



# **Town of Cushing**

## **Shoreland Zoning Ordinance**

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## OVERVIEW

A Shoreland Zoning Ordinance (SZO) is a complex legal document. It implements State regulation of coastal land use, development, and associated procedures. Each Maine shorefront municipality is required to adopt an SZO consistent with guidelines of the State Department of Environmental Protection (DEP).

The Planning Board and the Code Enforcement Officer (CEO) are the responsible bodies overseeing compliance with the articles within this ordinance. Where a determination by the Planning Board or CEO is required, a qualified designee may be appointed to investigate and provide recommendations.

The Town of Cushing Shoreland Zone is basically all land within two hundred fifty (250) feet of a water body or seventy-five (75) feet of a stream. Its precise definition is in the Definitions Section of this document.

The word “district” in this document refers to the type of land use on a lot or lots. There are six districts in the Shoreland Zone:

- Resource Protection (RP)
- Limited Residential (LR)
- Limited Commercial (LC)
- Commercial Fisheries/ Maritime Activities (CFMA)
- Fishing Home Business (FHB)
- Stream Protection (SP)

Each district is defined in Section 13 of the SZO. Districts and lots are shown on the Official Shoreland Zoning Map, on display at the Town Office, which is maintained and updated by the Planning Board. No other maps may be used to determine boundaries as the Shoreland Zoning Map is the baseline reference for all boundaries.

Table 14 provides an overview of mainly state-imposed land use restrictions. It enables lot-owners to determine what is allowed, what requires a permit in each district and which entity shall issue such a permit.

## Sections

1. PURPOSES.....	1
2. AUTHORITY .....	1
3. APPLICABILITY .....	1
4. EFFECTIVE DATE OF ORDINANCE AND ORDINANCE AMENDMENTS.....	1
5. AVAILABILITY .....	2
6. SEVERABILITY .....	2
7. CONFLICTS WITH OTHER ORDINANCES .....	2
8. AMENDMENTS .....	2
9. DISTRICTS AND ZONING MAP.....	2
10. INTERPRETATION OF DISTRICT BOUNDARIES.....	3
11. LAND USE REQUIREMENTS .....	5
12. NON-CONFORMANCE.....	5
13. DESCRIPTION OF DISTRICTS .....	11
14. TABLE OF LAND USES.....	13
15. LAND USE STANDARDS.....	19
16. ADMINISTRATION.....	43
17. DEFINITIONS.....	55
APPENDIX A: SOILS OF CONCERN .....	67
Table of Contents.....	68
Certificate of Adoption .....	79

## **1. PURPOSES**

The purposes of this Ordinance are to further the maintenance of safe and healthful conditions; to prevent and control water pollution; to protect fish spawning grounds, aquatic life, bird and other wildlife habitat; to protect buildings and lands from flooding and accelerated erosion; to protect archaeological and historic resources; to protect commercial fishing and maritime industries; to protect freshwater and coastal wetlands; to control building sites, placement of structures and land uses; to conserve vegetative cover and visual aspects, as well as actual points of access to inland and coastal waters; to conserve natural beauty and open space; and to anticipate and respond to the impacts of development in shoreland areas.

## **2. AUTHORITY**

This Ordinance has been prepared in accordance with the provisions of Title 38 Sections 435-449 of the Maine Revised Statutes Annotated (M.R.S.A.).

## **3. APPLICABILITY**

This Ordinance applies to all land areas within two hundred fifty (250) feet horizontal distance of the

- normal high-water line of any great pond or river,
- upland edge of a coastal wetland, including all areas affected by tidal action, or
- upland edge of a freshwater wetland, and to all land areas within seventy-five (75) feet, horizontal distance, of the normal high-water line of a stream.

This Ordinance also applies to any structure built on, over or abutting a dock, wharf or pier, or other structure extending beyond or located below the normal high-water line of a water body or within a wetland.

## **4. EFFECTIVE DATE OF ORDINANCE AND ORDINANCE AMENDMENTS**

This Ordinance was adopted by the municipal legislative body on December 15, 1991. This Ordinance and all subsequent Ordinance Amendments were approved by the Commissioner of the Department of Environmental Protection. Any Ordinance Amendment shall become effective on the date of its approval by the voters of the Town of Cushing, provided it is approved by the Commissioner. On approval, a certified copy of any Ordinance Amendment, attested and signed by the Municipal Clerk, shall be forwarded to the Commissioner for approval. If the Commissioner fails to act on the Ordinance Amendment within forty-five (45) days of receipt of the Ordinance Amendment, it shall be automatically approved.

Any application for a permit submitted to the municipality within the forty-five (45) day period shall be governed by the terms of the un-amended Ordinance if the Amendment is not approved by the Commissioner, or by the Amended Ordinance if the Amendment is approved by the Commissioner.

## **5. 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 availability of this Ordinance shall be posted.

## **6. SEVERABILITY**

Should any Section or provision of this Ordinance be declared by the courts to be invalid, such decision shall not invalidate any other Section or provision of the Ordinance.

## **7. CONFLICTS WITH OTHER ORDINANCES**

Whenever a provision of this Ordinance conflicts with or is inconsistent with another provision of this Ordinance or of any other ordinance, regulation or statute administered by the municipality, the more restrictive provision shall control.

## **8. AMENDMENTS**

This Ordinance may be amended by a majority vote of the municipal legislative body at a Town Meeting. Copies of amendments, attested and signed by the Town Clerk, shall be submitted to the Commissioner of the Department of Environmental Protection following adoption by the municipal legislative body and shall not be effective unless approved by the Commissioner. If the Commissioner fails to act on any amendment within forty-five (45) days of the Commissioner's receipt of the amendment, the amendment is automatically approved. Any application for a permit submitted to the municipality within the forty-five (45) day period shall be governed by the terms of the amendment, if such amendment is approved by the Commissioner.

Amendment of a zoning district designation on the Official Shoreland Zoning Map shall be initiated as set forth in Section 16.C.

## **9. DISTRICTS AND ZONING MAP**

### **A. Official Shoreland Zoning Map.**

The areas to which this Ordinance are applicable are hereby divided into the following districts as shown on the Official Shoreland Zoning Map, which is made a part of this Ordinance:

- **Resource Protection;**
- **Limited Residential;**
- **Limited Commercial;**
- **Commercial Fisheries/Maritime Activities;**
- **Fishing Home Business;**
- **Stream Protection.**

### **B. Scale of Map**

The Official Shoreland Zoning map shall be drawn at a scale of not less than one (1) inch = two hundred (200) feet. District boundaries shall be clearly delineated as accurately as possible, and a legend indicating the symbols for each district shall be placed on the map.

### **C. Certification of Official Shoreland Zoning Map**

The Official Shoreland Zoning Map shall be certified by the attested signature of the Town Clerk and shall be located in the town office.

### **D. Changes to the Official Shoreland Zoning Map**

If amendments, in accordance with Section 9 and Section 16.C, 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 thirty (30) days after the amendment has been approved by the Commissioner of the Department of Environmental Protection.

## **10. INTERPRETATION OF DISTRICT BOUNDARIES**

Unless otherwise set forth on the Official Shoreland Zoning Map, district boundary lines are property lines, the centerlines of streets, roads and rights of way, and the boundaries of the shoreland area as defined herein. Where uncertainty exists as to the exact location of district boundary lines, the Board of Appeals shall be the final authority as to location.  
[see Section 13 for description of Districts]

### **A. Boundaries**

Boundary lines between the Limited Residential, Limited Commercial, Fishing Home Business and Commercial Fisheries/Maritime Activities Districts are property lines within the Shoreland Zone and are shown on the Official Shoreland Zoning Map.

The boundaries of Resource Protection Districts shall be depicted on application site plans as illustrated on the Official Shoreland Zoning Map. When a boundary is defined by a licensed professional as set forth below, that boundary shall also be depicted.

### **B. Boundaries By Water Features**

Where district boundaries are defined by reference to water features and wetlands, the Official Shoreland Zoning Map is illustrative rather than definitive, and subordinate to the District descriptions in Section 13.

Boundaries of the Shoreland Zone around waters and wetlands protected by Sections 3 and 13.A shall be delineated and related to property lines in submittals as follows:

#### **1) No effect.**

If the Planning Board finds that the Shoreland Zone boundary has no effect on an application, the boundary shall be depicted on its site plan as located on the Official Shoreland Zoning Map.

**2) Upland edges.**

Upland edges of coastal wetlands, stream banks and wetland edges shall be located on-site by a professional trained in wetland delineation, using a recognized wetland classification system and utilizing soil profiles, composition of plant populations and site hydrology to determine wetland boundaries.

**3) Features.**

These features, and any seventy-five (75)-foot or one hundred (100) foot restriction area, together with the site contours shall be plotted by a Professional Engineer or Surveyor licensed in the State of Maine on the site plan of any application to the Planning Board.

At the discretion of the Planning Board, for purposes of shoreland application review, the Code Enforcement Officer may be authorized to make a determination of the normal high-water line of tidal waters.

**C. Boundary of any Flood Zone**

The boundary of any flood zone is the contour line of the elevation shown on the FEMA flood insurance rate map. It shall be shown and identified on the site plan. An applicant may submit, or at its discretion the Planning Board may require that an applicant submit, a plan by a Professional Engineer or Surveyor licensed in the State of Maine showing the flood elevation contour on topography measured on the ground at contour intervals of two feet or less.

**D. Approximate Boundaries**

Approximate boundaries of areas defined in Sections 13.A.3 (slopes) are depicted on the Official Shoreland Zoning Map and are definitive unless more accurate data meeting the requirements below is submitted.

More accurate data defining these areas or their boundaries and their relation to property lines may be submitted, or at the discretion of the Planning Board, shall be required. To take precedence over boundaries on the Official Shoreland Zoning Map, such data shall be developed consistent with the following, as applicable:

**1) Topography**

Topography shall be surveyed and shown at contour intervals of two feet or less. Topography measured on the ground shall be used where evergreen vegetation predominates.

**2) Steepness of slopes**

Steepness of slopes shall be expressed as grades as defined in Section 17. In determining the extent of contiguous slopes having grades of twenty percent (20%) or greater, grades shall be measured at right angles to contour lines.

**3) Slope measurements**

Slope measurements and calculations of contiguous areas of sustained slopes having grades twenty percent (20%) or greater shall be developed by a Professional Engineer or Surveyor licensed in the State of Maine. These areas shall be outlined on the site plan.



### **E. Approximate Locations**

Approximate locations of areas defined in Section 13.A.5 (unstable soils) are depicted on the Official Shoreland Zoning Map. In these areas, a report shall be submitted by a Professional Engineer licensed in the State of Maine with training and experience in slope stability to define a Resource Protection District boundary, to assess the effect of any instability on proposed development and to specify criteria for the safety of any proposed structures.

### **F. Costs**

All costs associated with the professional services outlined in Section 10.B through 10.E shall be incurred by the applicant. These services may not be performed by a professional who has a monetary interest in the subject property or project, or by a professional in whose business an applicant or applicant's affiliate holds an ownership or monetary interest, unless any such interests are disclosed. The Planning Board may at its discretion retain, at the applicant's expense, independent professional assistance to evaluate submittals.

### **G. Burden of Proof**

An applicant shall bear the burden of proof with respect to any boundary determinations sought pursuant to Sections 10.B through 10.E.

### **H. Acceptance**

Once accepted by the Planning Board, these professionally determined boundaries will be delineated on the official map as per Section 16.C.

## **11. LAND USE REQUIREMENTS**

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

## **12. NON-CONFORMANCE**

### **A. Purpose**

It is the intent of this Ordinance to promote land use conformities, except that non-conforming conditions that existed before the effective date of this Ordinance or amendments thereto shall be allowed to continue, subject to the requirements set forth in Section 12. Except as otherwise provided in this Ordinance, a non-conforming condition shall not be permitted to become more non-conforming.

## **B. General**

### **1) Transfer of Ownership.**

Non-conforming structures, lots, and uses may be transferred, and the new owner may continue the non-conforming use or continue to use the non-conforming structure or lot, subject to the provisions of this Ordinance.

### **2) Repair and Maintenance.**

This Ordinance allows, without a permit, the normal upkeep and maintenance of non-conforming uses and structures including repairs or renovations that do not involve expansion of the non-conforming use or structure, and such other changes in a non-conforming use or structure as federal, state, or local building and safety codes may require.

*NOTE: See Section 17 for the definitions of non-conforming lots, non-conforming structures and non-conforming uses.*

## **C. Non-conforming Structures**

Any proposed change to a non-conforming structure made by expansion, relocation, reconstruction or replacement as described in this Section, must meet all setback requirements to the greatest practical extent as determined by the Planning Board based on Sec. 12.C.3. The applicant shall bear the burden of proof for greatest practical extent by submitting evidence of limiting conditions on the lot, if any exist. These features must be depicted on the application plan.

### **1) Expansions.**

All new principal and accessory structures, excluding functionally water-dependent uses, must meet the water body, tributary stream, or wetland setback requirements contained in Section 10. A non-conforming structure may be added to or expanded after obtaining a permit from the same permitting authority as that for a new structure, if such an addition or expansion does not increase the non-conformity of the structure and is in accordance with subparagraphs a and b below.

- a. Expansion of any portion of a structure within twenty-five (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 non-conformity with the water body, tributary stream or wetland setback requirement. Expansion of an accessory structure that is located closer to the normal high-water line of a water body, tributary stream, or upland edge of a wetland than the principal structure is prohibited, even if the expansion will not increase non-conformity with the water body, tributary stream, or wetland setback requirement.
- b. Notwithstanding paragraph a above, if a legally existing non-conforming principal structure is entirely located less than twenty-five (25) feet from the normal high-water line of a water body, tributary stream, or upland edge of a wetland, that structure may be expanded as follows, as long as

all other applicable municipal land use standards are met and the expansion is not prohibited by Section 12.C.1.

