

TOWN OF WHITING  
SHORELAND ZONING ORDINANCE

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**SECTION 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 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 shore cover, and visual as well as actual points of access to inland and coastal waters; to conserve natural beauty and open space; and to anticipate and respond to the impacts of development in shoreland areas.

**SECTION 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.).

**SECTION 3. APPLICABILITY**

This Ordinance applies to all land areas within 250 feet, horizontal distance, of the normal high-water line of any lake, river and saltwater body;

**LAKES:** Rocky Lake                      Roaring Lake                      Sunken Lake  
Western Lake                      Orange Lake                      Holmes Pond  
Little Lake                      Josh Pond                      Indian Lake  
Eastern Lake                      Gardner Lake                      Orange River Flowage; and

within 250 feet, horizontal distance, of the upland edge of a ten (10) acre non-forested coastal or fresh-water wetland (see appendix B); and

within 75 feet, horizontal distance, of the normal high-water line of a stream: Cranberry Brook,                      Lively Brook,                      East Stream,  
Reynolds Brook,                      Crane Brook,                      Holmes Stream,  
the 2 unnamed streams flowing into Little Lake,  
the 1 unnamed streams flowing into Roaring Lake,  
the unnamed stream flowing into Orange River,  
the 1 unnamed stream flowing into Josh Pond,  
the 1 unnamed stream flowing out of Indian Lake,  
the 2 unnamed streams flowing into Orange Lake,  
the 1 unnamed stream flowing into Gardner Lake,  
the 1 unnamed stream flowing beyond the Whiting political boundary and returning into wetland #55.

**SECTION 4. EFFECTIVE DATE AND REPEAL OF FORMERLY ADOPTED ORDINANCE**

This Ordinance, which was adopted by the Whiting Special Town Meeting on July 22, 1993, shall not be effective unless approved by the Dept. of Environmental Protection. A certified copy of the Ordinance, attested and signed by the Town Clerk, shall be forwarded to the Dept. of Environmental Protection for approval. If the Dept. of Environmental Protection fails to act on this Ordinance within forty-five (45) days of its receipt of the Ordinance, it shall be deemed approved. Upon approval of this Ordinance, the shoreland zoning ordinance previously adopted on July 1, 1974 is hereby repealed. Any application for a permit submitted to the town within the forty-five (45) day period shall be governed by the terms of the July 1, 1974 Ordinance.

**SECTION 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.

**SECTION 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.

**SECTION 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, the more restrictive provision shall control.

**SECTION 8. AMENDMENTS**

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

**SECTION 9. DISTRICTS AND ZONING MAP**

**A. Official Shoreland Zoning Map**

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

1. Resource Protection (RP)
2. Limited Residential/Commercial District (LRC)
3. General Development (GD)
4. Stream Protection (SP)

**B. Scale of Map**

Most of the Official Shoreland Zoning Map is drawn at a scale of: 1 inch = 1,000 feet. Stream and wetland delineation may not be drawn at a scale of 1 inch - 1,000 feet but are nonetheless intended to convey the horizontal distance of the shoreland zone as specified in Section 3. Applicability. District boundaries are delineated and a legend indicating the symbols for each district is placed on the map.

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

The Official Shoreland Zoning Map is certified by the attested signature of the Town Clerk and is located in the Town Office. A second copy is in the custody of the Planning Board.

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

If amendments, in accordance with Section 8, 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 Dept. of Environmental Protection.

**SECTION 10. INTERPRETATION OF DISTRICT BOUNDARIES**

Unless otherwise set forth on the Official Shoreland Zoning Map, district boundary lines are property lines, the centerline of streets, roads and rights of way, and the boundaries of the shoreland area as defined herein. The "upland edge of a wetland" may have to be delineated on a case by case basis and the cost borne by an applicant. Where uncertainty exists as to the exact location of district boundary lines, the Board of Appeals shall be the final authority as to location.

**SECTION 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.

**SECTION 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 shall be allowed to continue, subject to the requirements set forth in this section.

**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. (continued next page)
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 which 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.

**C. NON-CONFORMING STRUCTURES**

A non-conforming structure is defined as " a structure which does not meet any one or more of the following dimensional requirements; setback, height, or lot coverage, but which is allowed solely because it was in lawful existence at the time this Ordinance or subsequent amendments took effect ".

1. **Expansions:** 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 addition or expansion does not increase the non-conformity of the structure.

**Further Limitations:**

- a. After January 1, 1989 if any portion of a structure is less than the required setback from the normal high-water line of a water body or upland edge of a wetland, that portion of the structure shall not be expanded in floor area or volume, by 30% (thirty percent) or more, during the lifetime of the structure. Any construction initiated after January 1, 1989 shall be applied to the 30% mandate.
- b. Construction or enlargement of a foundation beneath the existing structure shall not be considered an expansion of the structure provided; that the structure and new foundation are 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 subsection 2. Relocation, below; that the completed foundation does not extend beyond the exterior dimensions of the structure; and that the foundation does not cause the structure to be elevated by more than three (3) additional feet.

c. No structure which is less than the required setback from the normal high-water line of a water body, tributary stream, or the upland edge of a wetland shall be expanded toward the water body, tributary stream, or wetland.

2. **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 (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.

3. **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, or damaged or destroyed by more than 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 one year of the date of said damage, destruction, or removal, and provided that such reconstruction or replacement is in compliance with the water 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.

Any non-conforming structure which is damaged or destroyed by 50% or less of the market value of the structure, excluding normal maintenance and repair, may be reconstructed in place with a permit, from the Planning Board.

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 paragraph 2 above, the physical condition and type of foundation present, if any.

4. **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 or wetland, 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 may require written documentation from the applicant, regarding the probable effects on public health and safety, erosion and sedimentation, water quality, fish and wildlife habitat, vegetative cover, visual and actual points of public access to waters, natural beauty, flood plain management, archaeological and historic resources, and commercial fishing and maritime activities, and other functionally water-dependent uses.

