

2015

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TOWN OF CHERRYFIELD

LAND USE ORDINANCE

ENACTED AT THE ANNUAL TOWN MEETING

MARCH 12, 2007

REVISED AND APPROVED MARCH 10, 2008

MINOR WORDING CHANGES APRIL 2009

REVISED AND APPROVED MARCH 8, 2010

REVISED AND APPROVED MARCH 12, 2012

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Building and Land Use Ordinance of the Town of Cherryfield

Section 1. General

A. Title

This ordinance will be known and cited as the Land Use Ordinance of the Town of Cherryfield, Maine, and will be referred to herein as "this Ordinance."

B. Authority

This Ordinance is adopted pursuant to the enabling provisions of Article VIII, Part 2, Section 1 of the Maine Constitution, the provisions of Title 30-A, MRSA Section 3001 (Home Rule), and the State's Comprehensive Planning and Land Use Regulation Act, Title 30-A, MRSA, Sections 4312 *et seq.*

C. Purpose

The purpose of this Ordinance is to implement the Land Use provisions of the Comprehensive Plan of December 2003 as amended after State Planning Office review and adopted at Town Meeting, March 2003, the provisions therein being:

1. To protect and maintain the historic character of the Town.
2. To protect the socio/economic stability of the Town by creating a review process that will ensure that no project will create an unduly adverse impact on community values, services and facilities.
3. To give the people of the Town the opportunity to hear about and comment upon new uses of the land and the building thereon before such new uses occur.
4. To protect landowners in the Town from new uses of land or buildings that would make their own property less desirable.
5. To insure the orderly and beneficial development of the Town by designating general areas of appropriate location and size to accommodate anticipated growth and future development, these areas being: the Historic Village District (HV), a Mixed Use District (MU), a Future/Potential Industrial District (I) and a Rural District (R). This Ordinance is intended to encourage growth in the identified growth areas of the Town (HV, MU & I) and to limit growth in the Rural District (R). This Ordinance is further intended to attract, enhance and support existing and future development while minimizing negative impacts of non-compatible uses by identifying appropriate areas for commercial and industrial development thereby reducing the likelihood of future strip development and resistance to new projects.
6. To create commercial, home occupation and residential performance standards that will ensure compatibility within The Historic Village.

7. To promote the health, safety and general welfare of the residents of the community, including but not limited to traffic safety and safety from fire, flood and other elements.
8. To protect and conserve natural resources, including but not limited to aquifers and existing fish, waterfowl/wading bird habitats and deer wintering areas within the Town and those shared with neighboring towns.
9. To protect known and potential areas of archeological and historic significance.

To encourage the preservation of open space by requiring that major new residential developments provide recreational and open space areas in their plans.

D. Applicability

The provisions of this Ordinance shall govern all land and all structures within the boundaries of the Town of Cherryfield, exclusive of the land and water area subject to the Town's Shoreland Zoning Ordinance.

E. 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. This Ordinance supersedes and replaces the Building Permit Ordinance of the Town of Cherryfield, which became effective on March 13, 1989 and the revisions of March 14, 1994, May 4, 1995, and March 10, 1997.

F. Validity and 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 this Ordinance.

G. Effective Date

The effective date of this Ordinance shall be March 12, 2007.

H. Amendments

This Ordinance may be amended by majority vote of the Town Meeting of Cherryfield.

Section 2. Nonconformance

A. Purpose

It is the intent of these provisions to promote land use conformities, except that nonconforming conditions that legally existed before the effective date of this Ordinance or

any amendment thereto, shall be allowed to continue subject to the requirements set forth in this section.

B. General Requirements

- 1. Transfer of Ownership:** Nonconforming structures, lots, and uses may be transferred, and the new owner may continue the nonconforming use or continue to use the nonconforming structure or lot, subject to the provisions of this Ordinance.
- 2. Repair and Maintenance:** This Ordinance allows, without a permit pursuant to this Ordinance, the normal upkeep and maintenance of nonconforming uses and structures including repairs or renovations which do not involve expansion of the nonconforming use or structure, and such other changes in a nonconforming use or structure as Federal, State, or local building and safety codes may require.

C. Nonconforming Structures

- 1. Expansions:** A nonconforming 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.
 - a. Foundations:** 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 and other dimensional requirements are 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 existing dimensions of the structure; and that the foundation does not cause the structure to be elevated by more than three (3) additional feet.
 - b. Lot Lines:** No structure which is less than the required setback from a property line or the normal high-water line of a water body, tributary stream, or upland edge of a wetland shall be expanded toward the property line or the water body, tributary stream or wetland.
- 2. Relocation:** A nonconforming 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 or other dimensional 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 nonconforming.

In determining whether the building relocation meets the setback or other dimensional requirements to the greatest practical extent, the Planning Board shall base its decision on the size of the lot, the slope of the land, the potential for soil erosion, the location of the critical natural resources, 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.