- i. The maximum total footprint for the principal structure may not be expanded to a size greater than eight hundred (800) square feet or thirty percent (30%) larger than the footprint that existed on January 1, 1989, whichever is greater. The maximum height of the principal structure may not be made greater than the maximum defined in Section 15.B.2 or the height of the existing structure, whichever is greater.
- c. All other legally existing non-conforming principal and accessory structures 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 municipal land use standards are met and the expansion is not prohibited by Section 12.C.1 or Section 12.C.1.a, above.
  - i. For structures located less than seventy-five (75) feet from the normal high-water line of a water body, tributary stream, or upland edge of a wetland, the maximum combined total footprint for all structures may not be expanded to a size greater than one thousand (1,000) square feet or thirty percent (30%) larger than the footprint that existed on January 1, 1989, whichever is greater. The maximum structure height must comply with the provisions of Section 15.B.2
  - ii. For structures located less than one hundred (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, the maximum combined total footprint for all structures may not be expanded to a size greater than one thousand five hundred (1,500) square feet or thirty percent (30%) larger than the footprint that existed on January 1, 1989, whichever is greater. The maximum structure height must comply with the provisions of Section 15.B.2.
  - iii. In addition to the limitations in subparagraphs i and ii, for structures that are legally non-conforming due to their location within the Resource Protection District when located at less than two hundred fifty (250) feet from the normal high-water line of a water body or the upland edge of a wetland, the maximum combined total footprint for all structures may not be expanded to a size greater than one thousand five hundred (1,500) square feet or thirty percent (30%) larger than the footprint that existed at the time the Resource Protection District was established on the lot, whichever is greater. The maximum structure height must comply with the provisions of Section 15.B.2.
- d. An approved plan for expansion of a non-conforming structure must be recorded by the applicant with the registry of deeds, within ninety (90) days of approval. The recorded plan must show the existing and proposed footprint of the non-conforming structure, the existing and proposed structure height, the footprint of any other structures on the parcel, the

shoreland zone boundary and evidence of approval by the municipal reviewing authority.

## **2) Foundations**

Whenever a new, enlarged, or replacement foundation is constructed under a non-conforming structure, the structure and new foundation must be placed such that the setback requirement is met to the greatest practical extent as determined by the Planning Board, basing its decision on the criteria specified in Section 12.C.3.

Temporary relocation of the structure is permitted to provide safety and ease of access to the foundation in order to make approved foundation modifications.

## **3) Relocation**

A non-conforming structure may be relocated within the boundaries of the parcel on which the structure is located, provided that the site of relocation conforms to all setback requirements to the greatest practical extent as determined by the Planning Board, and provided that the applicant demonstrates that the present subsurface sewage disposal system meets the requirements of State law and the State of Maine Subsurface Wastewater Disposal Rules, or that a new system can be installed in compliance with the law and said Rules. In no case shall a structure be relocated in a manner that causes the structure to be more non-conforming.

In determining whether the building location meets the setback to the greatest practical extent, the Planning Board or its designee shall consider the size of the lot, the slope of the land, the potential for soil erosion, the location of other structures on the property and on adjacent properties, the location of the septic system and other on-site soils suitable for septic systems, and the type and amount of vegetation to be removed to accomplish the relocation.

When it is necessary to remove vegetation within the water or wetland setback area in order to relocate a structure, the Planning Board shall require replanting of native vegetation to compensate for the destroyed vegetation. In addition, the area from which the relocated structure was removed must be replanted with vegetation.

Replanting shall be required as follows:

- a. Trees removed in order to relocate a structure must be replanted with at least one (1) native tree, three (3) feet in height, for every tree removed. If more than five (5) trees are planted, no one species of tree shall make up more than fifty percent (50%) of the number of trees planted. Replaced trees must be planted no further from the water or wetland than the trees that were removed.

- b. Other woody and herbaceous vegetation, and ground cover, that are removed or destroyed in order to relocate a structure must be re-established. An area at least the same size as the area where vegetation and/or ground cover was disturbed, damaged, or removed must be re-established within the setback area. The vegetation and/or ground cover must consist of similar native vegetation and/or ground cover that was disturbed, destroyed or removed.
- c. Where feasible, when a structure is relocated on a parcel, the original location of the structure shall be replanted with vegetation which may consist of grasses, shrubs, trees, or a combination thereof.

#### **4) Reconstruction or Replacement**

Any non-conforming structure which is located less than the required setback from the normal high-water line of a water body, tributary stream, or upland edge of a wetland and which is removed, damaged or destroyed, regardless of cause, by more than fifty percent (50%) of the market value of the structure before such damage, destruction or removal, may be reconstructed or replaced provided that a permit is obtained within eighteen months of the date of said damage, destruction, or removal, and provided that such reconstruction or replacement is in compliance with the water body, tributary stream or wetland setback requirement to the greatest practical extent as determined by the Planning Board in accordance with the purposes of this Ordinance.

In no case shall a structure be reconstructed or replaced so as to increase its non-conformity. If the reconstructed or replacement structure is less than the required setback it shall not be any larger than the original structure, except as allowed pursuant to Section 12.C.1 above, as determined by the non-conforming footprint of the reconstructed or replaced structure at its new location.

If the total amount of footprint of the original structure can be relocated or reconstructed beyond the required setback area, no portion of the relocated or reconstructed structure shall be replaced or constructed at less than the 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 12.C.3 above.

Any non-conforming structure which is located less than the required setback from a water body, tributary stream or wetland and which is removed by fifty percent (50%) or less of the market value, or damaged or destroyed by fifty percent (50%) or less of the market value of the structure, excluding normal maintenance and repair, may be reconstructed in place if a permit is obtained from the Code Enforcement Officer within one (1) year of such damage, destruction or removal.

In determining whether the building reconstruction or replacement meets the water setback to the greatest practical extent the Planning Board shall consider in addition to the criteria in Section 12.C.2 above, the physical condition and type of foundation present, if any.

**5) Change of Use of a Non-conforming Structure**

The use of a non-conforming 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 impact on the water body, tributary stream or wetlands or on the subject or adjacent properties and resources than the existing use.

In determining that no greater adverse impact 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 aspects and actual points of public access to waters, natural beauty, flood plain management, archaeological and historic resources, and commercial fishing and maritime activities, and other functionally water-dependent uses.

**D. Non-conforming Uses**

**1) Expansions.**

Expansions of non-conforming uses are prohibited, except that non-conforming residential uses may, after obtaining a permit from the Planning Board, be expanded within existing residential structures or within expansions of such structures as allowed in Section 12.C.1 above.

**2) Resumption Prohibited.**

A lot, building or structure in or on which a non-conforming use is discontinued for a period exceeding one year, or which is superseded by a conforming use, may not again be devoted to a non-conforming use except that the Planning Board may, for good cause shown by the applicant, grant up to a one (1) year extension to that time period. This provision 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 (5) year period.

**3) Change of Use.**

An existing non-conforming use may be changed to another non-conforming use provided that the proposed use has no greater adverse impact on the subject and adjacent properties and resources, including water dependent uses in the CFMA & FHB districts, than the former use, as determined by the Planning Board. The determination of no greater adverse impact shall be made according to criteria listed in Section 12.C.5 above.

## **E. Non-conforming Lots**

### **1) Lots not contiguous with any other lot in the same ownership.**

A non-conforming lot of record as of the date of adoption of this Ordinance or amendment thereto 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 the same ownership, and that all provisions of this Ordinance except lot area, lot width and shore frontage can be met. Variances relating to setback or other requirements not involving lot area, lot width or shore frontage shall be obtained by action of the Board of Appeals.

### **2) Contiguous lots with principal structures, in the same ownership.**

If two (2) or more contiguous lots or parcels are in a single or joint ownership of record as of the date of adoption of this Ordinance or amendment thereto, 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 non-conforming lots may be conveyed separately or together, provided that the State Minimum Lot Size Law (12 M.R.S.A. Sections 4807-A through 4807-D) and the State of Maine Subsurface Wastewater Disposal Rules are complied with.

### **3) A lot with more than one principal structure or use.**

If two (2) or more principal uses or structures existed on a single lot of record as of the date of adoption of this ordinance, each may be sold on a separate lot provided that the above referenced law and rules are complied with. When such lots are divided, each lot thus created must be as conforming as possible to the dimensional requirements of this Ordinance.

### **4) Contiguous lots, vacant or partially built, in the same ownership.**

If two (2) or more contiguous lots or parcels are in single or joint ownership of record at the time of or since adoption of this Ordinance, if any of these lots do not individually meet the dimensional requirements of this Ordinance, and if one or more of the lots are vacant or contain no principal structure, the lots shall be combined to the extent necessary to meet the dimensional requirements.

This provision shall not apply to two (2) or more contiguous lots, at least one (1) of which is non-conforming, owned by the same person or persons on December 15<sup>th</sup>, 1991 and recorded in the registry of deeds if the lot is served by a public sewer or can accommodate a subsurface sewage disposal system in conformance with the State of Maine Subsurface Wastewater Disposal Rules; and

- a. Each lot contains at least one hundred fifty (150) feet of shore frontage and at least forty thousand (40,000) square feet of lot area; or
- b. Any lots that do not meet the frontage or lot size requirements of Section 12.E.4.a are reconfigured or combined so that each new lot contains at least one hundred fifty (150) feet of shore frontage and forty thousand (40,000) square feet of lot area.

## **13. DESCRIPTION OF DISTRICTS**

[See Section 10 for interpretation of District boundaries]

### **DESCRIPTION OF DISTRICTS**

## **A. Resource Protection District**

The Resource Protection District includes areas in which development would adversely affect water quality, productive habitat, biological ecosystems, or scenic and natural values. This district shall include the following areas when they occur within the limits of the Shoreland Zone, exclusive of the Stream Protection District, except that areas which are currently developed, and areas which meet the criteria for the Commercial Fisheries/Maritime Activities Districts are not included within the Resource Protection District.

### **1) Wetlands, Marshes and Wet Meadows**

Areas within 250 feet, horizontal distance, of the upland edge of freshwater and/or coastal wetlands, 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 (MDIF&W). These areas are generally depicted on a Geographic Information System (GIS) data layer.

### **2) Flood Plains**

Flood-plains are defined by the one hundred (100) year flood-plain as designated on the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Maps or Flood Hazard Boundary Maps, or defined by the flood of record, or in the absence of these, by soil types identified as recent flood-plain soils.

This district includes one hundred (100) year flood plains adjacent to tidal waters as shown on FEMA's Flood Insurance Rate Maps or Flood Hazard Boundary Maps.

### **3) Two plus (2+) Acre Lots with greater than twenty percent (>20%) Sustained Slopes**

Areas of two or more contiguous acres with sustained slopes of 20% or greater.

### **4) Two plus (2+) Acre Lots supporting wetland vegetation and hydric soils**

Areas of two (2) or more contiguous acres supporting wetland vegetation and hydric soils, which are not part of a freshwater or coastal wetland as defined, and which are not surficially connected to a water body during the period of normal high water.

*NOTE: these areas usually consist of forested wetlands abutting water bodies and non-forested wetlands.*

### **5) Land areas along rivers subject to severe bank erosion**

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

*NOTE: These areas usually consist of forested wetlands abutting water bodies and non-forested wetlands.*

## **B. Limited Residential District**

The Limited Residential District includes those areas suitable for residential and non-commercial recreational development. It does not include areas in the Resource



Protection District or Stream Protection District. Commercial uses are not permitted except for home occupations, rentals and fishing home businesses.

**C. Limited Commercial District**

The Limited Commercial District includes areas of mixed light commercial and residential uses, exclusive of the Stream Protection District and Resource Protection District, which should not be intensively developed. This district includes areas of two (2) or more contiguous acres in size devoted to a mix of residential and low intensity business and commercial uses. Industrial uses are prohibited.

**D. Commercial Fisheries/Maritime Activities District**

The Commercial Fisheries/Maritime Activities District includes 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 14, and other areas which are suitable for functionally water-dependent uses, taking into consideration such factors as:

- 1) Shelter from prevailing wind and wave action;
- 2) Slope of the land within two hundred fifty (250) feet horizontal distance of the shoreline;
- 3) Depth of water within 150 feet horizontal distance of the shoreline;
- 4) Available support facilities including utilities and transportation facilities;
- 5) Compatibility with adjacent upland uses.

**E. Fishing Home Business District**

Consistent with Title 38 Coastal Management policies giving preference to traditional water-dependent livelihood over other uses, the Fishing Home Business district includes coastal locations with both residential and resident-operated, for-profit, fishing, shell-fishing or aquaculture uses on one lot.

**F. Stream Protection District**

The Stream Protection District includes all land areas within seventy-five (75) feet, horizontal distance, of the normal high-water line of a stream, exclusive of those areas within two-hundred and fifty (250) feet, horizontal distance, of the normal high-water line of a great pond, or river, or within two hundred and fifty (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 two hundred fifty (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.

**14. TABLE OF LAND USES**

The Table shows for each district what is allowed, prohibited, and permitted subject to the Land Use Standards of Section 15. The Table also shows whether the Code Enforcement Officer (CEO), Planning Board (PB) or Local Plumbing Inspector (LPI) issues a required permit.

District designations are shown on the Official Shoreland Zoning Map. District descriptions are located in Section 13.

**A. Table of Land Uses Abbreviations**

CFMA = Commercial Fisheries/Maritime Activities

FHB = Fishing Home Business

LR = Limited Residential

LC = Limited Commercial

RP = Resource Protection

SP = Stream Protection

A = Allowed. No permit required but the use must comply with land use standards of Section 15.

N = Prohibited

PB = Allowed subject to the land use standards of Section 15 with permit issued by the Planning Board.

CEO = Allowed subject to the land use standards of Section 15 with permit issued by the Code Enforcement Officer.

LPI = Allowed subject to the land use standards of Section 15 with permit issued by the Local Plumbing Inspector.

SA = Appropriate State agencies.