#### D. NON-CONFORMING USES

A non-conforming use is defined as " use of buildings, structures, premises, land or parts thereof which is not permitted 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 ".

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 permitted in Section 12(C)(1)(a) 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 one 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, 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)(4) above.

#### E. NON-CONFORMING LOTS

Non-conforming lot is defined as " a single lot of record which, at the effective date of adoption or amendment of this Ordinance, does not meet the area, frontage, or width requirements of the district in which it is located".

1. **Non-conforming Lots:** A non-conforming lot of record as of the effective date 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 size and frontage can be met. Variances relating to setback or other requirements not involving lot size or frontage shall be obtained by action of the Board of Appeals.
2. **Contiguous Built Lots:** If two or more contiguous lots or parcels are in single or joint ownership of record at the time of adoption of this Ordinance, 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 and Subsurface Wastewater Disposal Rules are complied with.

If two or more principal uses or structures existed on a single lot of record on the effective date 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.

3. Contiguous Lots - Vacant or Partially Built: If two or more contiguous lots or parcels are in single or joint ownership of record at the time of or since adoption or amendment of this Ordinance, if any of these lots do not individually meet the dimensional requirements of this Ordinance or subsequent amendments, 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 of record, at least one of which is nonconforming, owned by the same person or persons on the effective date of this Ordinance, provided the lot 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 100 feet of shore frontage and 20,000 square feet of lot area; or
- b) Any lots that do not meet the frontage and lot size requirements of subparagraph a. are reconfigured or combined so that each new lot contains at least 100 feet of shore frontage and 20,000 square feet of lot area.

Lots meeting the requirements of subparagraphs a. and b. shall not be further divided; shall contain no more than one principal structure and must meet all other applicable provisions of this Ordinance.

**SECTION 13. ESTABLISHMENT OF DISTRICTS**

**A. RESOURCE PROTECTION DISTRICT (RP)**

The Resource Protection includes areas in which development would adversely affect water quality, productive habitat, biological ecosystems, or scenic and natural values. This district includes 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 Limited Residential/Commercial and General Development Districts are not be included within the Resource Protection District.

1. Areas within 250 feet, horizontal distance, of the upland edge of wetlands associated with lakes and the Orange River, which are rated "moderate" or "high" value by the Maine Dept. of Inland Fisheries and Wildlife (IF&W) as of January 1, 1973 and as indicated on the fresh-water wetlands map prepared by D.E.P. in 1989. Specifically:  
**Rated high:** #'s 13, 14, 15, 16, and 19. **Rated moderate:** 3, 4, 5, 6, 10, 53, 9, and 20. (See also, Appendix B)
2. Flood plains along rivers and flood plains along artificially formed great ponds along rivers, defined by the 100 year flood plain as designated on the Federal Emergency Management Agency's (FEMA) Flood Hazard Boundary Maps, or the flood of record, or in the absence of these, by soil types identified as recent flood plain soils. This district shall also include 100 year flood plains adjacent to tidal waters as shown on FEMA'S Flood Hazard Boundary Maps. (Appendix C)
3. Areas of two or more contiguous acres with sustained slopes of 20% or greater.
- \* 4. Areas of ~~ten (10)~~ 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 surface connected to a water body during normal spring high water as identified on the Official Shoreland Zoning Map.
5. 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.

**B. LIMITED RESIDENTIAL/COMMERCIAL DISTRICT (LRC)**

The Limited Residential/Commercial District includes areas of two or more contiguous acres in size devoted to or suitable for a mix of residential, recreational, and light commercial development including but not limited to home occupations, and agricultural uses including but not limited to livestock grazing areas. This District includes areas other than those in the Resource Protection or Stream Protection Districts, and areas which shall not be developed as intensively as the General Development District.

(continued next page)

\* Two (2) SEE Amendment: 8-C9-04



This District also includes areas within 250 feet, horizontal distance, of the upland edge of non-rated wetlands and wetlands rated "low" value by the Maine Dept. of Inland Fisheries and Wildlife (IF&W) as of January 1, 1973 which are indicated on the fresh-water wetlands map prepared by the Maine D.E.P. in 1989. Specifically:

**Non-rated:** #'s 2A, 7, 8, 10, 11, 12, 18, 21, 22, 23, 24, 26, 48, 49, 50, 51, 52, 54, 55, and 57. **Rated low:** #'s 1, 2. (See also, Appendix B)

High intensity commercial uses and industrial uses are prohibited.

#### C. GENERAL DEVELOPMENT DISTRICT (GD)

The General Development District includes the following types of areas:

1. Areas of two or more contiguous acres devoted to intensive recreation, commercial, or industrial activities, or a mix of such activities, including but not limited to the following:
  - a. Transportation rights of way;
  - b. Communication and utility rights of way;
  - c. Areas devoted to manufacturing, fabricating or other industrial activities;
  - d. Areas devoted to wholesaling, warehousing, retail trade and service activities, or other commercial activities;
  - e. Areas devoted to intensive recreational development and activities;
  - f. Areas devoted to mixed or combined patterns of a through e above.
2. Areas otherwise discernable as having patterns of intensive commercial, industrial or recreational uses.

Portions of the General Development District may also include residential development. However, no area shall be designated as a General Development District based solely on residential use.

In areas adjacent to lakes and the Orange River, the designation of an area as a General Development District shall be based upon uses existing at the time of adoption of this Ordinance. As required by D.E.P., there shall be no newly established General Development Districts or expansions in the area of existing General Development Districts adjacent to lakes and the Orange River.

#### D. STREAM PROTECTION DISTRICT (SP)

The Stream Protection District includes all land areas within seventy-five (75) feet, horizontal distance, of the normal high-water line of a stream (named in Section 3. Applicability), exclusive of those areas within two-hundred and fifty (250) feet, horizontal distance, of the normal high-water line of a lake, river or saltwater body, 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 is located within two-hundred and 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.