3. **Reconstruction or Replacement:** Any nonconforming 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, or from the property line, or which otherwise fails to meet the dimensional requirements of this Ordinance, 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 setback or other dimensional 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 reconstructed or replaced so as to increase its non-conformity.

Any nonconforming 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 setbacks 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.

D. Nonconforming Uses

1. **Expansions:** Expansions of nonconforming uses are prohibited, except that nonconforming uses may, after obtaining a permit from the Planning Board, be expanded within residential structures legally existing as of the effective date of this Ordinance, or within expansions of such structures, or on the effective date of a subsequent amendment that causes such use to be nonconforming.
2. **Resumption Prohibited:** A lot, building or structure in or on which a nonconforming use is discontinued for a period exceeding one year, or which is superseded by a conforming use, may not again be devoted to a nonconforming use except that the Planning Board may, for good cause shown by the applicant, grant up to a one year extension to that time period. 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 nonconforming use may be changed to another nonconforming use provided that the Planning Board finds after receiving a written application, that the proposed use is equally or more appropriate to the district than the existing nonconforming use, and that the proposed use will have no greater adverse impact on adjacent properties than the former use. The determination of appropriateness shall be based on the probable changes in traffic (volume and type), parking, noise, potential for litter, wastes or by-products, fumes, odors, or other nuisances likely to result

from such change of use. The performance standards of this Ordinance shall apply to such requests to establish new nonconforming uses.

E. Nonconforming Lots

1. **Nonconforming Lots:** A vacant, nonconforming lot of record legally existing 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. If more than one residential dwelling unit or other use is built, located or created on a nonconforming lot of record, the minimum lot size requirement of the District in which it is located shall be met for each residential dwelling unit and the frontage requirements of the District shall be met.
2. **Contiguous Built Lots:** If two or more contiguous lots or parcels are in the same ownership of record at the time of adoption or amendment 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 nonconforming lots may be conveyed separately or together, provided that the lots meet the minimum square footage of the district in which they are located and provided further that all such lots meet the requirements of the State Subsurface Wastewater Disposal Rules.

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 as 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, at least one of which is nonconforming, owned by the same person or persons on the effective date of this Ordinance 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 100 feet of road frontage and at least 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 such that each new lot contains at least 100 feet of road frontage and 20,000 square feet of lot area.

F. Vested Rights

Nonconforming use rights cannot arise by the mere filing of a notice of intent to build, an application for building permits, or an application for required State permits and approvals. Such rights usually arise when actual substantial construction has begun, or, in the case of pending applications, when the substantive review process to determine compliance with substantive performance standards on a complete application commences. Such construction must be legal at the time it is commenced and the owner must be in possession of and in compliance with all validly issued permits, both State and local.

Section 3. Land Use District Requirements

A. Purpose

The purpose of these district requirements is to implement the Town's Comprehensive Plan and to provide for orderly growth and development.

B. Boundaries

The location and boundaries of the land use districts are established as shown on the "Town of Cherryfield Land Use Map," entitled "Official Land Use Map of Cherryfield, Maine", dated March 12, 2007, and on file in the office of the Town Clerk. The Official Land Use Map is hereby made part of and incorporated into this Ordinance.

Unless otherwise set forth on the Official Land Use Map, district boundary lines are tax map lines, property lines, the center lines of roads, streets, and rights of way. Boundaries indicated as being parallel to or extensions of features listed above shall be so construed. Distances not specifically indicated on the Official Land Use Map shall be determined by the scale of the Map. Where uncertainty exists as to the exact location of the district boundary lines, the Board of Appeals shall be the final authority as to location.

Exclusive of the 250-foot Shoreland Zone, where a Land Use District Boundary line divides a lot or parcel of land of the same ownership of record at the time such line is established by adoption or amendment of this Ordinance, the regulations applicable to the less restricted portion of the lot may be extended not more than 30 feet into the more restricted portion of the lot.

A copy of the Official Land Use Map of Cherryfield is attached (As revised and approved at Cherryfield Town Meeting, March 10, 2008)

C. Land Use Districts

1. **The Historic Village (HV)** – This Ordinance hereby establishes an area within the Mixed Use District to be known as The Historic Village. The purpose of establishing The Historic Village is to protect that part of the Town of Cherryfield identified by the Maine Historic Preservation Commission in 1990 as the Cherryfield Historic District, an area of approximately 75 acres lying on both sides of the Narraguagus River and comprised of a collection of 52 contributing and substantially intact residential and commercial buildings that clearly depict the nineteenth century development of a

riverside community. The location and boundaries of The Historic Village are established as shown on the "Official Town of Cherryfield Land Use Map," which is incorporated herein by reference and made a part of this Ordinance.

