board shall state in writing any conditions of approval, specifically:

1. Any requirements associated with approval of waivers.

2. The kind of performance guarantee that the Planning Board will require.

c. The Planning Board shall sign the final plat. One signed paper copy and one reproducible copy shall be filed at the Town Office. Any plat not recorded in the Knox County Registry of Deeds by the applicant within ninety (90) days of the date upon which the plan is approved and signed by the Planning Board shall be considered null and void.

d. No application shall be accepted by the Planning Board from an applicant in violation of a plan previously approved under this ordinance.

e. Failure to commence substantial construction of the development within one (1) year of the signing of the plat shall render the approval null and void. The developer may apply to the Code Enforcement Officer for a one-year extension to commence construction. The performance guarantee and any conditional agreement shall also be extended by one year if an extension is granted.

f. If an application is denied, a subsequent application, unless substantially different from the original plan, shall not be accepted for processing by the Board for three (3) months.

8. The Planning Board may vote to reconsider any decision within forty-five (45) days of its decision vote. Seven (7) days notice of the reconsideration vote shall be provided to the applicant, Code Enforcement Officer, and other parties of interest, including abutters and those who testified at the original hearing(s). A motion to reconsider may only be made by a member who voted in the majority on the original decision. Reconsideration of a decision shall require a positive vote of the majority of the Board members who voted on the original decision. The Board may or may not receive additional evidence and testimony.

G. Appeals

1. **Powers and Duties of the Board of Appeals.** The Board of Appeals shall have the power to hear and decide administrative appeals, on an appellate basis, where it is alleged by an aggrieved party that there is an error in any order, requirement, decision, or determination made by, or failure to act by the Planning Board in the administration of this Ordinance, and to hear and decide administrative appeals on a de novo basis where it is alleged by an aggrieved party that there is an error in any order, requirement, written decision or determination made by, or failure to act by, the Code Enforcement Officer in his or her enforcement of this Ordinance.

When the Board of Appeals reviews a decision of the Code Enforcement Officer, the Board may receive and consider new evidence and testimony, be it oral or written. When acting in a "de novo" capacity, the Board of Appeals shall hear and decide the matter afresh, undertaking its own independent analysis of evidence and the law, and reaching its own decision.

2. Appeal Procedure

a. Making an Appeal

1. An administrative appeal may be taken to the Board of Appeals by an aggrieved party from any decision of the Code Enforcement Officer or the Planning Board. Such an appeal shall be taken within thirty (30) days of the date of the official, written decision appealed from, except that if the Planning Board has voted to reconsider its decision, such an appeal shall be taken within thirty (30) days of the date of the subsequent official, written decision appealed from; excepting further that the Board of Appeals, upon a showing of good cause, may extend either time requirement by an additional thirty (30) days.

2. Applications for appeals shall be made by filing a written notice of appeal with the Board of Appeals which includes:

i. A concise written statement indicating what relief is requested and why the appeal or should be granted.

ii. A sketch drawn to scale showing lot lines, location of existing buildings and structures and other physical features of the lot pertinent to the relief sought.

3. Upon receiving an application for an administrative appeal, the Chair of the Board of Appeals shall cause the Code Enforcement Officer or Planning Board, as appropriate, to transmit to the Board of Appeals all of the papers constituting the record of the decision appealed from.

4. The Board of Appeals shall hold a public hearing on an administrative appeal within thirty-five (35) days of its receipt of a complete written application, unless this time period is extended by the parties, and shall issue a written decision on all appeals.

b. Decision by Board of Appeals

1. A majority of the full voting membership of the Board shall constitute a quorum for the purpose of deciding an appeal.

2. The concurring vote of a majority of the members of the Board of Appeals present and voting shall be necessary to reverse an order, requirement, decision or determination of the Code Enforcement Officer or Planning Board, or to decide in favor of the applicant on any matter in which it is required to decide under this Ordinance, or to affect any variation in the application of this Ordinance from its stated terms. The Board may reverse the decision, or failure to act, of the Code Enforcement Officer or Planning Board only upon a finding that the decision, or failure to act, was clearly contrary to specific provisions of this Ordinance.

3. The person filing the appeal shall have the burden of proof.

4. The Board shall decide all administrative appeals within thirty five (35) days after the close of the hearing, and shall issue a written decision on all appeals.

5. The Board of Appeals shall state the reasons and basis for its decision, including a statement of the facts found and conclusions reached by the Board. The Board shall cause written notice of its decision to be mailed or hand-delivered to the applicant and to the Department of Environmental Protection within seven (7) days of the Board's decision. Copies of written decisions of the Board of Appeals shall be given to the Planning Board, Code Enforcement Officer and the municipal officers.