**SECTION 14. TABLE OF LAND USES**

All land use activities, as indicated in Table 1, Land Uses in the Shoreland Zone, shall conform with all of the applicable land use standards in Section 15. The district designation for a particular site shall be determined from the Official Shoreland Zoning Map.

Key to Table 1:

- YES - Allowed (no permit required but the use must comply with all applicable land use standards.)
- NO - PROHIBITED
- PB - Requires permit issued by the Planning Board
- CEO - Requires permit issued by the Code Enforcement Officer
- LPI - Requires permit issued by the Local Plumbing Inspector

Abbreviations:

- RP - Resource Protection
- LRC - Limited Residential/Commercial
- GD - General Development
- SP - Stream Protection

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THE FOLLOWING NOTE IS FOR INFORMATIONAL PURPOSES ONLY:

A person performing any of the following activities shall require a permit from the D.E.P., pursuant to Title 38 M.R.S.A., Section 480-C, if the activity occurs in, on, over or adjacent to any freshwater or coastal wetland, lake, river, stream or brook and operates in such a manner that material or soil may be washed into them:

- A. Dredging, bulldozing, removing or displacing soil, sand, vegetation, or other materials;
  - B. Draining or otherwise dewatering;
  - C. Filling, including adding sand or other material to a sand dune;  
or
  - D. Any construction or alteration of any permanent structure.
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TABLE 1. LAND USES IN THE SHORELAND ZONE

LANDUSES	DISTRICTS			
	SP	RP	LRC	GD
1. Non-intensive recreational uses not requiring structures such as hunting, fishing and hiking	yes	yes	yes	yes
2. Motorized vehicular traffic on existing roads and trails	yes	yes	yes	yes
3. Forest management activities except for timber harvesting	yes	yes	yes	yes
*4. Timber harvesting	yes	xPB	ce	yes
*5. Clearing of vegetation for approved construction and other allowed uses	PB	xPB	ce	yes
6. Fire prevention activities	yes	yes	yes	yes
7. Wildlife management practices	yes	yes	yes	yes
8. Soil and water conservation practices	yes	yes	yes	yes
9. Mineral exploration	no	yes <sup>1</sup>	yes <sup>2</sup>	yes <sup>3</sup>
10. Mineral extraction including sand and gravel extraction	no	PB <sup>4</sup>	PB	PB
11. Surveying and resource analysis	yes	yes	yes	yes
12. Emergency operations	yes	yes	yes	yes
13. Agriculture	yes	PB	yes	yes
14. Aquaculture	PB	PB	PB	yes
15. Principal structures and uses				
* A. One and two family residential	PB <sup>4</sup>	xPB	PB	PB
B. Multi-unit residential	no	no	PB	PB
C. Commercial	no	no	no	PB
D. Industrial	no	no	no	PB
E. Governmental and Institutional	no	no	no	PB
F. Small non-residential facilities for educational, scientific, or nature interpretation purposes	PB <sup>4</sup>	PB	PB	PB
16. Structures accessory to allowed uses	PB <sup>4</sup>	PB	PB	yes
17. Piers, docks, wharfs, bridges and other structures and uses extending over or below the normal high-water line or within a wetland				
* a. Temporary	PB	xPB	ce	PB
b. Permanent	PB	PB	PB	PB
* 18. Conversions of seasonal residences to year-round residences	LPI	xLPI	LPI	LPI
19. Home occupations	PB	no	PB	yes
* 20. Private sewage disposal systems for allowed uses	LPI	xLPI	LPI	LPI
21. Essential services	PB <sup>4</sup>	PB <sup>4</sup>	PB	PB
22. Service drops, as defined, to allowed uses	yes	yes	yes	yes
23. Public and private recreational areas involving minimal structural development	PB	PB	PB	PB
* 24. Individual, private campsites	PB	xPB	ce	PB
25. Campgrounds	no	no <sup>7</sup>	PB	PB
26. Road and driveway construction	PB	no <sup>8</sup>	PB	PB
27. Parking facilities	no	no <sup>8</sup>	PB	PB
28. Marinas	PB	no	PB	PB
* 29. Filling and earthmoving of < 10 cubic yards	PB	xPB	ce	yes
30. Filling and earthmoving of > 10 cubic yards	PB	PB	PB	PB
31. Signs	yes	yes	yes	yes
* 32. Uses similar to allowed uses	PB	xPB	ce	PB
* 33. Uses similar to uses requiring a CEO permit	PB	xPB	ce	PB
34. Uses similar to uses requiring a PB permit	PB	PB	PB	PB

<sup>1</sup> In RP not permitted within 250 feet of the normal high-water line, except to remove safety hazards.  
<sup>2</sup> In RP not permitted within 75 feet of the normal high-water line, except to remove safety hazards.  
<sup>3</sup> Requires permit if more than 100 square feet of surface area, in total, is disturbed.  
<sup>4</sup> In RP not permitted in areas so designated because of wildlife value.  
<sup>5</sup> Provided that a variance from the setback requirement is obtained from the Board of Appeals.  
<sup>6</sup> See further restrictions in Section 15(L)(2).  
<sup>7</sup> Except when area is zoned for resource protection due to flood plain criteria in which case a permit is required.  
<sup>8</sup> Except to provide access to permitted uses within the district, or where no reasonable alternative route or location is available outside the RP area, in which case a permit is required.  
<sup>9</sup> Except when home existed on lot prior to date of ordinance adoption.

10. Single family residential structures may be allowed by special exception only according to the provisions of Section 16E, Special Exceptions. Two family residential structures are prohibited.