2. **The Mixed Use District (MU)** – This Ordinance hereby establishes an area called the Mixed Use District, the location and boundaries of which are established as shown on the "Official Town of Cherryfield Land Use Map," and are part of this Ordinance. The purpose of the Mixed Use District is to encourage efficient land development patterns and to provide for anticipated growth and development by allowing a range of residential and compatible commercial uses within a concentrated area consistent with the concept of a downtown thereby discouraging sprawl, preserving open spaces and facilitating the delivery of town services.
3. **The Future Industrial District (I)** – This Ordinance hereby establishes an area called the Future Industrial District, the location and floating boundaries of which are sited on the "Official Town of Cherryfield Land Use Map" and are part of this Ordinance. The purpose of the Industrial District is to provide one area in which it would be considered appropriate to site industrial, manufacturing and commercial activity not compatible with a residential area. Criteria for the development of this district are established in the Comprehensive Plan and will include a well defined boundary with two or fewer access points on to Rt. 193, will be on the east side of Rt. 193, will be closely tied to regional transportation enhancements, and boundaries and uses will be identified through board consultation with members of the public, any existing Economic Development Committees of the Town, biologists with LURC and Inland Fish and Wildlife (or their successor agencies) and Maine Department of Transportation.
4. **The Rural District (R)** - This Ordinance hereby establishes an area called the Rural District, the location and boundaries of which are established as shown on the "Official Town of Cherryfield Land Use Map," and are part of this Ordinance. The purpose of the Rural District is to provide protection to rural resources from incompatible development by restricting the nature and extent of development in the Rural District.

D. Land Uses

Land uses permitted in the Historic Village, the Mixed Use District, the Industrial District and the Rural District, in conformance with the performance standards of this Ordinance, are shown in the following tables.

Key:	Y	=	Yes, permitted without a permit
	BP	=	Permitted with building permit only
	SPR	=	Permitted, subject to site plan review and the issuance of a building permit
	N	=	No, not permitted

Table of Land Uses				
Residential Use/Structure	Historic Village	Mixed Use	Industrial	Rural
Accessory Structure less than 100 sq. ft.	Y	Y	Y	Y
Accessory Structure more than 100 sq. ft.	BP	BP	BP	BP
Change of Use	SPR	SPR	SPR	SPR
Single-Family Dwelling	BP	BP	BP	BP
Mobile Home	N	BP	BP	BP
Duplex	BP	BP	BP	BP
Multi-Family Dwelling	SPR	SPR	SPR	N
Home Occupation	SPR	SPR	SPR	SPR
Manufactured Housing*	BP	BP	BP	BP
Mobile Home Park	N	SPR	SPR	N
Congregate Housing	N	SPR	N	N
Subdivision**	SPR	SPR	SPR	SPR
Residential Back Lot Development	BP	BP	BP	BP

*Manufactured Housing within the Historic Village shall be restricted to buildings compatible in style with those historic buildings found within the Historic District.

**See Subdivision Ordinance

Commercial Use/Structure	Historic Village	Mixed Use	Industrial	Rural
Accessory Structure	SPR	SPR	SPR	SPR
Change of Use	SPR	SPR	SPR	SPR
Amusement Facility, Comm. Recreation	SPR	SPR	SPR	SPR
Automobile Graveyard/Junkyard	N	N	SPR	N
Automobile Repair and/or Sales	N	SPR	SPR	SPR
Bed & Breakfast	SPR	SPR	SPR	SPR
Boarding/Lodging	SPR	SPR	SPR	SPR
Boat Building/Repair	N	SPR	SPR	SPR
Building Materials, Retail Sales	N	SPR	SPR	SPR
Commercial School	SPR	SPR	SPR	N
Firewood Processing	N	SPR	SPR	SPR
Fisheries, Processing/Storage	N	SPR	SPR	SPR
Gasoline Service Station	SPR	SPR	SPR	N
Hotel/Motel	SPR	SPR	SPR	N
Indoor Theatre	N	SPR	SPR	SPR
Kennel/Stable/Veterinary Hospital	N	SPR	SPR	SPR
Convenience Store	SPR	SPR	SPR	N