**B. Table 14 – Table of Land Uses**

Land Uses	Principal Standards	Zoning Districts					
		SP	RP	LR	FHB	LC	CFMA
1. Non-intensive recreational uses not requiring structures, such as hunting, fishing & hiking; no structures	State	A	A	A	A	A	A
2. Motorized vehicular traffic on existing roads and trails		A	A	A	A	A	A
3. Forest management activities, defined in Sec. 17 except timber harvesting & land management roads		A	A	A	A	A	A
4. Timber harvesting	State	SA	SA	SA	SA	SA	SA
5. Clearing or removal of vegetation for activities other than timber harvesting	Sec.15.P	CEO 1	CEO	CEO	CEO	CEO	CEO
6. Fire prevention activities		A	A	A	A	A	A
7. Wildlife management practices		A	A	A	A	A	A
8. Soil & water conservation practices		A	A	A	A	A	A
9. Mineral exploration	Sec.15.M	N	A 2	A 2	A 2	A 2	A 2
10. Mineral extraction, including sand & gravel extraction	Sec.15.M	N	PB 3	PB	PB	PB	PB
11. Surveying & Resource Analysis		A	A	A	A	A	A
12. Emergency operations, defined in Section 17		A	A	A	A	A	A
13. Agriculture, defined in Section 17	Sec.15.N	A	PB	A	A	A	A
14. Aquaculture	State	SA	SA	SA	SA	SA	SA
15. Principal Structures, ADUs, and uses	Sec.15.A, B						
A. One & Two-Family Residential, including driveways							
1. New Construction	Sec.15.A, B	PB 5	PB 9	CEO	CEO	CEO	N 8
2. Non-Conforming Lot New Construction	Sec.15.A, B	PB 5	PB 9	PB	PB	PB	N 8
3. Expansions	Sec.12.C.1	PB	PB	PB	PB	PB	N
4. Relocations	Sec.12.C.3	PB	PB	PB	PB	PB	N
5. Reconstruction or Replacement	Sec.12.C.4	PB	PB	PB	PB	PB	N
B. Multi-unit residential buildings, including driveways	Sec.15.A, B	N	N	PB	N	PB	N

Land Uses	Principal Standards	Zoning Districts					
		SP	RP	LR	FHB	LC	CFMA
C. Multi-unit rental apartments, including driveways	Sec.15.A, B	N	N	N	N	PB	N
D. Mobile home park		N	N	N	N	N	N
E. Fishing home business accessory structures used for lobstering, fishing & aquaculture	Sec.15.A, B	PB 5	N 8	PB	PB	PB	PB
F. Boatyards & shops for construction, sale, repair, storage or maintenance of boats up to 50 feet in length	Sec.15.A, B	N	N 8	N 8	N	PB	PB
G. Other commercial, defined in Section 17	Sec.15.D	N	N	N	N	PB	N
H. Industrial, defined in Section 17	Sec.13.C	N	N	N	N	N	N
I. Bed & breakfast, defined in Section 17	Sec.16.D	N	N	PB	PB	PB	N
J. Hotel & motel		N	N	N	N	N	N
K. Governmental & Institutional, defined in Sec.17	Sec.15.A, D	N	N	N	N	PB	N
L. Facilities 800 square feet or less for educational, scientific or nature interpretation purposes		PB 5	PB	CEO	N	CEO	N
16. Structures Accessory to Allowed Uses	Sec.15.B	PB 5	PB	CEO	CEO	CEO	CEO
17. Portions of piers, docks, wharves, and bridges in wetlands or above the high-water line							
A. Structures thereon, as defined in Section 3	Sec. 15.C	PB	PB	PB	PB	PB	PB
B. Permanent pier or wharf, as defined in Section 17	Sec. 15.C	CEO	CEO	CEO	CEO	CEO	CEO 4
C. Temporary pier or wharf, as defined in Section 17	Sec. 15.C	CEO	CEO	CEO	CEO	CEO	CEO
18. Marine commercial, defined in Section 17	Sec.15.D	N	N	N	N	PB	PB
19. Conversions of seasonal residences to year-round residences	Sec. 15.C.8	LPI	LPI	LPI	LPI	LPI	N
20. Home occupations-as defined in Section 17		A	A	A	A	A	A
21. Private sewage disposal systems for allowed uses	Sec.15.K	LPI	LPI	LPI	LPI	LPI	LPI
22. Essential Services	Sec.15.L						
A. Roadside distribution lines ( $\leq 34.5\text{kV}$ )	Sec.15.L	CEO	CEO	A 10	A 10	A 10	A 10

TABLE OF LAND USES

Land Uses	Principal Standards	Zoning Districts					
		SP	RP	LR	FHB	LC	CFMA
B. Non-roadside or cross-country distribution lines involving ten poles or fewer in the Shoreland Zone	Sec.15.L	PB	PB	PB	CEO	CEO	CEO
C. Non-roadside or cross-country distribution lines involving eleven poles or more in the Shoreland Zone	Sec.15.L	PB	PB	PB	PB	PB	PB
D. Other essential services	Sec.15.L	PB	PB	PB	PB	PB	PB
23. Public & private recreational facilities involving minimal structural development	Sec.15.A	PB	PB	PB	N	CEO	N
24. Individual private campsites	Sec.15.E	CEO	CEO	CEO	CEO	CEO	CEO
25. Campgrounds	Sec.15.D	N 6	N 6	PB	N	PB	N
26. Road construction	Sec.15.H	PB	N 7	PB	PB	PB	PB
27. Land management roads, defined in Section 17		PB	PB	A	A	A	A
28. Parking areas	Sec.15.G	N	N 6	PB	PB	PB	PB 4
29. Filling & earthmoving of less than 10 cubic yards.		CEO	CEO	A	A	A	A
30. Filling & earthmoving of more than 10 cubic yards.		PB	PB	CEO	CEO	CEO	CEO
31. Signs	Sec.15.L	A	A	A	A	A	A
32. Uses similar to allowed uses		CEO	CEO	CEO	CEO	CEO	CEO
33. Uses similar to uses requiring CEO permit		CEO	CEO	CEO	CEO	CEO	CEO
34. Uses similar to uses requiring PB permit		PB	PB	PB	PB	PB	PB

TABLE OF LAND USES

### **C. Land Use Table notes**

- 1) In RP not allowed within seventy-five (75) feet horizontal distance of normal high-water line of great ponds, except to remove safety hazards.
- 2) Requires permit from CEO if more than one hundred (100) square feet of surface area, in total, is disturbed
- 3) In RP not allowed in areas so designated because of wildlife value.
- 4) Functionally-dependent water uses and uses accessory to such water-dependent uses only.
- 5) Provided that a variance from the setback requirement is obtained from the Board of Appeals.
- 6) Except when an area is zoned RP based on flood plain, in which case a PB permit is required.
- 7) Except as provided in Section 15.G.
- 8) Except that all uses existing on the effective date of this Ordinance are conforming.
- 9) Single family residential structures may be allowed by special exception only according to the provisions of Section 16.G. Two-family residential structures are prohibited.
- 10) Permit not required but must file a written "Notice of Intent" with CEO thirty (30) days prior to commencing the on-site activity.
- 11) The Code Enforcement Officer may refer any item to the Planning Board.

### **D. General notes**

An applicant performing any of the following activities shall first obtain any required permits from the:

- Dept. of Environmental Protection, pursuant to Title 38 M.R.S.A. Section 480-C
- US Army Corps of Engineers, and
- any other relevant state or Federal authority,

if the activity occurs in, on, over or adjacent to any freshwater or coastal wetland, great pond, river, stream or brook and operates in such a manner that material or soil may be washed into them:

- 1) Dredging, bulldozing, removing or displacing soil, sand, vegetation or other materials;
- 2) Draining or otherwise de-watering;
- 3) Filling, including adding sand or other material to a sand dune; shoreland stabilization;
- 4) Any construction or alteration of any permanent structure; or,
- 5) Construction of piers, wharfs, docks, breakwaters, bridges and other structures.

### **E. Review of applications for cluster, multi-unit or commercial use**

Standards and submittal requirements in the Town of Cushing Subdivision Regulations will also apply. The Planning Board may require a groundwater extraction impact assessment.

## 15. LAND USE STANDARDS

All land use activities within the Shoreland Zone shall conform with the following provisions, if applicable:

### A. Minimum Lot Standards\*

1).

All Properties Within the Shoreland Zone	Minimum Lot Area (sq. ft.)	Minimum Shore Frontage (ft.)
<b>1. Residential and Fishing Home Business, per dwelling unit:</b>		
A. Adjacent to Tidal Areas	40,000	150
B. Adjacent to Non-Tidal Areas	40,000	200
<b>2. Accessory Dwelling Unit, per dwelling unit:</b>		
A. Adjacent to Tidal Areas	40,000	150
B. Adjacent to Non-Tidal Areas	40,000	200
<b>3. Governmental, Institutional, or Commercial per principal structure:</b>		
A. Adjacent to Tidal Areas Exclusive Of those Areas Zoned for Commercial Fisheries and Maritime Activities	40,000	200
B. Adjacent to Tidal Areas zoned for Commercial Fisheries and Maritime Activities	NONE	NONE
C. Adjacent to Non-tidal Areas	60,000	300
<b>4. Public and Private Recreational Facilities Adjacent to Tidal and Non-Tidal Areas</b>	40,000	200

*NOTE: The zoning district designation of a lot shall reflect the use of land and structures thereon, irrespective of whether structures are within or without the Shoreland Zone. For example, a lot would be Limited Residential even though the dwelling is outside the Shoreland Zone.*

2) Land below the normal high-water line of a water body or upland edge of a wetland and land beneath roads serving more than two (2) lots shall not be included toward calculating minimum lot area.

- 3) Lots located on opposite sides of a public or private road shall be considered each a separate tract or parcel of land unless such road was established by the owner of land on both sides thereof after September 22, 1971.
- 4) The minimum width (dimension parallel to the waterline) of any portion of any lot within one hundred (100) feet horizontal distance of the normal high-water line of a water body or upland edge of a wetland shall be equal to or greater than the shore frontage requirement for a lot with the proposed use.
- 5) If more than one (1) residential dwelling unit, principal governmental, institutional, or commercial structure or use or combination thereof is constructed or established on a single parcel, all dimensional requirements shall be met for each additional dwelling unit or principal structure or use

## **B. Principal Structures, Accessory Dwelling Units and Accessory Structures**

### **1) All new principal and accessory structures set back**

All new principal and accessory structures shall be set back at least one hundred (100) feet, horizontal distance, from the normal high-water line of great ponds classified GPA and rivers that flow to great ponds classified GPA, and seventy-five (75) feet, horizontal distance, from the normal high-water line of other water bodies, tributary streams, or the upland edge of a wetland. Additionally, the setback distance shall be sufficient to preclude the location of any new structure within the one hundred (100) year flood hazard areas described in Section 13.A.2. In the Commercial Fisheries/Maritime Activities District there shall be no minimum setback for water-dependent structures and uses. In the Fishing Home Business district, the setback shall not apply to fishing-related accessory structures. In the Resource Protection district the setback shall be two hundred fifty (250) feet, horizontal distance, except for structures, roads, parking spaces or other regulated objects specifically allowed in that district, in which case the setback requirements specified above shall apply.

*NOTE: The Natural Resources Protection Act, 38 M.R.S.A. Sections 480-A through 480-HH, requires the Department of Environmental Protection to designate areas of "significant wildlife habitat".*

Permitting under the Natural Resources Protection Act for activities adjacent to significant wildlife habitat areas may require greater setbacks. Contact your local Department of Environmental Protection office to see if additional permitting is required.

In addition:

- a. The water body, tributary stream or wetland setback provision shall neither apply to structures which require direct access to the water body or wetland as an operational necessity, such as piers, docks and retaining walls, nor to other functionally water-dependent uses.
- b. 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 greater setbacks may be appropriate include, but are not limited to areas of steep slopes, shallow or erodible soils, or where an adequate vegetative buffer does not exist.

- c. For Principal Structures and Accessory Dwelling Units, 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 its “Classification of Coastal Bluffs” and published on the most recent Coastal Bluff map. If the applicant and the permitting official(s) 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 applicant may appeal the matter to the Board of Appeals.
- d. On a non-conforming lot of record on which only a residential structure exists, and it is not possible to place an accessory structure meeting the required water body, tributary stream or wetland setbacks, 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 accessory structure shall not exceed eighty (80) square feet in area nor eight (8) feet in height, and 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.

*NOTE: A tributary stream may be perennial or intermittent. Where a tributary stream is present within the shoreland zone, setback standards from that tributary stream are applicable.*

## **2) Principal or accessory structures height**

Principal or accessory structures and expansions of existing structures which are permitted in the Resource Protection, Limited Residential, Limited Commercial and Stream Protection districts shall not exceed thirty-five (35) feet in height. This provision shall not apply to structures such as transmission towers, windmills, antennas, and similar structures having no footprint; however, other Town regulations may apply. Cupolas, domes, widow’s walks, or other similar features are exempt from the overall height requirement above.

## **3) Minimum abutter clearance**

For all buildings, the minimum distance between a new building wall and any property line abutting another lot shall be not less than five (5) feet.

## **4) The lowest floor elevation or openings**

The lowest floor elevation or openings of all buildings and structures, including basements, shall be elevated at least one foot above the elevation of the one

hundred (100) year flood, the flood of record, or in the absence of these, the flood as defined by soil types identified as recent flood-plain soils. In those municipalities that participate in the National Flood Insurance Program and have adopted the April 2005 version, or later version, of the Floodplain Management Ordinance, accessory structures may be placed in accordance with the standards of that ordinance and need not meet the elevation requirements of this paragraph.

**5) Total Areas**

The total area of all structures, parking lots and other non-vegetated surfaces, within the Shoreland Zone shall not exceed twenty percent (20%) of the lot or a portion thereof, located within the Shoreland Zone, including land area previously developed, except in the Commercial Fisheries/Maritime Activities District, where lot coverage shall not exceed seventy percent (70%), and in the Fishing Home Business District, where lot coverage shall not exceed thirty-five percent (35%).

**6) Calculating Lot Coverage**

For the purposes of calculating lot coverage, 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.

**7) Retaining Walls**

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:

- a. The site has been previously altered and an effective vegetated buffer does not exist;
- b. The wall(s) is(are) at least twenty-five (25) feet, horizontal distance, from the normal high-water line of a water body, tributary stream, or upland edge of a wetland;
- c. 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;
- d. The total height of the wall(s), in the aggregate, are no more than 24 inches;
- e. Retaining walls are located outside of the one hundred (100) year floodplain on rivers, streams, coastal wetlands, and tributary streams, 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.
- f. The area behind the 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; and

- g. A vegetated buffer area is established within twenty-five (25) feet, horizontal distance, of the normal high-water line of a water body, tributary stream, or upland edge of a wetland when a natural buffer area does not exist. The buffer area must meet the following characteristics:
  - i. The buffer must include shrubs and other woody and herbaceous vegetation. Where natural ground cover is lacking the area must be supplemented with leaf or bark mulch
  - ii. Vegetation plantings must be in quantities sufficient to retard erosion and provide for effective infiltration of stormwater runoff;
  - iii. Only native species may be used to establish the buffer area;
  - iv. A minimum buffer width of fifteen (15) feet, horizontal distance, is required, measured perpendicularly to the normal high-water line or upland edge of a wetland;
  - v. A footpath not to exceed the standards in Section 15.P.2.a, may traverse the buffer;

**8) Stairways or similar structures may be allowed**

Notwithstanding the requirements stated above, 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 the structure is limited to a maximum of four (4) feet in width; that the structure does not extend below or over the normal high-water line of a water body or upland edge of a wetland (unless permitted by the Department of Environmental Protection pursuant to the Natural Resources Protection Act, 38 M.R.S.A. Section 480-C); and that the applicant demonstrates that no reasonable access alternative exists on the property.

**C. Piers, Docks, Wharves, Bridges and Other structures**

Piers, Docks, Wharves, Bridges and Other structures and Uses extending Over or Beyond the Normal high-water line of a body or within a wetland.

**1) No more than one pier, dock, wharf or similar structure**

No more than one (1) pier, dock, wharf or similar structure extending or located below the normal high-water line of a water body or within a wetland is allowed on a single lot; except that when a single lot contains at least twice the minimum shore frontage as specified in Section 15.A, a second structure may be allowed and may remain as long as the lot is not further divided.

**2) Access from shore**

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

**3) Location shall not interfere**

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

**4) No adverse effects on fisheries**

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

**5) No larger in dimension than necessary**

The facility shall be no larger in dimension than necessary to carry on the activity and be consistent with the surrounding character and uses of the Town. A

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

**6) No new structure shall be built on, over or abutting**

No new structure shall be built 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 unless the structure requires direct access to the water as an operational necessity.