11. See Amendment 8-09-04

**SECTION 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.	Minimum Lot Area <u>(sq.ft.)</u>	Minimum Shore <u>Frontage(ft.)</u>
<u>Residential per dwelling unit</u>		
a. Within the Shoreland Zone Adjacent to Tidal Areas	30,000	150
b. Within the Shoreland Zone Adjacent to Non-Tidal Areas	40,000	200
<u>Governmental, Institutional, Commercial or Industrial per principal structure</u>		
a. Within the Shoreland Zone Adjacent to Tidal Areas	40,000	200
b. Within the Shoreland Zone Adjacent to Non-tidal Areas	60,000	300
<u>Public and Private Recreational Facilities</u>		
a. Within the Shoreland Zone Adjacent to Tidal and Non-Tidal Areas	40,000	200
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 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 residential dwelling unit or more than one principal commercial or industrial structure is constructed on a single parcel, all dimensional requirements shall be met for each additional dwelling unit or principal structure.	

**B. Principal and Accessory Structures**

1. All new principal and accessory structures shall be set back at the following horizontal distances as measured from the normal high-water line of water bodies:

100 (one-hundred) feet: Any lake and the Orange River;  
75 (seventy-five) feet: Salt water bodies, streams, tributary streams and the upland edge of a wetland;  
or  
25 (twenty-five) feet: General Development District (excluding non-conforming residential units and residential accessory structures).

**In addition:**

- a. The water body or wetland setback provision shall neither apply to structures which require direct access to the water 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 permit approval, if necessary to accomplish the purposes of this Ordinance. Instances where greater setback may be appropriate include, but are not limited to, areas of steep slope; shallow or erodible soils; or where an adequate vegetative buffer does not exist.
2. Principal or accessory structures and expansions of existing structures which are permitted in the Resource Protection, Limited Residential/Commercial, and Stream Protection Districts, shall not exceed ~~thirty (30)~~ feet in height. This provision shall not apply to structures such as transmission towers, windmills, antennas, and similar structures having no floor area.
3. The total area of all structures, parking lots and other non-vegetated surfaces, within the shoreland zone shall not exceed twenty (20) percent of the lot or a portion thereof, located within the shoreland zone, including land previously developed, except in the General Development District adjacent to water, where lot coverage shall not exceed seventy (70) percent.
4. Notwithstanding the requirements stated above, stairways or similar structures may be allowed with a permit from the Planning Board, 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 Dept. of Environmental Protection pursuant to the Natural Resources Protection Act, Title 38, Section 480-C); and that the applicant demonstrates that no reasonable access alternative exists on the property.

\* thirty-five (35) *See Amendment: 08-09-04*

**C. Piers, Docks, Wharfs, Bridges and Other Structures and Uses  
Extending Over or Beyond the Normal High-Water Line of a  
Water Body or Within a Wetland.**

The municipal officials have chosen not to regulate structures and uses as described in 'C.' above. The heading is maintained in the Ordinance in order to provide the reader with the following information:

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THE FOLLOWING IS PROVIDED FOR INFORMATIONAL PURPOSES ONLY:

Permanent structures projecting into or over water bodies require a permit from the Department of Environmental Protection pursuant to the Natural Resources Protection Act, Title 38, MRSA, Section 480-C.

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**D. Campgrounds**

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

1. 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. The areas intended for placement of a recreational vehicle, tent or shelter, and utility and service buildings shall be setback at the following minimum distances as measured horizontally from the normal high-water line:

100 (one-hundred) feet: Any lake or the Orange River; and  
75 (seventy-five) feet: other water bodies, tributary  
streams, or the upland edge of a  
wetland.

**E. Individual Private Campsites**

Individual, private campsites not associated with campgrounds are permitted provided the following conditions are met:

1. 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. Campsite placement on any lot, including the area intended for a recreational vehicle or tent platform, shall be setback at the following minimum distances as measured horizontally from the normal high-water line:

100 (one-hundred) feet: Any lake or the Orange River; and  
75 (seventy-five) feet: other water bodies, tributary  
streams, or the upland edge of a  
wetland.

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3. Recreational vehicles shall not be located on any type of permanent foundation except for a gravel pad, and no structure(s) except canopies shall be attached to the recreational vehicle.
4. The clearing of vegetation for the siting of the recreational vehicle, tent or similar shelter in a Resource Protection District shall be limited to one thousand (1000) square feet.
5. A written sewage disposal plan describing the proposed method and location of sewage disposal shall be required for each campsite and shall be approved by the Local Plumbing Inspector. Where disposal is off-site, written authorization from the receiving facility or land owner is required.
6. When a recreational vehicle, tent or similar shelter is placed on-site for more than one hundred and 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 and Industrial Uses**

The following new commercial and industrial uses are prohibited within the shoreland zone:

- a. Auto washing facilities
- b. Auto or other vehicle service and/or repair operations, including body shops
- c. Chemical and bacteriological laboratories
- d. Storage of chemicals, including herbicides, pesticides or fertilizers other than amounts normally associated with individual households or farms
- e. Commercial painting, wood preserving, and furniture stripping
- f. Dry cleaning establishments
- g. Electronic circuit assembly
- h. Laundromats
- i. Metal plating, finishing, or polishing
- j. 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
- k. Photographic processing
- l. Printing
- m. Any activity which produces hazardous waste

**G. Parking Areas**

1. Parking areas shall meet the shoreline setback requirements for structures for the district in which such areas are located. The setback requirement for parking areas serving public boat launching facilities, in Districts other than the General Development District may be reduced to no less than fifty (50) feet from the normal high-water line or upland edge of a wetland if the Planning Board finds that no other reasonable alternative exists. (See subsection B. Principal and Accessory Structures of this Section 15 for setback requirements)

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2. 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, and where feasible, to retain all runoff on-site.
3. In determining the appropriate size of proposed parking facilities, the following shall apply:
  - a. **Typical parking space:** Approximately ten (10) feet wide and twenty (20) feet long, except that parking spaces for a vehicle and boat trailer shall be 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. Roads and driveways shall be setback at the following minimum distances as measured horizontally from the normal high-water line:  
100 (one-hundred) feet: any lake or the Orange River; and  
75 (seventy-five) feet: other water bodies, tributary streams, or the upland edge of a wetland

unless no reasonable alternative exists as determined by the Planning Board. If no other reasonable alternative exists, the Planning Board may reduce the road and/or driveway setback requirement to no less than fifty (50) feet upon clear showing by the applicant that appropriate techniques will be used to prevent sedimentation of the water body or tributary stream. Such techniques may include but not be limited to the installation of settling basins, and/or the effective use of additional ditch relief culverts and turnouts placed so as to avoid sedimentation of the water body, tributary stream or the upland edge of a wetland.