3. Appeal to Superior Court. Any aggrieved party who participated as a party during the proceedings before the Board of Appeals may take an appeal to Superior Court in accordance with State laws within the requirements of 30-A MRSA § 2691.

4. Reconsideration. In accordance with 30-A M.R.S.A. Section 2691(3)(F), the Board of Appeals may reconsider any decision within forty-five (45) days of its prior decision. A request to the Board to reconsider a decision must be filed within ten (10) days of the decision that is being reconsidered. A vote to reconsider and the action taken on that reconsideration must occur and be completed within forty-five (45) days of the date of the vote on the original decision. Reconsideration of a decision shall require a positive vote of the majority of the Board members originally voting on the decision, and proper notification to the landowner, petitioner, planning board, code enforcement officer, and other parties of

interest, including abutters and those who testified at the original hearing(s). The Board may conduct additional hearings and receive additional evidence and testimony.

Appeal of a reconsidered decision to Superior Court must be made within fifteen (15) days after the decision on reconsideration.

H. Submittal requirements. The applicant has the burden of proving that the proposed land use activity is in conformity with the purposes of this ordinance.

1. Submittals shall provide required information, such as the following. Not all of these items may apply:

- Location of property
- Boundary survey at 1"=30' to 1"=60', with topo at 2' or 5' interval as determined by the Board; roads; driveways; easements and utility corridors; delineation of wetlands, resource protection areas, and flood plains; 75', 100' and 250' setbacks associated with protected waters; existing and proposed buildings; septic system improvements; required setback lines; treelines
- Acreage of site, wetlands
- Limits of disturbance
- Sewage permit or approved evaluation & plan
- A report by a Professional Engineer supporting proposed development on or regrading of Soils of concern (See Division III) or on a Coastal Bluff or Coastal Landslides Hazards map.
- MHPC report on archaeological/historical features
- MDIFW report on significant wildlife habitat
- MDEP report on protected natural areas
- Stormwater management plan, improvements and details
- Erosion control plan, improvements and details
- Fire protection plan, improvements and details
- Required State/Federal permit needs
- A statement on the plan that the lowest floor elevation or openings of all buildings and structures including basements shall be elevated at least one (1) foot above the elevation of the 100-year flood, the flood of record, or in the absence of these, the flood as defined by soil types identified as recent floodplain soils
- Applicable requirements of the Subdivision Regulations or Shoreland Zoning Ordinance
- Any required groundwater extraction impact assessment
- Such other items as the Board may require
- Copies of applications for required State and Federal permits, as under the Site Location Development Act, the Natural Resource Protection Act, the Stormwater Management Law, or from the Manufactured Housing Board, the Department of Health and Human Services for a water or sewer permit
- Building footprints, elevations, parking plan.

2. Construction drawings bearing the signature and seal of a licensed Professional Engineer shall show all road, storm water management, erosion and sediment control and site-based fire protection system improvements, at a scale of not more than 60 feet to the inch, on 24" x 36" sheets where practical, with details at appropriate scales.

3. A final plat at a scale of not more than 60 feet to the inch, on 24" x 36" sheets where practical, two (2) on reproducible, stable-based transparent originals, and seven (7) copies shall be prepared to professional engineering standards to show meets and bounds; easements; edges of 100-year flood plain, wetlands, and Shoreland Zone or Resource

Protection areas; required setback lines; any conditions of approval or waivers of standards; date, scale, north; and space for endorsement signatures.

4. A performance guarantee approved by the Board of Selectmen shall be submitted for improvements for fire protection, stormwater management and erosion and sediment control.

DIVISION II: DEFINITIONS

Accessory structure or use: A use or structure which is incidental and subordinate to the principal use or structure (e.g. garages, woodsheds, and fish houses). Accessory uses, when aggregated shall not subordinate the principal use of the lot. 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 considered part of the principal structure. Accessory structures, except those that require direct access to the water, must also meet all setback requirements.

Agriculture: The production, keeping or maintenance for sale or lease, of plants and/or animals, including but not limited to: forages and sod crops; grains and seed crops; trees, shrubs and Christmas trees; dairy animals and dairy products; poultry and poultry products; livestock; fruits and vegetables; and ornamental and green house products. Agriculture does not include forest management and timber harvesting activities except the cultivation and harvesting of Christmas trees.

Aggrieved party: An owner of land whose property is directly or indirectly affected by the granting or denial of a permit or variance under this Ordinance; a person whose land abuts land for which a permit or variance has been granted; or any other person or group of persons who have suffered particularized injury as a result of the granting or denial of such permit or variance.

Bed and breakfast: A single-family, proprietor-occupied dwelling in which lodging or lodging and meals are offered to guests for compensation, consisting of no more than six (6) bedrooms for lodging purposes.

Boat launching facility: 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.