*NOTE: A structure constructed on a float or floats is prohibited unless it is designed to function as, and is registered with the Maine Department of Inland Fisheries and Wildlife as a watercraft and has any appropriate Army Corps of Engineers permit.*

**7) Piers and docks on non-tidal waters**

New permanent piers and docks 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 Department of Environmental Protection pursuant to the Natural Resources Protection Act.

**8) No conversion to residential dwelling**

No existing structures built 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 shall be converted to residential dwelling units in any district.

**9) Not to exceed twenty (20) feet in height**

Except in the Commercial Fisheries/Maritime Activities district, structures built 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 shall not exceed twenty (20) feet in height above the pier, wharf, dock or other structure.

*NOTE: New permanent structures and expansions thereof projecting into or over water bodies shall require a permit from the Department of Environmental Protection pursuant to the Natural Resources Protection Act, 38 M.R.S.A. Section 480-C. Permits may also be required from the Army Corps of Engineers if located in navigable waters.*

**D. Campgrounds**

Campgrounds shall conform to the minimum requirements imposed under State licensing procedures and the following:

**1) Minimum size**

Campgrounds shall contain a minimum of five thousand (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) Setbacks**

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

## **E. Individual Private Campsites**

Individual, private campsites for use for no more than seven (7) months per year and not associated with campgrounds are allowed provided the following conditions are met:

**1) One campsite per lot**

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

**2) Minimum dimensions of lot**

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

**3) Placement on any lot**

Campsite placement on any lot, including the area intended for recreational vehicle or tent platform, shall be set back one hundred (100) feet horizontal distance from the normal high-water line of a great pond classified GPA or river flowing to a great pond classified GPA, and seventy-five (75) feet horizontal distance from the normal high-water line of other water bodies, tributary streams, or the upland edge of a wetland.

**4) One recreational vehicle shall be allowed on a campsite**

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

**5) Clearing of vegetation**

The clearing of vegetation for the siting of the recreational vehicle, tent or similar shelter in a Resource Protection District shall be limited to one thousand (1,000) square feet.

**6) Sewage disposal plan**

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.

**7) Usage beyond one hundred twenty (120) days per year**

When a recreational vehicle, tent or similar shelter is placed on-site for more than one hundred twenty (120) days per year, all requirements for residential structures shall be met, including the installation of a subsurface sewage disposal system in compliance with the State of Maine Subsurface Wastewater Disposal Rules unless served by public sewage facilities.

## **F. Commercial Uses**

The following new commercial uses are prohibited within the Shoreland Zone adjacent to great ponds classified GPA and rivers and streams which flow to great ponds classified GPA.

- 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 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.

## **G. Parking Areas**

Parking areas shall meet the shoreline and tributary stream setback requirements for structures for the district in which such areas are located, except that in the Commercial Fisheries/Maritime Activities district, parking areas shall be set back at least twenty-five (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 and Home Fishing districts shall be no less than fifty (50) feet horizontal distance from the shoreline or tributary stream unless the Planning Board finds that no other reasonable location satisfying the district setback exists.

### **1) Adequately sized**

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

### **2) Size considerations**

In determining the appropriate size of proposed parking facilities, the following shall apply:

- a. Typical parking space: Ten (10) feet wide and twenty (20) feet long, except that parking spaces for a vehicle and boat trailer shall be ten (10) feet wide and forty (40) feet long.
- b. Internal travel aisles: Approximately twenty (20) feet wide.

## **H. Roads and Driveways**

The following standards shall apply to the construction of roads and/or driveways and drainage systems, culverts and other related features.

### **1) Location**

Roads and driveways shall be located, constructed and maintained in such manner that minimal erosion hazard results. Adequate provisions shall be made to prevent soil erosion and sedimentation of surface waters.

**2) Setback**

Roads and driveways shall be set back at least one-hundred (100) feet horizontal distance from the normal high-water line of a great pond classified GPA or a river that flows to a great pond classified GPA, and seventy-five (75) feet horizontal distance from the normal high-water line of other water bodies, tributary streams, or the upland edge of a wetland unless no reasonable location satisfying the setback exists as determined by the Planning Board. If no such location exists, the road and/or driveway setback requirement shall be no less than fifty (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, and/or the effective use of additional ditch relief culverts and turnouts be placed so as to avoid sedimentation of the water body, tributary stream, or wetland.

On slopes of greater than twenty percent (20%) the road and/or driveway setback shall be increased by ten (10) feet horizontal distance for each five (5) percent increase in slope above twenty percent (20%).

This Section 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. Roads and driveways providing temporary access to permitted structures within the setback area shall comply fully with the requirements of this Section except for that portion of the road or driveway necessary for direct access to the structure.

**3) Expanding existing public roads**

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

**4) Resource Protection District restrictions**

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 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 and/or driveway shall be set back as far as practicable from the normal high-water line of a water body, tributary stream, or upland edge of a wetland.

**5) Bank slopes**

Road and driveway banks shall be no steeper than a slope of two (2) horizontal to one (1) vertical and shall be graded and stabilized in accordance with the provisions for erosion and sedimentation control contained in Section 15.T.

**6) Grades**

Road and driveway grades shall be no greater than ten percent (10%) except for segments of less than two hundred (200) feet.

**7) Surface drainage**

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 of

at least fifty (50) feet plus two times the average slope, in width between the outflow point of the ditch or culvert and the normal high-water body, tributary stream, or upland edge of a wetland. Surface drainage which is directed to an unscarified buffer strip shall be diffused or spread out to promote infiltration of the runoff and to minimize channelized flow of the drainage through the buffer strip.

**8) Ditches, culverts, dips and turnouts**

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

a. Spacing

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:

Grade (Percent)	Spacing (Feet)
0-2	250
3-5	200-135
6-10	100-80
11-15	80-60
16-20	60-45
21+	40

- b. Drainage dips may be used in place of ditch relief culverts only where the grade is ten percent (10%) or less
- c. On Sections having slopes greater than ten percent (10%), ditch relief culverts shall be placed at approximately a thirty percent (30%) angle down slope from a line perpendicular to the center line of the road or driveway.
- d. Ditch relief culverts shall be sufficiently sized and properly installed in order to allow for effective functioning, and their inlet and outlet ends shall be stabilized with appropriate materials.

**9) Assure effective functioning**

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

**I. Signs**

The following provisions shall govern the use of signs in the Resource Protection, Stream Protection, Limited Residential and Limited Commercial Districts:



**1) Signs relating to goods and services**

Signs relating to goods and services sold on the premises shall be allowed, provided that such signs shall not exceed six (6) square feet in area and shall not exceed two (2) signs per premises. In the Limited Commercial District, however, such signs shall not exceed sixteen (16) square feet in area. Signs relating to goods or services not sold or rendered on the premises shall be prohibited.

**2) Name signs**

Name signs are allowed, provided such signs shall not exceed two (2) signs per premises, and shall not exceed twelve (12) square feet in the aggregate.

**3) Residential signs**

Residential users may display a single sign not over three (3) square feet in area relating to the sale, rental, or lease of the premises.

**4) Trespassing and hunting**

Signs relating to trespassing and hunting shall be allowed without restriction as to number provided that no such sign shall exceed two (2) square feet in area.

**5) Public safety**

Signs relating to public safety shall be allowed without restriction.

**6) Height**

No sign shall extend higher than twenty (20) feet above the ground.

**7) Illumination**

Exterior signs may be illuminated only by non-flashing lights.

**J. Storm Water Management**

**1) New construction and development**

All new construction and development shall be designed to minimize storm water runoff from the site in excess of the natural predevelopment conditions. Where possible, existing natural runoff control features, such as berms, swales, terraces and wooded areas shall be retained in order to reduce runoff and encourage infiltration of storm water.

**2) Maintenance**

Storm water runoff control systems shall be maintained as necessary to ensure proper functioning.

*NOTE: The Stormwater Management Law (38 M.R.S.A. Section 420-D) requires a full permit to be obtained from the DEP prior to construction of a project consisting of twenty thousand (20,000) square feet or more of impervious area or five (5) acres or more of a developed area in an urban impaired stream watershed or most-at-risk lake watershed, or a project with one (1) acre or more of developed area in any other stream, coastal or wetland watershed. A permit-by-rule is necessary for a project with one (1) acre or more of disturbed area but less than one (1) acre impervious area twenty thousand (20,000) square feet for most-at-risk lakes and urban impaired streams) and less than five (5) acres of developed area. Furthermore, a Maine Construction General Permit is required if the construction will result in one (1) acre or more of disturbed area.*

## **K. Septic Waste Disposal**

All subsurface sewage disposal systems shall be installed in conformance with the State of Maine Subsurface Wastewater Disposal Rules, and the following:

### **1) Clearing or removal of woody vegetation**

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

### **2) Holding tanks**

A holding tank is not allowed for a first-time residential use in the Shoreland Zone.

*NOTE: The Maine Subsurface Wastewater Disposal Rules require new systems, excluding fill extensions, to be constructed no less than one hundred (100) horizontal feet from the normal high-water line of a perennial water body. The minimum setback distance for a new subsurface disposal system may not be reduced by variance.*

## **L. Essential Services**

### **1) Installation limitations**

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

### **2) Installation in Resource or Stream Protection District**

The installation of essential services other than roadside distribution lines is not allowed in a Resource or Stream Protection District except to provide services to a permitted use within said 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 impacts on surrounding uses and resources, including visual impacts.

### **3) Replacement or reconstruction of public utility infrastructure**

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

## **M. Mineral Exploration and Extraction**

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 one hundred (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.

Mineral extraction may be permitted under the following conditions:

**1) Reclamation plan**

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 the requirements of Paragraph 3 below.

**2) Setbacks and permissions**

No part of any extraction operation, including drainage and runoff control features shall be permitted within one hundred (100) feet, horizontal distance, of the normal high-water line of a great pond classified GPA or a river flowing to a great pond classified GPA, and within seventy-five (75) feet, horizontal distance, of the normal high-water line of any other water body, tributary stream, or the upland edge of a wetland. Extraction operations shall not be permitted within fifty (50) feet, horizontal distance, of any property line without written permission of the owner of such adjacent property.

**3) Reestablishment upon completion**

Within twelve (12) months following the completion of extraction operations at any extraction site, which operations shall be deemed complete when less than one hundred (100) cubic yards of materials are removed in any consecutive twelve (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.

*NOTE: The State of Maine Solid Waste Laws, Title 38, Maine Revised Statutes Annotated, Section 1301 and Chapter 400-419 of the Department of Environmental Protection's regulations may contain other applicable provisions regarding disposal of such materials.*

- b. The final graded slope shall be two and one-half to one (2.5 : 1) slope or flatter.
- c. Top soil or loam shall be retained to cover all disturbed land areas, which shall be re-seeded 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.

**4) Planning Board may impose conditions**

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

**N. Agriculture**

**1) Spreading of manure**

All spreading of manure shall be accomplished in conformance 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.A. Sections 4201-4209).

**2) Storing of manure**

Manure shall not be stored or stockpiled within one hundred (100) feet, horizontal distance, of a great pond classified GPA or a river flowing to a great pond, classified GPA, or within seventy-five (75) feet horizontal distance, of other water bodies, tributary streams, or wetlands. All manure storage areas within the Shoreland Zone must be constructed or modified such that the facility produces no discharge of effluent or contaminated storm water.

**3) Tillage of soil**

Agricultural activities involving tillage of soil greater than forty thousand (40,000) square feet in surface area, within the Shoreland Zone shall require a Conservation Plan to be filed with the Planning Board. Non-conformance with the provisions of said plan shall be considered to be a violation of this ordinance.

*NOTE: Assistance in preparing a soil and water conservation plan may be available through the local Soil and Water Conservation District office.*

**4) New tillage**

There shall be no new tilling of soil within one-hundred (100) feet, horizontal distance, of the normal high-water line of a great pond classified GPA; within seventy-five (75) feet, horizontal distance, from other water bodies and coastal wetlands; or within twenty-five (25) feet, horizontal distance, of tributary streams and freshwater wetlands. Operations in existence on the effective date of this ordinance and not in conformance with this provision may be maintained.

**5) New livestock grazing areas**

Newly established livestock grazing areas shall not be permitted within one hundred (100) feet, horizontal distance, of the normal high-water line of a great pond classified GPA; within seventy-five (75) feet, horizontal distance of other water bodies and coastal wetlands, nor within twenty-five (25) feet, horizontal distance, of tributary streams and freshwater wetlands. Livestock grazing associated with ongoing farm activities and which are not in conformance with the above setback provisions may continue; provided that such grazing is conducted in accordance with a Conservation Plan that has been filed with the Planning Board.

**O. Timber Harvesting**

Title 38 M.R.S.A. Section 438-A provides that, notwithstanding other provisions of the Mandatory Shoreland Zoning Act, the regulation of timber harvesting and timber harvesting activities in shoreland areas must be in accordance with Section 438-B and rules adopted by the Maine Forest Bureau pursuant to Title 12, Section 8867-B.

In accordance with Title 38 M.R.S.A. Section 438-B Option 1, the Maine Forest Bureau shall administer the statutes and regulations related to timber harvesting in the shoreland zone.

## **P. Clearing or Removal of Vegetation for Activities other than Timber Harvesting**

### **1) Resource Protection district limitations**

In a Resource Protection district abutting a great pond, there shall be no cutting of vegetation within the strip of land extending seventy-five (75) feet, horizontal distance, inland from the normal high-water line, except to remove safety hazards.

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, and as shown on the site plan, noted as "Limits of Disturbance".

### **2) Opening canopy or clearings**

Except in areas as described in Section 15.P.1 above, and except to allow for the development of permitted uses within a strip of land extending one-hundred (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 seventy-five (75) feet, horizontal distance, from any other water body, tributary stream, or the upland edge of a wetland, a buffer strip of vegetation shall be preserved as follows:

- a. There shall be no cleared opening greater than two hundred fifty (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 footpath not to exceed six (6) feet in width as measured between tree trunks and/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.
- b. 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 the purposes of this Section, 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 twenty-four (24) or more in each twenty-five (25) foot by fifty (50) foot rectangular (one thousand two hundred fifty (1250) square feet) area as determined by the following rating system:

<b>Diameter of Tree at 4-1/2 feet</b>	
<b>Above ground level (inches)</b>	<b>Points</b>
2-<4 in.	1
4-<8 in.	2
8-<12 in.	4
12 in. 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 sixteen (16) per twenty-five (25) foot by fifty (50) foot rectangular area.