On slopes of greater than twenty (20) percent the road and/or driveway setback shall be increased by ten (10) feet for each five (5) percent increase in slope above twenty (20) percent. This paragraph shall neither apply to approaches to water crossings nor to roads or driveways that provide access to permitted structures, and facilities located nearer to the shoreline due to an operational necessity.

2. Existing public roads may be expanded within the legal road right-of-way regardless of its setback from a water body.
3. New roads and driveways are prohibited in a Resource Protection District except to provide access to permitted uses within the district, or as approved by the Planning Board upon a finding that no reasonable alternative route or location is available outside the district, in which case 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.

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4. Road 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 subsection Q.
5. Road grades shall be no greater than ten (10) percent except for short segments of less than two hundred (200) feet.
6. In order to prevent road surface drainage from directly entering water bodies and tributary streams, roads shall be designed, constructed, and maintained to empty onto an unscarified buffer strip 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 line of a water body, tributary stream, or upland edge of a wetland. Road 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.
7. Ditch relief (cross drainage) culverts, drainage dips and water turnouts shall be installed in a manner effective in directing drainage onto unscarified buffer strips before the flow in the road or ditches gains sufficient volume or head to erode the road or ditch. To accomplish this, the following shall apply:
  - a. Ditch relief culverts, drainage dips and associated water turnouts shall be spaced along the road at intervals no greater than indicated in the following table:

<u>Road Grade</u> (Percent)	<u>Spacing</u> (Feet)
0-2	250
3-5	200-135
6-10	100-80
11-25	80-60
16-20	60-45
21+	40

- b. Drainage dips may be used in place of ditch relief culverts only where the road grade is ten (10) percent or less.
  - c. On road sections having slopes greater than ten (10) percent, ditch relief culverts shall be placed across the road at approximately a thirty (30) degree angle downslope from a line perpendicular to the centerline of the road.
  - 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. Ditches, culverts, bridges, dips, water turnouts and other storm water runoff control installations associated with roads 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. The Planning Board may, for good cause clearly demonstrated by the applicant, waive the dimensional criteria of this subsection to allow an increase in the square foot area of each sign. In making this decision, the Planning Board may limit the number of signs per premises to one. In no instance shall more than two signs per premises be permitted.

1. Signs and bill boards relating to goods and services sold on the premises shall be permitted, provided that such signs shall not exceed six (6) square feet in area and shall not exceed two (2) signs per premises. Billboards and signs relating to goods or services not sold or rendered on the premises shall be prohibited.
2. Name signs shall be permitted, provided such signs shall not exceed two (2) signs per premises.
3. 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. Signs relating to trespassing and hunting shall be permitted without restriction as to number provided that no such sign shall exceed two (2) square feet in area.
5. Signs relating to public safety shall be permitted without restriction.
6. No sign shall extend higher than twenty (20) feet above the ground.
7. Signs may be illuminated only by shielded, non-flashing lights.

### J. Storm Water Runoff

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

### K. Septic Waste Disposal

1. All subsurface sewage disposal systems shall be installed in conformance with the State of Maine Subsurface Wastewater Disposal Rules (Rules). For specific information contact the local plumbing inspector or the Dept. of Human Services; Division of Health Engineering in Augusta.

**L. Essential Services**

1. Where feasible, the installation of essential services shall be limited to existing public ways and existing service corridors.
2. The installation of essential services is not permitted in a Resource Protection 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 permitted, such structures and facilities shall be located so as to minimize any adverse impacts on surrounding uses and resources, including visual impacts.

**M. Mineral Exploration**

Mineral exploration to determine the nature and 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 Planning Board 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, so as to restore disturbed areas and to protect the public health and safety.

Mineral extraction may be permitted under the following conditions:

1. A reclamation plan shall be filed with, and approved by the Planning Board before a permit is granted. Such plan shall describe in detail procedures to be undertaken to fulfill the requirements of paragraph 3. below.
2. Unless authorized pursuant to the Natural Resources Protection Act (NRPA), Title 38 MRSA, Section 480-C no part of any extraction operation, including drainage and runoff features shall be permitted within two-hundred-and fifty (250) feet of the normal high-water line of any lake, tidal area, or the Orange River, and seventy-five (75) feet of the normal high-water line of any stream, tributary stream, or the upland edge of a wetland. Extraction operations shall not be permitted within seventy-five (75) feet of any property line; without written permission of the owner of such adjacent property.
3. 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.
  - b. The final graded slope shall be two to one (2:1) slope or flatter.

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- c. Top soil or loam shall be retained to cover all disturbed land areas, which shall be reseeded and stabilized with vegetation native to the area. Additional topsoil or loam shall be obtained from off-site sources if necessary to complete the stabilization project.
- 4. 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. All spreading or disposal of manure shall be accomplished in conformance with the Maine guidelines for Manure and Manure Sludge Disposal on Land published by the University of Maine Soil and Water Conservation Commission in July, 1972.
- 2. Manure shall not be stored or stockpiled within the following distances as measured horizontally from the normal high-water line:

100 (one-hundred) feet: any lake or the Orange River; or  
 75 (seventy-five) feet: other waterbodies, tributary streams, or the upland edge of a wetland.

Within five (5) years of the effective date of this Ordinance all manure storage areas within the shoreland zone must be constructed or modified such that the facility produces no discharge or effluent or contaminated storm water. Existing facilities which do not meet the setback requirement may remain, but must meet the no discharge provision within the five (5) year period.