Campground: A commercial use on any area or tract of land accommodating two (2) or more parties in temporary living quarters, including, but not limited to tents, recreational vehicles or other shelters.

Canopy: the more or less continuous cover formed by tree crowns in a wooded area.

Coastal wetland: 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 the activity is proposed as identified in tide tables published by the National Oceanic and Aeronautic Administration (NOAA). Coastal wetlands may include portions of coastal sand dunes.

Note: All areas below the highest 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: The use of lands, buildings, or structures, other than a home occupation or the rental of a single family detached home, the intent of which activity is the production of income from buying, selling or rental of goods, activities, and/or services.

Day: A calendar day.

Development: A change in land use involving alteration of the land, water or vegetation, or the addition or alteration of structures or other construction not naturally occurring

District: A sub-area of the Shoreland Zone.

Essential services: 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 tanks. Such systems may include towers, poles, wires, mains, drains, pipes, conduits, cables, fire alarms and police call boxes, traffic signals, hydrants and similar accessories, but shall not include service drops or buildings which are necessary for the furnishing of such services.

Expansion of a structure: An increase in the floor area or volume of a structure, including all extensions such as, but not limited to attached: decks, garages, porches and greenhouses.

Floor area: The sum of the horizontal areas of the floor(s) of a structure enclosed by exterior walls, plus the horizontal area of any unenclosed portions of a structure such as porches and decks. Floor area includes areas with both a ceiling height of six feet or more, and more than 50% of its volume above original ground level.

Forest management activities: Timber cruising and other forest resource evaluation activities, pesticide or fertilizer application, timber 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 or maintenance of roads.

Forested wetlands: A freshwater wetland dominated by woody vegetation that is six (6) meters tall (approximately 20 feet) or taller.

Foundation: The supporting substructure of a building or other structure, excluding wooden sills and post supports, but including basements, slabs, sills, frost walls, or other base consisting of concrete, block, brick or similar material.

Freshwater wetland: Freshwater swamps, marshes, bogs and similar areas other than forested wetlands which are:

1. Of ten or more contiguous acres; or of less than 10 contiguous acres and 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 10 acres; and
2. Inundated or saturated by surface or ground water 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.

Freshwater wetlands may contain small stream channels or inclusions of land that do not conform to the criteria of this definition.

Grade: The slope of a surface, such as a lot or road, with a vertical rise or fall expressed as a percentage of the horizontal distance; e.g., a 3 percent upgrade means a rise of 3 feet per 100 feet horizontal distance. [Source: American Congress on Surveying and Mapping, *Definitions of Surveying and Associated Terms*.]

Height of a structure: The vertical distance between the mean original grade at the downhill side of the structure and the highest point of the structure, excluding chimneys, steeples, antennas, and similar appurtenances which have no floor area.

Home occupation: An occupation or profession which is customarily conducted on or in a residential structure or property and which is 1) clearly incidental to and compatible with the residential use of the property and surrounding residential uses; and 2) which employs no more than two (2) persons other than family members residing in the home.

Individual private campsite: An area of land which is not associated with a campground, but which is developed for repeated camping by only one group not to exceed ten (10) individuals and which involves site improvements which may include but are not limited to a gravel pad, parking area, fire place, or tent platform.

Industrial: The assembling, fabrication, finishing, manufacturing, packaging or processing of goods; also the extraction of minerals.

Institutional: a non-profit or quasi-public use, or institution such as a church, library, public or private school, utility substation, hospital, or municipally owned or operated building, structure or land used for public purposes.

Lot area: The area of land enclosed within the boundary lines of a lot, minus land below the normal high-water line of a water body or upland edge of a wetland and areas beneath roads serving more than two lots.

Medical marijuana dispensary: A “registered dispensary” as that term is defined in 22 M.R.S.A. § 2422(6), as may be amended. A medical marijuana dispensary includes a location at which marijuana is cultivated by a registered dispensary pursuant to 22 M.R.S.A. § 2428, as may be amended. A medical marijuana dispensary is only authorized as a principal use, and not as an accessory use.

Methadone clinic: A substance abuse treatment program that provides treatment for persons with heroin or other opiate addictions where the treatment provided includes administration or prescription of methadone or other opioid replacements (e.g., methadone, methadone hydrochloride or LAAM (levo-alpha-acetyl-methadol)) for either detoxification or maintenance purposes.

Minimum lot width: the closest distance between the side lot lines of a lot.

Person: An individual, corporation, governmental agency, municipality, trust, estate, partnership, association, two or more individuals having a joint or common interest, or other legal entity.

Principal structure: A building other than one which is used for purposes wholly incidental or accessory to the use of another building or use on the same premises.

Principal use: A use other than one which is wholly incidental or accessory to another use on the same premises.