*NOTE: As an example, adjacent to a great pond, if a 25-foot x 50-foot plot contains four (4) trees between 2 and 4 inches in diameter, two (2) trees between 4 and 8 inches in diameter, three (3) trees between 8 and 12 inches in diameter, and two (2) 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.*

The following shall govern in applying this point system:

- i. The twenty-five (25) foot by fifty (50) foot rectangular plots must be established where the landowner or lessee proposes clearing within the required buffer;
- ii. Each successive plot must be adjacent to but not overlap a previous plot;
- iii. Any plot not containing the required points must have no vegetation removed except as otherwise allowed by this Ordinance;
- iv. Any plot containing the required points may have vegetation removed down to the minimum points required or as otherwise allowed by this Ordinance.
- v. Where conditions permit, no more than fifty percent (50%) of the points on any twenty-five (25) foot by fifty (50) foot rectangular area may consist of trees greater than twelve (12) inches in diameter.

For the purposes of this Section “other natural vegetation” is defined as retaining existing vegetation under three (3) feet in height and other ground cover and retaining at least five (5) saplings less than two (2) inches in diameter at four and one-half (4.5) feet above ground level for each twenty-five (25) foot by fifty (50) foot rectangular area. If five (5) saplings do not exist, no woody stems less than two (2) inches in diameter can be removed until five (5) saplings have been recruited into the plot.

Notwithstanding the above provisions, no more than forty percent (40%) of the total volume of trees four (4) inches or more in diameter, measured at four and one half (4.5) feet above ground level may be removed in any ten (10) year period.

- c. In order to protect water quality and wildlife habitat, existing vegetation under three (3) 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 Section 15.P.2.a above.

- d. Pruning of tree branches, on the bottom one-third (1/3) of the tree is allowed.
- e. In order to maintain a buffer strip of vegetation, when the removal of storm-damaged, diseased, unsafe, or dead trees results in the creation of cleared openings, these openings shall be replanted with native tree species unless existing new tree growth is present.
- f. 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 Section 15.P.2.
- g. Section 15.P.2 does not apply to those portions of public recreational facilities adjacent to public swimming areas as long as cleared areas are limited to the minimum necessary.

### **3) Selective cutting**

At distances greater than one hundred (100) feet, horizontal distance, from a great pond classified GPA or a river flowing to a great pond classified GPA, and seventy-five (75) feet, horizontal distance, from the normal high-water line of any other water body, tributary stream, or the upland edge of a wetland, there shall be permitted on any lot, in any ten (10) year period, selective cutting of not more than forty percent (40%) of the volume of trees four (4) inches or more in diameter, measured four and one half (4.5) feet above ground level. Tree removal in conjunction with the development of permitted uses shall be included in the forty percent (40%) calculation. For the 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 twenty five percent (25%) of the lot area within the Shoreland Zone or ten thousand (10,000) square feet, whichever is greater, including land previously cleared, a total of fourteen thousand (14,000) sq ft. of aggregated cleared openings is allowed on lots up to fifty-six thousand (56,000) sq ft. This provision shall not apply to the Commercial Fisheries/Maritime Activities and Fishing Home Business districts.

### **4) Legally existing non-conforming cleared openings may be maintained**

Legally existing non-conforming cleared openings may be maintained, but shall not be enlarged, except as allowed by this Ordinance.

### **5) Reverted areas**

Fields and other cleared openings which have reverted to primarily shrubs, trees, or other woody vegetation shall be regulated under the provisions of Section 15.P.

## **Q. Hazard Trees, Storm-Damaged Trees, and Dead Tree Removal**

### **1) CEO consultation required**

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:

- a. Within the shoreline buffer, if the removal of a hazard tree results in a cleared opening in the tree canopy greater than two hundred fifty (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 (2) inches in diameter, measured at four and one half (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 (4) feet in height, and be no less than two (2) inches in diameter. Stumps may not be removed.
- b. Outside of the shoreline buffer, when the removal of hazard trees exceeds forty percent (40%) of the volume of trees four (4) inches or more in diameter, measured at four and one half (4.5) feet above ground level in any ten (10) year period, and/or results in cleared openings exceeding twenty-five percent (25%) of the lot area within the shoreland zone, or ten thousand (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 (2) inches in diameter, measured at four and one half (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 (2) inches in diameter, measured at four and one half (4.5) feet above the ground level.
- c. The removal of standing dead trees, resulting from natural causes, is permissible without the need for replanting or a permit, as long as the removal does not result in the creation of new lawn areas, or other permanently cleared areas, and stumps are not removed. For the purposes of this provision dead trees are those trees that contain no foliage during the growing season.
- d. 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.
- e. The Code Enforcement Officer may require more than a one-for-one replacement for hazard trees removed that exceed eight (8) inches in diameter measured at four and one half (4.5) feet above the ground level.

### **2) Storm-damaged trees**

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:



- a. Within the shoreline buffer, when the removal of storm-damaged trees results in a cleared opening in the tree canopy greater than two hundred fifty (250) square feet, replanting is not required, but the area shall be required to naturally revegetate, and the following requirements must be met:
  - i. The area from which a storm-damaged tree is removed does not result in new lawn areas, or other permanently cleared areas;
  - ii. Stumps from the storm-damaged trees may not be removed;
  - iii. Limbs damaged from a storm event may be pruned even if they extend beyond the bottom one-third (1/3) of the tree; and
  - iv. 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 eighty (80) square feet of lost canopy.
- b. Outside of the shoreline buffer, if the removal of storm damaged trees exceeds forty percent (40%) of the volume of trees four (4) inches or more in diameter, measured at four and one half (4.5) feet above the ground level in any ten (10) year period, or results, in the aggregate, in cleared openings exceeding twenty five percent (25%) of the lot area within the shoreland zone or ten thousand (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.

## **R. Exemptions to Clearing and Vegetation Removal Requirements**

The following activities are exempt from the clearing and vegetation removal standards set forth in Section 15.P, 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) Maintenance of legally existing areas**

The removal of vegetation that occurs at least once every two (2) 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 Section. If any of these areas, due to lack of removal of vegetation every two (2) years, reverts back to primarily woody vegetation, the requirements of Section 15.P apply;

### **2) Removal from allowed structures or trees**

The removal of vegetation from the location of allowed structures or allowed uses, when the shoreline setback requirements of Section 15.B are not applicable;

### **3) Removal from public swimming areas**

The removal of vegetation from the location of public swimming areas associated with an allowed public recreational facility;

### **4) Removal associated with allowed agricultural uses**

The removal of vegetation associated with allowed agricultural uses, provided best management practices are utilized, and provided all requirements of Section 15.N are complied with;

**5) Removal associated with brownfields or VRAP**

The removal of vegetation associated with brownfields or Voluntary Response Action Program (VRAP) projects provided that the removal of vegetation is necessary for remediation activities to clean-up contamination on a site in a Commercial Fisheries and Maritime Activities district or other equivalent zoning district approved by the Commissioner that is part of a state or federal brownfields program or a voluntary response action program pursuant 38 M.R.S.A. Section 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 pursuant to 38 M.R.S.A. Section 465-A.

**6) Removal of non-native invasive vegetation species**

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

- a. If removal of vegetation occurs via wheeled or tracked motorized equipment, the wheeled or tracked motorized equipment is operated and stored at least twenty-five (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 twenty-five (25) feet, horizontal distance, from the shoreline occurs via hand tools; and
- 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.

*NOTE: An updated list of non-native invasive vegetation is maintained by the Department of Agriculture, Conservation and 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)*

**7) Removal associated with emergency response activities**

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

**S. Revegetation Requirements**

When revegetation is required in response to violations of the vegetation standards set forth in Section 15.P, 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 following requirements.

**1) Must submit a revegetation plan**

The property owner must submit a revegetation plan, prepared with 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.

**2) Revegetation must occur along the same segment of shoreline**

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, except where 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:

**3) Revegetation shall occur before the expiration of the permit.**

If part of a permitted activity, 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.

**4) Revegetation activities requirements**

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

- a. All trees and saplings removed must be replaced with native non-invasive species;
- b. Replacement vegetation must at a minimum consist of saplings;
- c. If more than three (3) trees or saplings are planted, then at least three (3) different species shall be used;
- d. No one species shall make up fifty percent (50%) or more of the number of trees and saplings planted;
- e. 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 sapling must be planted in a location that effectively reestablishes the screening between the shoreline and structures; and
- f. A survival rate of at least eighty percent (80%) of planted trees or saplings is required for a minimum five (5) year period.

**5) Woody revegetation requirements**

Revegetation activities must meet the following requirements for woody vegetation and other vegetation under three (3) feet in height:

- a. All woody vegetation and vegetation under three (3) feet in height must be replaced with native non-invasive species of woody vegetation and vegetation under three (3) feet in height as applicable;
- b. Woody vegetation and vegetation under three (3) feet in height shall be planted in quantities and variety sufficient to prevent erosion and provide for effective infiltration of stormwater;
- c. If more than three (3) woody vegetation plants are to be planted, then at least three (3) different species shall be planted;
- d. No one species shall make up fifty percent (50%) or more of the number of planted woody vegetation plants; and

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

**6) Revegetation ground vegetation and cover**

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

- a. 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;
- b. Where necessary due to a lack of sufficient ground cover, an area must be supplemented with a minimum four (4) inch depth of leaf mulch and/or bark mulch to prevent erosion and provide for effective infiltration of stormwater; and
- c. Survival and functionality of ground vegetation and ground cover must be sufficient to remain in compliance with the standards contained within this chapter for a minimum of five (5) years.

**T. Erosion and Sedimentation Control**

**1) Activities requiring a permit**

All activities which involve filling, grading, excavation or other similar activities which result in un-stabilized soil conditions and which require a permit shall also require a written soil erosion and sedimentation control plan conforming to the “Maine Erosion and Sediment Control Best Management Practices”. The plan shall be submitted to the permitting authority for approval and shall include, where applicable, provisions for:

- a. Mulching and revegetation of disturbed soil.
- b. Temporary runoff control features such as hay bales, silt fencing or diversion ditches.
- c. Permanent stabilization structures such as retaining walls or rip-rap.

**2) Development to fit topography**

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.

**3) Protection of Resources minimum width buffer**

For resource protection, the minimum width buffer between a building and a resource protection area line shall be:

- a. five (5) feet, undisturbed by runoff controls or construction equipment, where the resource protection area supports trees over 4” diameter at breast height, and the following width shall be added to accommodate construction activity,
- b. ten (10) feet where the intervening grade change is less than one (1) foot;
- c. fifteen (15) feet where the intervening grade change is two (2) feet or less;

- d. twenty (20) feet where the intervening grade change is three (3) feet or less; and
- e. five (5) feet more for each additional foot of increase in the intervening grade change.

**4) Finish grades**

Finish grades in this area shall not exceed one (1) vertical to three (3) horizontal. Proposed Limits of Disturbance shall be shown on plans and so staked in the field.

**5) Erosion and sedimentation control**

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.

**6) Exposed ground area**

Any exposed ground area shall be temporarily or permanently stabilized within one (1) week from the time it was last actively worked, by use of riprap, sod, seed and mulch, or other effective measures. In all cases permanent stabilization shall occur within nine (9) months of the initial date of exposure. In addition:

- a. Where mulch is used, it shall be applied at a rate of at least one (1) bale per five hundred (500) square feet and shall be maintained until a catch of vegetation is established.
- b. Anchoring the mulch with netting, peg and twine or other suitable method may be required to maintain the mulch cover.
- c. Additional measures shall be taken where necessary in order to avoid siltation into the water. Such measures may include the use of staked hay bales an/or silt fences.

**7) Natural and man-made drainage ways and outlets**

Natural and man-made drainage ways and drainage outlets shall be protected from erosion from water flowing through them. Drainage ways shall be designed and constructed in order to carry water from a twenty-five (25) year storm or greater, and shall be stabilized with vegetation or lined with rip-rap.

**U. Soils**

All land uses shall be located on soils in or upon which the proposed uses or structures can be established or maintained without causing adverse environmental impacts, including severe erosion, mass soil movement, improper drainage, and water pollution, whether during or after construction. Proposed uses on soils listed in Appendix A and uses requiring subsurface waste disposal, and commercial or industrial development or other similar intensive land uses, shall require a soils report based on on-site investigation, prepared by professionals certified to provide services in Maine. Certified preparers may include Maine Certified Soil Scientists, Maine Registered Professional Engineers, Maine State Certified Geologists and others who have training and experience in the recognition and evaluation of soil properties. The soils report shall be based on analysis of the characteristics of the soil, and surrounding land and water areas, maximum ground water elevation, presence of ledge, drainage conditions, and other data

the evaluator deems appropriate. The report should include recommendations that would enable the proposed use to cope with any soil limitations.

#### **V. Water Quality**

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.

#### **W. 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 Planning Board shall be submitted by the applicant to the Maine Historic Preservation Commission for review and comment, at least twenty (20) days prior to action being taken by the Planning Board. The Planning Board shall consider comments received from the Commission prior to rendering a decision on the application.

*NOTE: Municipal officials should contact the Maine Historic Preservation Commission for the listing and location of Historic Places in their community.*

## **16. ADMINISTRATION**

### **A. Administering Bodies and Agents**

- 1) A Code Enforcement Officer shall be appointed or re-appointed annually by July 1st.
- 2) A Board of Appeals shall be created in accordance with the provisions of State law.
- 3) A Planning Board shall be created in accordance with the provisions of State law.

### **B. Permits Required**

After the date of adoption of this ordinance no person shall, without first obtaining a permit,

- 1) initiate or commence any activity or use of land or structure(s) identified in Table 14 as requiring a permit in the district in which such activity or use would occur, or
- 2) (b) expand, change or replace an existing use or structure; or renew a discontinued non-conforming use; nor shall any principal or accessory structure be built, constructed, set, installed, established, expanded, substantially altered or relocated without a permit.

Repairs and interior renovations and alterations which do not involve expanding footprint do not require a permit.

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.

#### **1) Culvert permit exceptions**

A permit is not required for the replacement of an existing road culvert as long as:

- a. The replacement culvert is not more than twenty five percent (25%) longer than the culvert being replaced;
- b. The replacement culvert is not longer than seventy-five (75) feet; and
- c. Adequate erosion control measures are taken to prevent sedimentation of the water, and the crossing does not block fish passage in the watercourse.

#### **2) Archaeological excavation permit exceptions**

A permit is not required for an archaeological excavation as long as the excavation is conducted by an archaeologist listed on the State Historic Preservation Officer's level one (1) or level two (2) approved list, and unreasonable erosion and sedimentation is prevented by means of adequate and timely temporary and permanent stabilization measures.

#### **3) All required permits to be displayed**

Any permit required by this Ordinance shall be in addition to any other permit required by other law or ordinance.

### **C. Official Shoreland Zone Map Changes**

Any change in District designation of a property, or a change in Resource Protection Boundaries, requires an amendment of the Official Shoreland Zone Map.

#### **1) Public hearing**

The Planning Board shall schedule a Public Hearing for any Shoreland Zone Map change.