- 3. Agricultural activities involving tillage of soil greater than forty thousand (40,000) square feet in surface, or the spreading, disposal or storage of manure within the shoreland zone shall require a Soil and Water 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.
- 4. Except to allow for vegetable and flower gardens of not greater than 500 (five-hundred) square feet, there shall be no new tilling of soil within the following distances as measured horizontally from the normal high-water line:  
 100 (one-hundred) feet: any lake or the Orange River; nor  
 75 (seventy-five) feet: other water bodies; nor  
 25 (twenty-five) feet: tributary streams and the upland edge of a wetland.

Operations in existence on the effective date of this Ordinance and not in conformance with this provision may be maintained.

- 5. After the effective date of this Ordinance, newly established livestock grazing areas shall not be permitted within the following distances as measured horizontally from the normal high-water line:  
 100 (one-hundred) feet: any lake or the Orange River; nor  
 75 (seventy five) feet: other water bodies; nor  
 25 (twenty-five) feet: tributary streams and wetlands.

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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 Soil and Water Conservation Plan.

**O. Timber Harvesting**

1. Within the strip of land extending 250 feet inland from the normal high-water line in a shoreland area zoned for resource protection, there shall be no timber harvesting, except to remove safety hazards.
2. Except in areas as described in Paragraph 1 above, timber harvesting shall conform with the following provisions:
  - a. Selective cutting of no more than forty (40) percent of the total volume of trees four (4) inches or more in diameter measured at 4 1/2 feet above ground level on any lot in any ten (10) year period is permitted.

**In addition:**

- i. Within the following distances, as measured horizontally from the normal high-water line, there shall be no clearcut openings and a well-distributed stand of trees and other vegetation, including existing ground cover, shall be maintained:
  - 100 (one-hundred) feet: any lake or the Orange River; or
  - 75 (seventy-five) feet: other water bodies, tributary streams, or the upland edge of a wetland.
- ii. At distances greater than those listed below, as measured horizontally from the normal high-water line, harvesting operations shall not create single clearcut openings greater than ten-thousand (10,000) square feet in the forest canopy:
  - >100 (one-hundred) feet: any lake or the Orange River; and
  - >75 (seventy-five) feet: other water bodies, tributary streams, or the upland edge of a wetland.

Where such openings exceed five-thousand (5000) square feet they shall be at least one hundred (100) feet apart. Such clearcut openings shall be included in the calculation of total volume removal. For the purposes of these standards volume may be considered to be equivalent to basal area.

Notwithstanding the requirements of (2) (a) above, the Planning Board may approve timber harvesting in excess of 40% upon a clear demonstration by the applicant, including but not limited to, a forest management plan signed by a Maine licensed professional forester, that the excess harvest is necessary for improvement in forest management, and will be carried out in accordance with the purposes and other applicable

provisions of this Ordinance. A violation of the plan shall be a violation of this Ordinance. The Planning Board shall submit a copy of each permit issued for this exception to the Dept. of Environmental Protection within 14 days of permit issuance.

- b. No accumulation of slash shall be left within fifty (50) feet of the normal high-water line of a water body. In all other areas slash shall either be removed or disposed of in such a manner that it lies on the ground and no part thereof extends more than four (4) feet above the ground. Any debris that falls below the normal high-water line of a water body shall be removed.
- c. Timber harvesting equipment shall not use stream channels as travel routes except when:
  - i. Surface waters are frozen; and
  - ii. The activity will not result in any disturbance.
- d. All crossings of flowing water shall require a bridge or culvert, except in areas with low banks and channel beds which are composed of gravel, rock or similar hard surface which would not be eroded or otherwise damaged.
- e. Skid trail approaches to water crossings shall be located and designed so as to prevent water runoff from directly entering the water body or tributary stream. Upon completion of timber harvesting, temporary bridges and culverts shall be removed and areas of exposed soil revegetated.
- f. Except for water crossings, skid trails and other sites where the operation of machinery used in timber harvesting results in the exposure of mineral soil shall be located such that an unscarified strip of vegetation of at least seventy-five (75) feet in width for slopes up to ten (10) percent shall be retained between the exposed mineral soil and the normal high-water line of a water body or upland edge of a wetland. For each ten (10) percent increase in slope, the unscarified strip shall be increased by twenty (20) feet. The provisions of this paragraph apply only to a face sloping toward the water body or wetland, provided, however, that no portion of such exposed mineral soil on a back face shall be closer than twenty-five (25) feet from the normal high-water line of a water body or upland edge of a wetland.

P. Clearing of Vegetation for Development

1. Within a shoreland area zoned for Resource Protection there shall be no cutting of vegetation within the strip of land extending 75 feet, horizontal distance, from the normal high-water line, except to remove safety hazards .

Elsewhere, in any Resource Protection District the clearing of vegetation shall be limited to that which is necessary for uses expressly authorized in that district.

2. Except in areas as described in Paragraph 1, above, and except to allow for the development of permitted uses, within the following distances as measured horizontally from the normal high-water line;

100 (one-hundred) feet: any lake or the Orange River; or

75 (seventy-five) feet: any other water body, tributary stream, or the upland edge of a wetland,

a buffer strip of vegetation shall be preserved as follows:

- a. Selective cutting of trees within the buffer strip is permitted provided that a well distributed stand of trees and other vegetation is maintained. For the purposes of this section a "well-distributed stand of trees and other vegetation", adjacent to a great pond, shall be defined as maintaining a rating score of 12 or more in any 25-foot by 25-foot square area (625 square feet) as determined by the following rating system.