Recreational facility: 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: A vehicle or an attachment to a vehicle designed to be towed, and designed for temporary sleeping or living quarters for one or more persons, and which may include a pickup 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 must remain with its tires on the ground, and must be registered with the State Division of Motor Vehicles.

Residential dwelling unit: 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 shall include mobile homes and rental units that contain cooking, sleeping and toilet facilities regardless of the time period rented. Recreational vehicles are not residential dwelling units.

River, stream or brook: A channel between defined banks. A channel is created by the action of surface water and has two or more of the following characteristics:

- a. It is depicted as a solid or broken blue line on the most recent edition of the U.S. Geological Survey 7.5-minute series topographic map or, if that is not available, a 15-minute series topographic map.
- b. It contains or is known to contain flowing water continuously for a period of at least three months of the year in most years.
- c. The channel bed is primarily composed of mineral material such as sand and gravel, parent material or bedrock that has been deposited or scoured by water
- d. The channel contains aquatic animals such as fish, aquatic insects or mollusks in the water or, if no surface water is present, within the stream bed.
- e. The channel contains aquatic vegetation and is essentially devoid of upland vegetation.

Road: 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.

Service drop: Any utility line extension which 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/or 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 one thousand (1,000) feet.
2. In the case of telephone service
 - a. the extension, regardless of length, will be 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 one thousand (1,000) feet in length.

Setback: The least horizontal distance from a regulated object to a property line, road right-of-way, the normal high-water line of a water body, tributary stream, or upland edge of a wetland.

Shoreland Zone: The land area located within two hundred and fifty (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 of the upland edge of a freshwater wetland; or within 75 feet, horizontal distance, of the normal high-water line of a stream.

Shoreline: the normal high-water line, or upland edge of a freshwater or coastal wetland.

Slope: The inclined surface of a hill, mountain, plateau, plain, or any part of the surface of the earth. [Source: American Congress on Surveying and Mapping, *Definitions of Surveying and Associated Terms*.]

Structure: Anything built for the support, shelter or enclosure of persons, animals, goods or property of any kind, together with anything constructed or erected with a fixed location on or in the ground, exclusive of fences and poles, wiring and other aerial equipment normally associated with service drops, as well as guying and guy anchors. The term includes structures temporarily or permanently located, such as decks and satellite dishes.

Substantial start: completion of thirty (30) percent of a permitted structure or use measured as a percentage of estimated total cost.

Subsurface sewage disposal system; any system designed to dispose of waste or waste water on or beneath the surface of the earth; including, but is not limited to: septic tanks; disposal fields; grandfathered cesspools; holding tanks; pretreatment filter, piping, or any other fixture, mechanism, or apparatus used for those purposes; does not include any discharge system licensed under 38 M.R.S.A. Section 414, any surface waste water disposal system, or any municipal or quasi-municipal sewer or waste water treatment system

Timber harvesting: The cutting and removal of timber for the primary purpose of selling or processing forest products.

Timber harvesting and related activities: Timber harvesting, the construction and maintenance of roads used primarily for timber harvesting and other activities conducted to facilitate timber harvesting.

Tributary stream: A channel between defined banks created by the action of surface water, characterized by the lack of terrestrial vegetation or by the presence of a bed, devoid of topsoil, containing waterborne deposits on exposed soil, parent material or bedrock; and connected hydrologically to other water bodies. "Tributary stream" 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 Ordinance, and only applies to that portion of the tributary stream located within the Shoreland Zone of the receiving water body or wetland.

Upland edge of a wetland: 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 and/or the tide level for the year in which the activity is proposed as identified by tide tables published by

NOAA, 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 (6) meters (approximately twenty (20) foot) tall or taller.

Vegetation: All live trees, shrubs, and other plants including without limitation, trees both over and under 4 inches in diameter, measured at 4-1/2 feet above ground level.

Water body: Any great pond, river, stream or tidal area.

DIVISION III: SOILS OF CONCERN

The following soils are not recommended by the Knox & Lincoln County Soils Survey for:

- a. development due to flooding: Charles, Lovewell, Medomak.
- b. development due to organic composition: Borosapristis
- c. development due to high seasonal water table and poor drainage: Biddeford, Boothbay, Brayton, Buxton, Charles, Eldridge, Marlow, Naumburg, Scantic, Searsport, Sheepscot, Swanville.
- d. development due to erosive soils: Biddeford, Boothbay, Buxton, Charles, Eldridge, Marlow, Naumburg, Scantic, Searsport, Sheepscot, Swanville.
- e. stable slopes: Adams and Masardis 15-25% slopes, Allagash 8-15% slopes.
- f. buildings with basements, due to unstable subsoils: Hermon, Madawaska, Masardis.