**2) Applicant to notify abutting property owners**

On receipt of an application that includes a map change, the Planning Board shall;

- a. require the applicant to notify abutting property owners by registered return-receipt-requested mail on a form provided by the Planning Board, that an application specifying the Zoning District change or a Resource Protection Boundary change has been submitted. The applicant shall provide the Planning Board with the receipts, and;
- b. within thirty-five (35) days, or within any other time limit that may be mutually agreed upon by the Planning Board and the applicant, make a finding that the property does or does not conform to all requirements for the proposed Shoreland Zone Map Change, and shall within ten (10) days thereafter inform the applicant of the finding.

**3) Planning Board to schedule hearing**

On finding that the applicant's property complies with the requirements of Sections 10 and 13, the Planning Board shall within thirty (30) days;

- a. schedule a Public Hearing for the Municipal Legislative Body to vote on the proposed Map Change Amendment, as set forth in Sec.8 and
- b. submit the Town approved Map Change to the DEP Commissioner for approval in accordance with Sec. 8 and Sec. 9.D.

**4) Map change approval must precede permit application**

An application for a permit that requires a Map Change shall not be approved by the Planning Board until an amendment of the Official Shoreland Zone Map has been approved by both the Town and the DEP Commissioner.

**D. Permit Application**

**1) Submission using municipal form(s)**

Every applicant shall submit to the Town Clerk, by noon fourteen (14) days in advance of the next scheduled Planning Board meeting, a written application on a form provided by the municipality, together with eight (8) copies of a scaled site plan, and any scheduled fee or escrow deposit. Both the form and the plan shall be dated.

The applicant is required to provide to the municipal permitting authority preconstruction photographs and, no later than 20 days after completion of the development, postconstruction photographs of the shoreline vegetation and development site. (Pursuant to 38 M.R.S. §439-A(10))

**2) Signed and show right of title**

All applications shall be signed by an owner or individual who can show evidence of right, title or interest in the property or by an authorized agent, representative, tenant, or contractor of the owner with authorization from the owner to apply for a permit hereunder, certifying that the information in the application is complete and correct.

A copy of the deed and any deed restrictions or encumbrances affecting the property shall be submitted.



**3) Date and time recorded and receipts provided**

The Town Clerk shall note on an application form and site plan the date and time of their receipt by the Town, and shall provide the applicant a receipt for any fees and escrow deposit received.

**4) Code Enforcement Officer shall determine completeness**

The Code Enforcement Officer shall determine whether an application form is complete, including all required submittals, before issuing a dated receipt for a complete application. The review on any application will only be scheduled based on the issuance of this receipt.

**5) Code Enforcement Officer shall inspect site**

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

**6) Valid septic system permit required**

If the property is not served by a public sewer, a valid septic system permit or a completed application for a septic system permit, including the site evaluation approved by the Plumbing Inspector, shall be submitted whenever the nature of the proposed structure would require the installation of a subsurface sewage disposal system.

**7) Building Permit issuance subject to sewage compliance**

No building permit shall be issued for any structure or use involving the construction, installation or alteration of sewage disposal facilities unless a sewage disposal permit for such facilities has been secured by the applicant or his/her authorized agent, according to the requirements of this Ordinance.

**8) Previous violations to be resolved**

No application shall be accepted from an applicant in violation of a plan previously approved under this Ordinance until the time such violation is resolved.

**9) Abutter notification by applicant**

When the Planning Board receives, at a regularly scheduled meeting, a complete application for any of the following land uses (see Table 14) in or adjoining the Limited Residential District, the Planning Board shall require the applicant to notify abutting property owners by registered return-receipt-requested mail on a form provided by the Planning Board that an application for the proposed use has been submitted, and to provide the Planning Board with the receipts:

- a. Land Uses;
  - i. Multi-unit rental apartments, including driveways;
  - ii. Boatyards and shops for construction, sale, repair, storage or maintenance of boats up to 50 feet in length;
  - iii. Marine commercial;
  - iv. Other commercial;
  - v. Bed and breakfast;
  - vi. Governmental & Institutional;
- b. Expansions of any of the above uses;

- c. Non-roadside or cross-country distribution lines in the Shoreland Zone;
- d. Commercial recreational facilities;
- e. Campgrounds.

## **E. Fees and escrow funds**

### **1) Schedule of fees and escrow funds**

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) Escrow deposits**

Each escrow deposit shall be placed in an account held solely for a given application.

- a. Funds held in escrow shall be used to defray the cost of independent consulting services required by the Planning Board for review of technical or legal aspects of an application; and for costs of notice, mailing, and copying of documents or maps.
  - i. The original deposit shall be restored whenever the balance of the account goes below twenty five percent (25%) of the original deposit. Whenever the balance in an escrow account is drawn down by seventy five percent (75%), the Planning Board shall notify the applicant of the amount of funds to be deposited to restore the scheduled deposit.
  - ii. The Planning 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 Planning Board action on the application, or satisfaction of escrow obligations.

### **3) Late or not received escrow funds**

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 the required fee or deposit is not received within fourteen (14) dates after that meeting, the application shall be considered to have been withdrawn.

## **F. Procedure for Administering Permits**

### **1) Permits issued by reviewing authority**

Permits shall be issued by the reviewing authority noted in Table 14 or their designee.

Within thirty-five (35) days of the Town Clerk's receipt of a written application, the Code Enforcement Officer shall notify the applicant whether the application is a complete application, or, if the application is incomplete, that specified additional material is needed to make the application complete.

- a. The Planning Board may decide that a Public Hearing is required for any application. If so, the Planning Board shall give notice of its date, time and

place to be published twice in a local news outlet, with the date of first publication at least fourteen (14) days prior to the hearing.

- b. Unless an extension of time has been agreed with the applicant, or is required for independent professional review, the reviewing authority shall act within thirty-five (35) days of receiving a complete application to approve, approve with conditions, or deny the application, and shall communicate its decision to the applicant in writing. However, if the Planning Board has a list of waiting applications, a decision on the application shall occur within thirty-five (35) days after the first available date on the Planning Board's agenda following receipt of the completed application, or within thirty-five (35) days of the public hearing, if one is held.
- c. All materials which require Planning Board review shall be submitted to the Town Clerk at least by noon fourteen days in advance of a regular or special meeting, to allow sufficient time for consideration by the Planning Board. The Town Clerk shall note the date and time of their receipt on all such submittals.

## **2) Burden of proof for proposed use**

The applicant has the burden of proving that the proposed land use activity is in conformity with the purposes and provisions of this ordinance, and that any required State and Federal approvals have been obtained. The Application Packet contains a Completeness Checklist that lists submittals and Ordinance Sections that require them. Submittals shall provide required information such as the following:

- a. Location of property on the Official Tax and Shoreland Zoning Maps
  - i. Boundary survey at one inch (1") = thirty feet (30') to one inch (1") = fifty feet (50'), with topo at two feet (2') or five foot (5') interval as determined by the Planning Board; roads; driveways; easements and utility corridors; delineation of wetlands, resource protection areas, and flood plains; seventy five (75) foot, one hundred (100) foot and two hundred fifty (250) foot setbacks associated with protected waters; existing and proposed buildings; septic systems, and septic system improvements
  - ii. Acreage of site, wetlands, and disturbed areas
  - iii. Lot coverage as a percent of its total area
  - iv. Sewage permit or approved evaluation & plan
  - v. Soil suitability report
  - vi. Maine Historic Preservation Commission (MHPC) report on archaeological/historical features
  - vii. Maine Department of Inland Fisheries & Wildlife (MDIFW) report on significant wildlife habitat
  - viii. Maine Department of Environmental Protection (MDEP) report on protected natural areas
  - ix. Stormwater management plan

- x. Erosion control plan
- xi. Fire protection plan
- xii. Required approved Local/State/Federal permits
- xiii. Additional information for commercial, cluster and multifamily applications
- xiv. 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 one hundred (100) year flood, the flood of record, or in the absence of these, the flood as defined by soil types identified as recent flood-plain soils.
- xv. In review of applications for cluster, multi-unit or commercial use, the Town of Cushing Subdivision Regulations standards and submittal requirements for these uses will also apply, and the Planning Board may require a groundwater extraction impact assessment.
- xvi. Such other items as the Planning Board may require.

### **3) Approval or Approval with conditions**

After the submittal of a complete application to the Planning Board, the Planning Board shall approve an application or approve it with conditions if it makes a positive finding based on the information presented that the proposed use:

- a. Will maintain safe and healthful conditions;
- b. Will not result in water pollution, erosion, or sedimentation to surface waters;
- c. Will adequately provide for the disposal of all wastewater;
- d. Will not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat;
- e. Will conserve shore vegetative cover and visual aspect, as well as actual, points of access to inland and coastal waters;
- f. Will protect archaeological and historic resources;
- g. Will not adversely affect existing commercial fishing or maritime activities in a Commercial Fisheries/Maritime Activities district;
- h. Will avoid problems associated with flood plain development and use; and
- i. Is in conformance with the provisions of Section 15, Land Use Standards.

If a permit is issued where a completion inspection or review is required, the permit is conditional on that activity being completed.

### **4) Denial**

If a permit is denied, or application approved with conditions, the reasons for the denial as well as the conditions shall be stated in writing. 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 local ordinance or regulation or statute administered by the municipality.

No permit will be issued until all application conditions have been met.

**5) Reconsideration**

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 Planning Board members who voted on the original decision. The Planning Board may receive additional evidence and testimony.

**G. Special Exceptions**

In addition to the criteria specified in Section 16.F above, excepting structure setback requirements, 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 are met:

**1) Location within Resource Protection District**

There is no location on the property, other than a location within the Resource Protection District, where the structure can be built.

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 on 12/15/1991.

**2) Slopes and floodways**

All proposed buildings, sewage disposal systems and other improvements are:

- a. Located on natural ground slopes of less than twenty percent (20%); and
- b. Located outside the floodway of the one hundred (100) year flood-plain along rivers and artificially formed great ponds 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 one hundred (100) year flood-plain elevation; and the development is otherwise in compliance with any applicable municipal flood-plain ordinance.

If the floodway is not shown on the Federal Emergency Management Agency Maps, it is deemed to be one-half (1/2) the width of the one hundred (100) year flood-plain.

**3) Total footprint**

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

#### **4) Setback**

All structures, except functionally water-dependent structures, are set back from the normal high-water line of a water body, tributary stream or upland edge of a wetland to the greatest practical extent, but not less than seventy-five (75) feet, horizontal distance. In determining the greatest practical extent, the Planning Board shall 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 elevation in regard to the flood-plain, and its proximity to moderate-value and high-value wetlands.

### **H. Expiration of Permit**

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.

### **I. 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.

Following installation of service, the company shall forward the written authorization to the municipal officials, indicating that installation has been completed.

### **J. Appeals**

#### **1) Powers and Duties of the Board of Appeals.**

The Board of Appeals shall have the following powers:

**Administrative Appeals:** 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, written 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 review of and action on a permit application under this Ordinance, or in the enforcement of this Ordinance. Any order, requirement, decision or determination made, or failure to act, in the enforcement of this ordinance is not appealable to the Board of Appeals.

#### **2) Variance Appeals.**

**Variance Appeals:** To authorize variances upon appeal, within the limitations set forth in this Ordinance.

**3) Variances may be granted only under the following conditions:**

- a. Variances may be granted only from dimensional requirements including, but not limited to, lot width, structure height, percent of lot coverage, and setback requirements.
- b. Variances shall not be granted for establishment of any uses otherwise prohibited by this Ordinance.
- c. The Board of Appeals shall not grant a variance unless it finds that:
  - i. The proposed structure or use would meet the provisions of Section 15 except for the specific provision which has created the non-conformity and from which relief is sought; and
  - ii. The strict application of the terms of this Ordinance would result in undue hardship. The term "undue hardship" shall mean:
  - iii. That the land in question cannot yield a reasonable return unless a variance is granted;
  - iv. That the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;
  - v. That the granting of a variance will not alter the essential character of the locality; and
  - vi. That the hardship is not the result of action taken by the applicant or a prior owner.
- d. Notwithstanding Section J.2.c above, the Board of Appeals, or the Code Enforcement Officer in accordance with 30-A M.R.S.A. Section 4353-A, may grant a variance to an owner of a residential dwelling for the purpose of making that dwelling accessible to a person with a disability who resides in or regularly uses the dwelling. The Board of Appeals shall restrict any variance granted under this subsection solely to the installation of equipment or the construction of structures necessary for access to or egress from the dwelling by the person with the disability. The board may impose conditions on the variance, including limiting the variance to the duration of the disability or to the time that the person with the disability lives in the dwelling. The term "structures necessary for access to or egress from the dwelling" shall include railing, wall or roof systems necessary for the safety or effectiveness of the structure. Any permit issued pursuant to this subsection is subject to Sections 16.J.2.f and 16.J.4.b.iv below.
- e. The Board of Appeals shall limit any variances granted as strictly as possible in order to ensure conformance with the purposes and provisions of this Ordinance to the greatest extent possible, and in doing so may impose such conditions to a variance as it deems necessary. The party receiving the variance shall comply with any conditions imposed.
- f. A copy of each variance request, including the application and all supporting information supplied by the applicant, shall be forwarded by the Board of Appeals to the Commissioner of the Department of Environmental Protection at least twenty (20) days prior to action by the Board of Appeals. Any comments received from the Commissioner prior

to the action by the Board of Appeals shall be made part of the record and shall be taken into consideration by the Board of Appeals.

**4) Administrative Appeals**

When the Board of Appeals reviews a decision of the Code Enforcement Officer, the Board of Appeals shall hold a *de novo* hearing. At this time the Board of Appeals 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.

When the Board of Appeals hears a decision of the Planning Board, it shall hold an appellate hearing, and may reverse the decision of the Planning Board only upon finding that the decision was contrary to specific provisions of the Ordinance or contrary to the facts presented to the Planning Board. The Board of Appeals may only review the record of the proceedings before the Planning Board. The Board of Appeals shall not receive or consider any evidence which was not presented to the Planning Board, but the Board of Appeals may receive and consider written or oral arguments. If the Board of Appeals determines that the records of the Planning Board proceedings are inadequate, the Board of Appeals may remand the matter to the Planning Board for additional fact finding.

**5) Appeal Procedure**

a. Making an Appeal

- i. An administrative or variance 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.
- ii. Applications for appeals shall be made by filing a written notice of appeal with the Board of Appeals which includes:
  - a. A concise written statement indicating what relief is requested and why the appeal or variance should be granted.
  - b. 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.
- iii. Upon receiving an application for an administrative appeal or a variance, 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.



- iv. The Board of Appeals shall hold a public hearing on an administrative appeal or a request for a variance 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

- i. A majority of the full voting membership of the Board of Appeals shall constitute a quorum for the purpose of deciding an appeal.
- ii. 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 of Appeals 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.