<u>Diameter of Tree at 4-1/2 Feet</u> <u>Above Ground Level (inches)</u>	<u>Points</u>
<u>2 - 4 in.</u>	<u>1</u>
<u>&gt;4 - 12 in.</u>	<u>2</u>
<u>&gt;12 in.</u>	<u>4</u>

Adjacent to other water bodies, tributary streams, and wetlands, a "well-distributed stand of trees and other vegetation" is defined as maintaining a minimum rating score of 8 per 25-foot square area.

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**NOTE:** As an example, adjacent to a great pond, if a 25-foot x 25-foot plot contains three (3) trees between 2 and 4 inches in diameter, three (3) trees between 4 and 12 inches in diameter, and three (3) trees over 12 inches in diameter, the rating score is:

$$(3 \times 1) + (3 \times 2) + (3 \times 4) = 21 \text{ points}$$

Thus, the 25-foot by 25-foot plot contains trees worth 21 points. Trees totaling 9 points (21-12 = 9) may be removed from the plot provided that no cleared openings are created.

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Notwithstanding the above provisions, no more than 40% of the total volume of trees four (4) inches or more in diameter, measured at 4-1/2 feet above ground level may be removed in any ten (10) year period.

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- b. In order to protect water quality and wildlife habitat, when vegetation under three (3) feet in height and other ground cover is removed, it shall be replaced with vegetation which is equally effective in retarding erosion and sedimentation.
- c. Pruning of tree branches, on the bottom 1/3 of the tree is permitted.
- d. 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.

The provisions contained in paragraph 2 above shall not apply to those portions of public recreational facilities adjacent to public swimming areas. Cleared areas, however, shall be limited to the minimum area necessary.

3. In any ten (10) year period, except to allow for permitted uses, selective cutting of not more than forty (40) percent of the volume of trees four (4) inches or more in diameter, measured at 4 1/2 feet above ground level, shall be permitted on any lot at the following distances as measured horizontally from the normal high-water line of water bodies:

> 100 feet: any lake and the Orange River.

> 75 feet: other water bodies, tributary streams, and the upland edge of a wetland.

Tree removal in conjunction with the development of permitted uses shall be included in the forty (40) percent calculation. For the purposes of these standards volume may be considered to be equivalent to basal area.

In no event shall cleared openings for development, including but not limited to, principal and accessory structures, driveways and sewage disposal areas, exceed in the aggregate, 25% of the lot area or ten thousand (10,000) square feet, whichever is greater, including land previously developed. This provision shall not apply to the General Development District.

4. Cleared openings legally in existence on the effective date of this Ordinance may be maintained, but shall not be enlarged, except as permitted by this Ordinance.
5. Fields which have reverted to primarily shrubs, trees, or other woody vegetation shall be regulated under the provisions of this section.



## 0. Erosion and Sedimentation Control

1. All activities which involve filling, grading, excavation or other similar activities which result in unstabilized soil conditions and which require a permit shall require a written soil erosion and sedimentation control plan. 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 riprap.
2. 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. 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.
4. 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 and/or silt fences.
5. Natural and man-made drainage ways and drainage outlets shall be protected from erosion from water flowing through them. Drainageways 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.

#### R. 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 requiring subsurface waste disposal, and commercial or industrial development and other similar intensive land uses, shall require a soils report based on an on-site investigation and be prepared by state-certified professionals. Certified persons may include Maine Certified Soil Scientists, Maine Registered Professional Engineers, Maine State Certified Geologists and other persons who have training and experience in the recognition and evaluation of soil properties. The report shall be based upon the analysis of the characteristics of the soil and surrounding land and water areas, maximum ground water elevation, presence of ledge, drainage conditions, and other pertinent data which the evaluator deems appropriate. The soils report shall include recommendations for a proposed use to counteract soil limitations where they exist.

#### S. 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.

**SECTION 16. ADMINISTRATION**

**A. Administering Bodies and Agents**

1. Code Enforcement Officer:  
A Code Enforcement Officer shall be appointed or reappointed annually by July 1st.
2. Board of Appeals:  
A Board of Appeals shall be created in accordance with the provisions of M.R.S.A., Title 30-A Section 2691.
3. Planning Board:  
A Planning Board was created on July 01, 1974 in accordance with the provisions of State law.

**B. Permits Required**

After the effective date of this Ordinance no person shall, without first obtaining a permit, engage in any activity or use of land or structure requiring a permit in the district in which such activity or use would occur; or expand, change, or replace an existing use or structure; or renew a discontinued non-conforming use.

**C. Permit Application**

1. Every applicant for a permit shall submit a written application, including a scaled site plan, on a form provided by the municipality, to the Planning Board.
2. All applications shall be signed by the owner or owners of the property or other person authorizing the work, certifying that the information in the application is complete and correct. If the person signing the application is not the owner or lessee of the property then that person shall submit a letter of authorization from the owner or lessee.
3. All applications shall be dated, and the Planning Board shall note upon each application the date and time of its receipt.
4. A valid plumbing permit or a completed application for a plumbing 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.

D. Procedure for Administering Permits

Within 35 days of receiving a written application, the Planning Board shall notify the applicant in writing either that the application is a complete application, or, if the application is incomplete, that specified additional material is needed to make the application complete. The Planning Board shall approve, approve with conditions, or deny all permit applications in writing within 35 days of receiving a completed application. However, if the Planning Board has a waiting list of applications, a decision on the application shall occur within 35 days after the first available date on the Planning Board's agenda following receipt of the completed application, or within 35 days of the public hearing, if one is held. Permits shall be approved if the proposed use or structure is found to be in conformance with the purposes and provisions of this Ordinance.

The applicant shall have the burden of proving that the proposed land use activity is in conformity with the purposes and provisions of this Ordinance.

After the submission of a complete application to the Planning Board, the 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:

1. Will maintain safe and healthful conditions;
2. Will not result in water pollution, erosion, or sedimentation of surface waters;
3. Will adequately provide for the disposal of all wastewater;
4. Will not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat;
5. Will conserve shore cover and visual, as well as actual, points of access to inland and coastal waters;
6. Will avoid problems associated with flood plain development and use; and
7. Is in conformance with the provisions of Section 15. Land Use Standards.

If a permit is either denied or approved with conditions, the reasons as well as 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 any State law which the municipality is responsible for enforcing.

\* Insert E. Special Exceptions. *See Amendment: 08/09/04*

E. **Special Exceptions.** In addition to the criteria specified in Section 16.D. above, 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) There is no location on the property, other than a location within the Resource Protection District, where the structure can be built.
- (2) The lot on which the structure is proposed is undeveloped and was established and recorded in the registry of deeds of the county in which the lot is located before the adoption of the Resource Protection District.
- (3) The proposed location of all buildings, sewage disposal systems and other improvements are:
  - (a) Located on natural ground slopes of less than 20%; and
  - (b) Located outside the floodway of the 100-year floodplain 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 100-year floodplain elevation; and the development is otherwise in compliance with any applicable municipal floodplain ordinance.

If the floodway is not shown on the Federal Emergency Management Agency Maps, it is deemed to be 1/2 the width of the 100-year floodplain.

- (4) The total ground-floor area of all principal and accessory structures is limited to a maximum of 1,500 square feet.
- (5) All structures, except functionally water-dependent structures, are set back from the normal high-water line or upland edge of a wetland to the greatest practical extent, but not less than 75 feet. 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 floodplain, and its proximity to moderate-value and high-value wetlands.

F. ~~X~~ Expiration of Permit

Following the issuance of a permit, if no substantial start is made in construction or in the use of the property within one year of the date of the permit, the permit shall lapse and become void.

*See Amendment: 08-09-04*

G. ~~X~~. Installation of Public Utility Service

No public utility company of any kind may 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. Following installation of service, the company or district shall forward the written authorization to the Planning Board, indicating that installation has been completed.

H. ~~X~~. Appeals

1. Powers and Duties of the Board of Appeals

The Board of Appeals shall have the following powers:

- a. Administrative Appeals: To hear and decide appeals where it is alleged that there is an error in any order, requirement, decision, or determination made by, or failure to act by, the Code Enforcement Officer or Planning Board in the enforcement or administration of this Ordinance.
- b. Variance Appeals: To authorize variances upon appeal, within the limitations set forth in this Ordinance.

2. Variance Appeals

Variances may be permitted 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 shall not grant a variance unless it finds that:
  - (1) 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
  - (2) The strict application of the terms of this Ordinance would result in undue hardship.

The term "undue hardship" shall mean:

- (i) That the land in question cannot yield a reasonable return unless a variance is granted;
- (ii) That the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;
- (iii) That the granting of a variance will not alter the essential character of the locality; and

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- (iv) That the hardship is not the result of action taken by the applicant or a prior owner.
- d. The Board of Appeals shall limit any variances granted as strictly as possible in order to insure 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.
- e. A copy of all variances granted by the Board of Appeals shall be submitted to the Dept. of Environmental Protection within fourteen (14) days of the decision.

### 3. Appeal Procedure

#### a. Making an Appeal

- (1) 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 appeal shall be taken within thirty (30) days of the date of the decision appealed from, and not otherwise, except that the Board, upon a showing of good cause, may waive the thirty (30) day requirement.
- (2) Such appeal shall be made by filing with the Board of Appeals a written notice of appeal which includes:
  - (i) A concise written statement indicating what relief is requested and why it should be granted.
  - (ii) A sketch drawn to scale showing lot lines, location of existing buildings and structures and other physical features of the lot pertinent to the relief sought.
- (3) Upon being notified of an appeal, the Code Enforcement Officer or Planning Board, as appropriate, shall transmit to the Board of Appeals all of the papers constituting the record of the decision appealed from.
- (4) The Board of Appeals shall hold a public hearing on the appeal within thirty-five (35) days of its receipt of an appeal request.

**b. Decision by Board of Appeals**

- (1) A majority of the board shall constitute a quorum for the purpose of deciding an appeal. A member who abstains shall not be counted in determining whether a quorum exists.
- (2) The concurring vote of a majority of the members of the Board of Appeals present and voting shall be necessary to reverse an order, requirement, decision, or determination of the Code Enforcement Officer or Planning Board, or to decide in favor of the applicant on any matter on which it is required to decide under this Ordinance, or to affect any variation in the application of this Ordinance from its stated terms. The board may reverse the decision, or failure to act, of the Code Enforcement Officer or Planning Board only upon a finding that the decision, or failure to act, was clearly contrary to specific provisions of this Ordinance.
- (3) The person filing the appeal shall have the burden of proof.
- (4) The Board shall decide all appeals within thirty-five (35) days after the close of the hearing, and shall issue a written decision on all appeals.
- (5) All decisions shall become a part of the record and shall include a statement of findings and conclusions as well as the reasons or basis therefor, and the appropriate order, relief or denial thereof.

**4. Appeals to Superior Court**

Any aggrieved party who participated as a party during the proceedings before the Board of Appeals may take an appeal to Superior Court in accordance with State laws within thirty (30) days from the date of any decision of the Board of Appeals.

**5. Reconsideration**

The Board of Appeals may reconsider any decision within thirty (30) days of its prior decision. The Board may conduct additional hearings and receive additional evidence and testimony.



~~I.E.~~ 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 Planning Board and be maintained as a permanent record.
- b. The Code Enforcement Officer shall conduct on-site inspections to insure 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. On an bi-annual basis, a summary of this record shall be submitted by March 1 (one) to the Director of the Bureau of Land Quality Control within the Dept. of Environmental Protection.

3. Legal Actions

When the above action does not result in the correction or abatement of the violation or nuisance condition, the selectmen, upon notice from the Code Enforcement Officer, are hereby directed to institute any and all actions and proceedings, wither 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 Whiting. 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 any activity in violation of this Ordinance shall be penalized in accordance with Title 30-A, Maine Revised Statutes Annotated, Subsection 4452.