- iii. The person filing the appeal shall have the burden of proof.
- iv. The Board of Appeals shall decide all administrative appeals and variance appeals within thirty-five (35) days after the close of the hearing, and shall issue a written decision on all appeals.
- v. 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 of Appeals. The Board of Appeals 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 of Appeals' decision. Copies of written decisions of the Board of Appeals shall be given to the Planning Board, Code Enforcement Officer and the municipal officers.

**6) Appeal to Superior Court.**

In accordance with 30-A M.R.S.A. Section 2691(3)(F), 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 forty-five (45) days from the date of any decision of the Board of Appeals.

**7) 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 of Appeals 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 of Appeals

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 of Appeals 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.

## **K. Enforcement**

### **1) Nuisances.**

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

### **2) Code Enforcement Officer**

- a. It shall be the duty of the Code Enforcement Officer to enforce the provisions 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.
- b. The Code Enforcement Officer shall conduct on-site inspections to ensure compliance with all applicable laws and conditions attached to permit approvals. The Code Enforcement Officer shall also investigate all complaints of alleged violations of this Ordinance.
- c. The Code Enforcement Officer shall keep a complete record of all essential transactions of the office, including applications submitted, permits granted or denied, variances granted or denied, revocation actions, revocation of permits, appeals, court actions, violations investigated, violations found, and fees collected.

### **3) Legal Actions.**

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.

**4) Fines.**

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.

*NOTE: Current penalties include fines of not less than one hundred dollars (\$100) or more than two hundred fifty dollars (\$250) per violation for each day that the violation continues. However, in a resource protection district the maximum penalty is increased to five thousand dollars (\$5000) (38 M.R.S.A. Section 4452).*

## 17. 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. A guest house without kitchen facilities for preparing, cooking and storing food is an accessory structure.

**Accessory Dwelling Unit (ADU):** Accessory dwelling unit means a self-contained dwelling unit located within, attached to or detached from a single-family dwelling unit located on the same parcel of land.

ADU: see Accessory Dwelling Unit

**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.

**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.

**Aquaculture:** The growing or propagation of harvestable freshwater, estuarine, or marine plant or animal species.

**Basal area:** The area of cross-section of a tree stem four and one half (4.5) feet above ground level and inclusive of bark.

**Basement:** any portion of a structure with a floor-to-ceiling height of six (6) feet or more and having more than fifty percent (50%) of its volume below the existing ground level.

**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.

**Bureau of Forestry:** State of Maine Department of Agriculture, Conservation, and Forestry, Bureau of Forestry.

**Campground:** Commercial use of any area or tract of land to accommodate 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 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:** The use of lands, buildings, or structures, other than a "home occupation" or "fishing home business" defined below, the intent and result of which activity is the production of income from the buying and selling of goods and/or services, exclusive of rental of residential buildings and/or dwelling units.

**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.

**Dimensional requirements:** Numerical standards relating to spatial relationships including but not limited to setback, lot area, shore frontage and height.

**Disability:** Any disability, infirmity, malformation, disfigurement, congenital defect or mental condition caused by bodily injury, accident, disease, birth defect, environmental conditions or illness; also including the physical or mental condition of a person which constitutes a substantial handicap as determined by a physician or in the case of mental handicap, by a psychiatrist or psychologist, as well as any other health or sensory impairment which requires special education, vocational rehabilitation or related services.

**District:** (as used in this Ordinance, a zoning district): A sub-area of the Shoreland Zone listed in Section 9, differing from other such areas in characteristics and boundaries defined in Sections 10 and 13.

**Driveway:** A vehicular access-way less than five hundred (500) feet in length serving two lots or less.

**Emergency operations:** 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 and livestock from the threat of destruction or injury.

**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 footprint or height of a structure, including all extensions such as, but not limited to attached: decks, garages, porches and greenhouses.

**Expansion of use:** An increase of one or more months to a use's operating season, or the use of more footprint or ground area devoted to a particular use.

**Family:** One or more persons occupying a premises and living as a single housekeeping unit.

**Fishing home business:** Fishing, lobstering, clamming or aquaculture business, including the storage and maintenance of boats and gear used in a business conducted from a home on the same lot, and which employs no more than three (3) persons other than family members residing in the home.

**Floodway:** The channel of a river or other watercourse and adjacent land areas that must be reserved in order to discharge the one hundred (100) year flood without cumulatively increasing the water surface elevation by more than one (1) foot in height.

**Floor area:** The sum of the horizontal areas of the floor(s) of a structure enclosed by exterior walls.

**Footprint:** The entire area of ground covered by the structure(s) on a lot, including but not limited to cantilevered or similar overhanging extensions, as well as unenclosed structures, such as patios and decks.

**Forested wetlands:** A freshwater wetland dominated by woody vegetation that is six (6) meters tall (approximately twenty (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 (10) or more contiguous acres; or of less than ten (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 ten (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.

**Functionally water dependent uses:** Those uses that require, for their primary purpose, location on submerged lands or that require direct access to, or location in, coastal or inland waters and which cannot be located away from these waters. The uses include, but are not limited to commercial and recreational fishing and boating facilities, excluding recreational boat storage buildings, fin fish and shell fish selling, processing and storage and retail and wholesale fish marketing facilities, water front dock and port facilities, shipyards and boat building facilities, marinas, navigation aids, basins and channels, shoreland structures necessary for erosion control purposes, industrial uses dependent upon water-borne transportation or requiring large volumes of cooling or processing water and which cannot reasonably be located or operated at an inland site, and uses which primarily provide general public access to marine or tidal waters.

**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 three percent (3%) upgrade means a rise of three (3) feet per one hundred (100) feet horizontal distance. [Source: American Congress on Surveying and Mapping, Definitions of Surveying and Associated Terms.]

**Great pond:** Any inland body of water which in a natural state has a surface area in excess of ten acres, and any inland body of water artificially formed or increased which has a surface area in excess of thirty (30) acres except for the purposes of this Ordinance, where the artificially formed or increased inland body of water is completely surrounded by land held by a single owner.

**Great pond classified GPA:** Any great pond classified GPA, pursuant to Title 38 Article 4-A Section 465-A. This classification includes some, but not all impoundments of rivers that are defined as great ponds.

**Ground cover:** Small plants, fallen leaves, needles and twigs, and the partially decayed organic matter of the forest floor.

**Hazard tree:** 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 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 and linger.

**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 footprint.

**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.

**Increase in non-conformity of a structure:** Any change in a structure or property which causes further deviation from the dimensional standard(s) creating the nonconformity such as, but not limited to, reduction in water body, tributary stream or wetland setback distance, increase in lot coverage, or increase in height of a structure. Property changes or structure expansions which either meet the dimensional standard or which cause no further increase in the linear extent of nonconformance of the existing structure shall not be considered to increase nonconformity. For example, there is no increase in nonconformity with the setback requirement for water bodies, wetlands, or tributary streams if the expansion extends no further into the required setback area than does any portion of the existing non-conforming structure. Hence, a structure may be expanded laterally provided that the expansion extends no closer to the water body, tributary stream, or wetland than the closest portion of the existing structure from that water body, tributary stream, or wetland. Included in this allowance are expansions which in-fill irregularly shaped structures.

**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, warehousing, packaging or processing of goods or the extraction of minerals.

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



**Licensed forester:** A forester licensed under 32 M.R.S.A. Chapter 76.

**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 (2) lots.

**Marina:** A business establishment having frontage on navigable water and, as its principal use, providing for hire offshore moorings or docking facilities for boats.

**Marine commercial:** The use of lands, buildings, or structures, other than a home occupation or fishing home business, the intent and result of which activity is the production of income from the buying and selling of marine goods and/or services, including marinas and accessory services such as boat and related sales, boat repair and construction, boat engine repair and service, indoor and outdoor storage of boats and marine equipment, bait and tackle shops and marine fuel service facilities.

**Market value:** 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:** Hand sampling, test boring, or other methods of determining the nature or extent of mineral resources which create minimal disturbance to the land and which include reasonable measures to restore the land to its original condition.

**Mineral extraction:** Any operation within any twelve (12) month period which removes more than one hundred (100) cubic yards of soil, topsoil, loam, sand, gravel, clay, rock, peat, or other like material from its natural location and to transport the product removed, away from the extraction site.

**Minimum lot width:** The closest distance between the side lot lines of a lot. When only two lot lines extend into the Shoreland Zone, both lot lines shall be considered to be side lot lines.

**Multi-unit residential building:** A residential structure containing three (3) or more dwelling units owned individually.

**Multi-unit rental apartment:** A residential structure under single ownership containing three (3) or more dwelling units for rent.

**Native:** Indigenous to the local forests.

**Non-conforming condition:** Non-conforming lot, structure or use which is allowed solely because it was in lawful existence at the time this Ordinance or subsequent amendment took effect.

**Non-conforming lot:** A single lot of record which, at the effective date of adoption or amendment of this Ordinance, did not meet the area, frontage, or width requirements of the district in which it is located.

**Non-conforming structure:** A structure which does not meet any one or more of the following dimensional requirements; setback, height, or lot coverage or footprint, but which is allowed solely because it was in lawful existence at the time this ordinance or subsequent amendments took effect.

**Non-conforming use:** Use of buildings, structures, premises, land or parts thereof which is not allowed in the district in which it is situated, but which is allowed to remain solely because it was in lawful existence at the time this ordinance or subsequent amendments took effect.

**Non-native invasive species of vegetation:** 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.

**Normal high-water line (non-tidal waters):** 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 predominately terrestrial land. Areas contiguous with rivers and great ponds that support non-forested wetland vegetation and hydric soils and that are at the same or lower elevation as the water level of the river or great pond during the period of normal high-water are considered part of the river or great pond.

*Note: Adjacent to tidal waters, setbacks are measured from the upland edge of the Coastal Wetland.*

**Outlet stream:** Any perennial or intermittent stream, as shown 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, that flows from a freshwater wetland.

**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.

**Piers, docks, wharfs, breakwaters, bridges and other structures** and uses extending over or beyond the normal high-water line or within a wetland, but limited to that portion that abuts the shoreland to the mean high-water line:

- a. Permanent: Structures which remain in or over the water for seven (7) months or more in any period of twelve (12) consecutive months.
- b. Temporary: Structures which remain in or over the water for less than seven (7) months in any period of twelve (12) consecutive months.

**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 lot.

**Principal structure maintenance:** Any maintenance that does not change the size of the structure, materially change its dimensions or conflict with any requirement of this ordinance.

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

**Public facility:** 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:** 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:** 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.

**Replacement system:** A system intended to replace: 1) An existing system which is either malfunctioning or being upgraded with no significant change of design flow or use of the structure, or 2) Any existing overboard wastewater discharge.

**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.

**Riprap:** Rocks, irregularly shaped, and at least six (6) inches in diameter, used for erosion control and soil stabilization, typically used on ground slopes of two (2) units horizontal to one (1) unit vertical or less.

**River:** A free flowing body of water including its associated flood plain wetlands from that point at which it provides drainage for a watershed of twenty-five (25) square miles to its mouth.

*NOTE: The portion of a river that is subject to tidal action is a coastal wetland.*

**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, excluding a driveway as defined.

**Salt marsh:** Areas of coastal wetland (most often along coastal bays) that support 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 cord grass (*Spartina alterniflora*). More open areas often support widgeon grass, eel grass, and sago pond weed.

**Salt meadow:** Areas of a coastal wetland that support salt tolerant plant species bordering the landward side of 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; common three square occurs in fresher areas.

**Sapling:** A tree species that is less than two (2) inches in diameter at four and one half (4.5) feet above ground level.

**Seedling:** A young tree species that is less than four and one half (4.5) feet in height above ground level.

**Service drop:** Any utility line extension which does not cross or run beneath any portion of a water body provided that:

A. In the case of electric service:

- 1). 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
- 2). the total length of the extension is less than one thousand (1,000) feet.

B. In the case of telephone service:

- 1) the extension, regardless of length, will be made by the installation of telephone wires to existing utility poles, or
- 2) the extension requiring the installation of new utility poles or placement underground is less than one thousand (1,000) feet in length.

**Setback:** The nearest horizontal distance from the normal high-water line of a water body, tributary stream, or upland edge of a wetland to the nearest part of a structure, road, parking space or other regulated object, area or property boundaries.

**Shore frontage:** The dimension 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:** The land area located within two hundred fifty (250) feet, horizontal distance, of the normal high-water line of any great pond or river; within two hundred fifty (250) feet, horizontal distance of the upland edge of a coastal wetland, including all areas affected by tidal

## DEFINITIONS

action; within two hundred fifty (250) feet of the upland edge of a freshwater wetland; or within seventy-five (75) feet, horizontal distance, of the normal high-water line of a stream or brook.

**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.]

**Storm-damaged tree:** A tree that has been uprooted, blown down, is lying on the ground, or that remains standing and is damaged beyond the point of recovery as the result of a storm event.

**Stream:** A free-flowing body of water from the outlet of a great pond or the confluence of two (2) 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 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, that channel is also a stream.

**Structure:** Anything temporarily or permanently located, built, constructed or erected for the support, shelter or enclosure of persons, animals, goods or property of any kind or anything constructed or erected on or in the ground. The term includes structures temporarily or permanently located, such as decks, patios, and satellite dishes. Structure does not include fences; poles and wiring and other aerial equipment normally associated with service drops, including guy wires and guy anchors; subsurface waste water disposal systems as defined in Title 30-A, Section 4201, subsection 5; geothermal heat exchange wells as defined in Title 32, Section 4700-E, subsection 3-C; or wells or water wells as defined in Title 32, Section 4700-E, subsection 8.

**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 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.

**Sustained slope:** A change in elevation where the referenced percent grade is substantially maintained or exceeded throughout the measured area.

**Tidal waters:** All waters affected by tidal action during the highest annual tide.

**Timber harvesting:** The cutting and removal of timber for the primary purpose of selling or processing forest products. The cutting or removal of trees in the Shoreland Zone on a lot that has less than two (2) acres within the Shoreland Zone shall not be considered timber harvesting. Such cutting and removal of trees shall be regulated pursuant to Section 15.P, Clearing and Removal of Vegetation for Activities other than Timber Harvesting.

**Tree:** A woody perennial plant with a well-defined trunk(s) at least two (2) inches in diameter at four and one half (4.5) feet above the ground, with a more or less definite crown, and reaching a height of at least ten (10) feet at maturity.

**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.

*NOTE: Water setback requirements apply to tributary streams within the Shoreland Zone.*

**Unstable soils:** A portion of land surface or area which is prone to slipping, sloughing or landslides.

**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 four (4) inches in diameter, measured at four and one half (4.5) feet above ground level.

**Velocity zone:** 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:** Any great pond, river, stream or tidal area.

**Water crossing:** Any project extending from one bank to the opposite bank of a river or stream whether under, through, or over the watercourse. 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.

**Wetland:** A Freshwater Wetland or Coastal Wetland. See definitions above.

**Woody vegetation:** Live trees and woody, non-herbaceous shrubs.

**Written Decision:** A decision by the Code Enforcement Officer written by the Code Enforcement Officer, or a decision by the Planning Board written by the Planning Board chairperson, based on recorded minutes. A written Planning Board decision shall be issued within fourteen (14) days of the decision vote.

## APPENDIX A: SOILS OF CONCERN

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

1. Development due to flooding:  
Charles, Lovewell, Medomak.
2. Development due to organic composition:  
Borosaprists
3. Development due to high seasonal water table and poor drainage:  
Brayton, Buxton, Charles, Eldridge, Marlow, Naumburg, Scantic, Searsport, Sheepscot, Swanville.
4. Development due to erosive soils:  
Biddeford, Boothbay, Buxton, Charles, Eldridge, Marlow, Naumburg, Scantic, Searsport, Sheepscot, Swanville.
5. Stable slopes: Adams and Masardis 15-25% slopes, Allagash 8-15% slopes.
6. Buildings with basements, due to unstable subsoils:  
Hermon, Madawaska, Masardis.



## Table of Contents

1. PURPOSES.....	1
2. AUTHORITY .....	1
3. APPLICABILITY.....	1
4. EFFECTIVE DATE OF ORDINANCE AND ORDINANCE AMENDMENTS.....	1
5. AVAILABILITY .....	2
6. SEVERABILITY .....	2
7. CONFLICTS WITH OTHER ORDINANCES .....	2
8. AMENDMENTS .....	2
9. DISTRICTS AND ZONING MAP.....	2
A. Official Shoreland Zoning Map.....	2
• Resource Protection;.....	2
• Limited Residential;.....	2
• Limited Commercial;.....	2
• Commercial Fisheries/Maritime Activities;.....	2
• Fishing Home Business; .....	2
• Stream Protection.....	2
B. Scale of Map .....	3
C. Certification of Official Shoreland Zoning Map .....	3
D. Changes to the Official Shoreland Zoning Map .....	3
10. INTERPRETATION OF DISTRICT BOUNDARIES.....	3
A. Boundaries .....	3
B. Boundaries By Water Features .....	3
1) No effect.....	3
2) Upland edges.....	4
3) Features.....	4
C. Boundary of any Flood Zone .....	4
D. Approximate Boundaries .....	4
1) Topography .....	4
2) Steepness of slopes .....	4
3) Slope measurements.....	4
E. Approximate Locations.....	5
F. Costs.....	5
G. Burden of Proof.....	5

H. Acceptance.....	5
11. LAND USE REQUIREMENTS.....	5
12. NON-CONFORMANCE.....	5
A. Purpose.....	5
B. General.....	6
1) Transfer of Ownership.....	6
2) Repair and Maintenance.....	6
C. Non-conforming Structures.....	6
1) Expansions.....	6
2) Foundations.....	8
3) Relocation.....	8
4) Reconstruction or Replacement.....	9
5) Change of Use of a Non-conforming Structure.....	10
D. Non-conforming Uses.....	10
1) Expansions.....	10
2) Resumption Prohibited.....	10
3) Change of Use.....	10
E. Non-conforming Lots.....	11
1) Lots not contiguous with any other lot in the same ownership.....	11
2) Contiguous lots with principal structures, in the same ownership.....	11
3) A lot with more than one principal structure or use.....	11
4) Contiguous lots, vacant or partially built, in the same ownership.....	11
13. DESCRIPTION OF DISTRICTS.....	11
A. Resource Protection District.....	12
1) Wetlands, Marshes and Wet Meadows.....	12
2) Flood Plains.....	12
3) Two plus (2+) Acre Lots with greater than twenty percent (>20%) Sustained Slopes.....	12
4) Two plus (2+) Acre Lots supporting wetland vegetation and hydric soils.....	12
5) Land areas along rivers subject to severe bank erosion.....	12
B. Limited Residential District.....	12
C. Limited Commercial District.....	13
D. Commercial Fisheries/Maritime Activities District.....	13
E. Fishing Home Business District.....	13
F. Stream Protection District.....	13

14. TABLE OF LAND USES.....	13
A. Table of Land Uses Abbreviations .....	14
B. Table 14 – Table of Land Uses .....	15
C. Land Use Table notes.....	18
D. General notes .....	18
E. Review of applications for cluster, multi-unit or commercial use.....	18
15. LAND USE STANDARDS.....	19
A. Minimum Lot Standards* .....	19
B. Principal Structures, Accessory Dwelling Units and Accessory Structures .....	20
1) All new principal and accessory structures set back.....	20
2) Principal or accessory structures height.....	21
3) Minimum abutter clearance .....	21
4) The lowest floor elevation or openings.....	21
5) Total Areas.....	22
6) Calculating Lot Coverage .....	22
7) Retaining Walls.....	22
8) Stairways or similar structures may be allowed .....	23
C. Piers, Docks, Wharves, Bridges and Other structures .....	23
1) No more than one pier, dock, wharf or similar structure .....	23
2) Access from shore.....	23
3) Location shall not interfere .....	23
4) No adverse effects on fisheries .....	23
5) No larger in dimension than necessary .....	23
6) No new structure shall be built on, over or abutting.....	24
7) Piers and docks on non-tidal waters.....	24
8) No conversion to residential dwelling .....	24
9) Not to exceed twenty (20) feet in height.....	24
D. Campgrounds .....	24
1) Minimum size .....	24
2) Setbacks .....	24
E. Individual Private Campsites .....	25
1) One campsite per lot .....	25
2) Minimum dimensions of lot.....	25
3) Placement on any lot.....	25

4) One recreational vehicle shall be allowed on a campsite .....	25
5) Clearing of vegetation.....	25
6) Sewage disposal plan .....	25
7) Usage beyond one hundred twenty (120) days per year .....	25
F. Commercial Uses .....	25
G. Parking Areas.....	26
1) Adequately sized.....	26
2) Size considerations.....	26
H. Roads and Driveways .....	26
1) Location .....	26
2) Setback.....	27
3) Expanding existing public roads.....	27
4) Resource Protection District restrictions .....	27
5) Bank slopes .....	27
6) Grades .....	27
7) Surface drainage.....	27
8) Ditches, culverts, dips and turnouts .....	28
9) Assure effective functioning .....	28
I. Signs.....	28
1) Signs relating to goods and services .....	29
2) Name signs.....	29
3) Residential signs .....	29
4) Trespassing and hunting .....	29
5) Public safety.....	29
6) Height.....	29
7) Illumination.....	29
J. Storm Water Management .....	29
1) New construction and development.....	29
2) Maintenance .....	29
K. Septic Waste Disposal.....	30
1) Clearing or removal of woody vegetation .....	30
2) Holding tanks .....	30
L. Essential Services.....	30
1) Installation limitations .....	30

2)	Installation in Resource or Stream Protection District .....	30
3)	Replacement or reconstruction of public utility infrastructure .....	30
M.	Mineral Exploration and Extraction.....	30
1)	Reclamation plan .....	31
2)	Setbacks and permissions .....	31
3)	Reestablishment upon completion .....	31
4)	Planning Board may impose conditions .....	31
N.	Agriculture .....	31
1)	Spreading of manure .....	31
2)	Storing of manure .....	32
3)	Tillage of soil .....	32
4)	New tillage .....	32
5)	New livestock grazing areas .....	32
O.	Timber Harvesting .....	32
P.	Clearing or Removal of Vegetation for Activities other than Timber Harvesting .....	33
1)	Resource Protection district limitations .....	33
2)	Opening canopy or clearings .....	33
3)	Selective cutting.....	35
4)	Legally existing non-conforming cleared openings may be maintained .....	35
5)	Reverted areas .....	35
Q.	Hazard Trees, Storm-Damaged Trees, and Dead Tree Removal.....	36
1)	CEO consultation required.....	36
2)	Storm-damaged trees .....	36
R.	Exemptions to Clearing and Vegetation Removal Requirements.....	37
1)	Maintenance of legally existing areas.....	37
2)	Removal from allowed structures or trees .....	37
3)	Removal from public swimming areas .....	37
4)	Removal associated with allowed agricultural uses.....	37
5)	Removal associated with brownfields or VRAP .....	38
6)	Removal of non-native invasive vegetation species .....	38
7)	Removal associated with emergency response activities.....	38
S.	Revegetation Requirements .....	38
1)	Must submit a revegetation plan .....	38
2)	Revegetation must occur along the same segment of shoreline .....	39

3) Revegetation shall occur before the expiration of the permit .....	39
4) Revegetation activities requirements .....	39
5) Woody revegetation requirements .....	39
6) Revegetation ground vegetation and cover .....	40
T. Erosion and Sedimentation Control .....	40
1) Activities requiring a permit .....	40
2) Development to fit topography .....	40
3) Protection of Resources minimum width buffer .....	40
4) Finish grades .....	41
5) Erosion and sedimentation control .....	41
6) Exposed ground area .....	41
7) Natural and man-made drainage ways and outlets .....	41
U. Soils .....	41
V. Water Quality .....	42
W. Archaeological Sites .....	42
16. ADMINISTRATION .....	43
A. Administering Bodies and Agents .....	43
B. Permits Required .....	43
1) Culvert permit exceptions .....	43
2) Archaeological excavation permit exceptions .....	43
3) All required permits to be displayed .....	43
C. Official Shoreland Zone Map Changes .....	43
1) Public hearing .....	43
2) Applicant to notify abutting property owners .....	44
3) Planning Board to schedule hearing .....	44
4) Map change approval must precede permit application .....	44
D. Permit Application .....	44
1) Submission using municipal form(s) .....	44
2) Signed and show right of title .....	44
3) Date and time recorded and receipts provided .....	45
4) Code Enforcement Officer shall determine completeness .....	45
5) Code Enforcement Officer shall inspect site .....	45
6) Valid septic system permit required .....	45
7) Building Permit issuance subject to sewage compliance .....	45

8) Previous violations to be resolved .....	45
9) Abutter notification by applicant .....	45
E. Fees and escrow funds .....	46
1) Schedule of fees and escrow funds .....	46
2) Escrow deposits .....	46
3) Late or not received escrow funds .....	46
F. Procedure for Administering Permits .....	46
1) Permits issued by reviewing authority .....	46
2) Burden of proof for proposed use .....	47
3) Approval or Approval with conditions .....	48
4) Denial.....	48
5) Reconsideration.....	49
G. Special Exceptions .....	49
1) Location within Resource Protection District.....	49
2) Slopes and floodways .....	49
3) Total footprint .....	49
4) Setback.....	50
H. Expiration of Permit.....	50
I. Installation of Public Utility Service.....	50
J. Appeals .....	50
1) Powers and Duties of the Board of Appeals. ....	50
2) Variance Appeals.....	50
3) Variances may be granted only under the following conditions: .....	51
4) Administrative Appeals .....	52
5) Appeal Procedure.....	52
6) Appeal to Superior Court.....	53
7) Reconsideration.....	53
K. Enforcement.....	54
1) Nuisances.....	54
2) Code Enforcement Officer.....	54
3) Legal Actions.....	54
4) Fines.....	55
17. DEFINITIONS.....	55
Accessory structure or use .....	55

Accessory Dwelling Unit (ADU).....	55
ADU .....	55
Aggrieved party .....	55
Agriculture .....	55
Aquaculture.....	55
Basal area .....	55
Basement.....	55
Bed and breakfast.....	55
Boat launching facility .....	56
Bureau of Forestry .....	56
Campground:.....	56
Canopy .....	56
Coastal wetland.....	56
Commercial use .....	56
Day:.....	56
Development .....	56
Dimensional requirements .....	56
Disability.....	56
District: .....	57
Driveway.....	57
Emergency operations.....	57
Essential services .....	57
Expansion of a structure.....	57
Expansion of use.....	57
Family .....	57
Fishing home business .....	57
Floodway.....	57
Floor area .....	57
Footprint.....	57
Forested wetlands.....	57
Foundation .....	58
Freshwater wetland .....	58
Functionally water dependent uses .....	58
Grade.....	58



Great pond.....	58
Great pond classified GPA.....	58
Ground cover .....	58
Hazard tree .....	59
Height of a structure.....	59
Home occupation .....	59
Individual private campsite.....	59
Industrial .....	59
Institutional .....	59
Licensed forester .....	60
Lot area .....	60
Marina .....	60
Marine commercial .....	60
Market value .....	60
Mineral exploration.....	60
Mineral extraction .....	60
Minimum lot width .....	60
Multi-unit residential building.....	60
Multi-unit rental apartment.....	60
Native.....	60
Non-conforming condition.....	60
Non-conforming lot .....	61
Non-conforming structure.....	61
Non-conforming use .....	61
Non-native invasive species of vegetation.....	61
Normal high-water line (non-tidal waters) .....	61
Outlet stream.....	61
Person.....	61
Piers, docks, wharfs, breakwaters, bridges and other structures.....	61
a. Permanent: Structures .....	61
b. Temporary .....	61
Principal structure .....	62
Principal structure maintenance .....	62
Principal use.....	62

Public facility .....	62
Recent flood plain soils.....	62
Recreational facility .....	62
Recreational vehicle.....	62
Replacement system.....	62
Residential dwelling unit .....	62
Riprap.....	62
River.....	62
Road .....	63
Salt marsh.....	63
Salt meadow.....	63
Sapling .....	63
Seedling.....	63
Service drop .....	63
Setback.....	63
Shore frontage.....	63
Shoreland Zone .....	63
Shoreline .....	64
Slope .....	64
Storm-damaged tree .....	64
Stream .....	64
Structure.....	64
Substantial start.....	64
Subsurface sewage disposal system.....	64
Sustained slope.....	64
Tidal waters.....	64
Timber harvesting .....	65
Tree .....	65
Tributary stream.....	65
Unstable soils.....	65
Upland edge of a wetland .....	65
Vegetation.....	65
Velocity zone .....	65
Water body.....	65

Water crossing .....	66
Wetland .....	66
Woody vegetation .....	66
Written Decision .....	66
APPENDIX A: SOILS OF CONCERN .....	67
Table of Contents .....	68
Certificate of Adoption .....	79

## Certificate of Adoption

I hereby attest that this is a true copy of the Town of Cushing Shoreland Zoning Ordinance, duly adopted by the legislative body of the Town of Cushing, Maine, on December 15, 1991, and amended March 17, 1992, March 16, 1993, March 18, 1997, March 16, 1999, March 20, 2001, February 22, 2007, November 14, 2007, June 9, 2009, September 16, 2009, November 2, 2010, November 8, 2011 and XXXXXXXX NN, 2025.

\_\_\_\_\_  
Town Clerk

\_\_\_\_\_  
Date