Table of Land Uses, cont'd				
Off-street Parking/Loading Facilities	N	SPR	SPR	N
Offices, Business/Professional	SPR	SPR	SPR	N
Publishing/Printing	SPR	SPR	SPR	SPR
Tele-Communications Towers	N	SPR	SPR	SPR
Restaurant	SPR	SPR	SPR	SPR
Retail Business	SPR	SPR	SPR	SPR
Service Business	SPR	SPR	SPR	SPR
Shopping Center	N	SPR	SPR	N
Well Drilling –High Volume Commercial	N	SPR	SPR	SPR
Wholesale Business	N	SPR	SPR	SPR
Industrial Use/Structure				
Accessory Structure	SPR	SPP	SPP	SPR
Change of Use	SPR	SPR	SPR	SPR
Airport/Air Transportation Dependent Use	N	SPR	SPR	N
Bulk Oil/Gas Terminal	N	SPR	SPR	N
Demolition/Waste Disposal	N	N	SPR	SPR
Recycling Operation	N	SPR	SPR	SPR
Sawmill	N	SPR	SPR	SPR
Transportation/Communications Facility	N	SPR	SPR	N
Trucking/Distribution Terminal	N	SPR	SPR	N
Warehousing/Storage Buildings	N	SPR	SPR	SPR
Education, Institutional, Public Use/Structure				
Accessory Structure	SPR	SPR	SPR	SPR
Change of Use	SPR	SPR	SPR	SPR
Church/Synagogue/Mosque/Parish House	SPR	SPR	SPR	N
Civic/Convention Center	N	SPR	SPR	N
Community Center/Club	SPR	SPR	SPR	SPR
Day Care	SPR	SPR	SPR	N
Essential Services	Y	Y	Y	Y
Fire/Police Stations	N	SPR	SPR	N
Government Office	SPR	SPR	SPR	N
Group Home/Hospice/Nursing Home	SPR	SPR	SPR	N
Hospital/Medical Treatment Facilities	N	SPR	SPR	N
General Pharmacy	SPR	SPR	N	N
Sole-Source Pharmacy/Drug Dispensary	N	SPR	SPR	SPR
Museum/Library	SPR	SPR	SPR	N
Public/Private School	SPR	SPR	SPR	SPR
Public Utility Facility	N	SPR	SPR	SPR
Outdoor/Resource-based Use/Structure	Historic Village	Mixed Use	Industrial	Rural
Accessory Structure	SPR	SPR	SPR	SPR
Change of Use	SPR	SPR	SPR	SPR
Agriculture	Y	Y	Y	Y
Animal Breeding or Care	N	SPR	BP	BP
Campground	N	SPR	SPR	SPR
Cemetery	SPR	SPR	SPR	SPR
Extractive Industry	N	N	SPR	SPR

Table of Land Uses, cont'd				
Outdoor/Resource-based Use/Structure	Historic Village	Mixed Use	Industrial	Rural
Farm Stand-larger than 100 sq ft	SPR	BP	BP	BP
Forestry	N	Y	Y	Y
Golf Course (excluding miniature golf)	N	SPR	SPR	SPR
Parks and Recreation	Y	Y	Y	Y
Noncommercial Recreational Uses:	Y	Y	Y	Y
Primitive recreation uses, including fishing, hiking, hunting, wildlife study and photography, wild crop harvesting, trapping, horseback riding, canoe portaging, cross country skiing and snowshoeing				

E. Dimensional Requirements

Lots in the Historic Village, Mixed Use, Industrial and Rural Districts shall meet or exceed the following minimum requirements (additional area may be required by other provisions of this Ordinance).

Table of Land Dimensions				
Dimensions	Historic Village	Mixed Use	Industrial	Rural
Minimum land area per dwelling unit in square feet	20,000	20,000	20,000	40,000
Minimum frontage (feet) Town or State owned roads	50	75	200	200
Minimum Setbacks (feet)				
Front setback (feet)	25	25	100	25
Side setback (feet)	10	15	50	15
Rear setback (feet)	15	15	25	50
Maximum lot coverage (%)	50%	50%	75%	50%
Height Limits (feet)	50	50	50	50

F. Notes to Table

1. Lot Size Determination

All lots created for sale to the Public, or for residential or commercial development, after the effective date of this Ordinance, shall comply with the minimum lot size requirements for each of the districts specified herein (refer to table above, and to Future Land Use Map following this ordinance).

Land below the maximum high water line of a water body, tributary stream, or upland edge of a wetland shall not be included when calculating minimum lot size.

2. Multiple Structures

If more than one principal building is constructed on a single parcel of land, the “minimum land area per dwelling” requirement shall apply, and all structures shall meet the front, side, and rear setback requirements. If more than one non-residential structure is constructed on a lot, the minimum land area per dwelling requirement shall be met for each additional structure, even if such structures are connected.

3. Required Frontage

See Table or Land Use Dimensions.

4. Cul-de-Sac Frontage

New building lots located at the end of cul-de-sacs or along curves in a street where the radius of the curve at the front lot line is less than 90 feet, may be designed so that they have a minimum of 35 feet of street frontage along the front lot line, so long as lot width at the location where the principal building is to be constructed is at least equal to the distance normally required for street frontage in that district. The lot width shall be measured along a line that is parallel to a tangent of the mid-point of the curve.

5. Setback Measurements

The front setback along a public road shall be measured from the edge of the right-of-way line to the nearest part of the building. All side and rear setbacks shall be measured from the property line to the nearest part of the building.

6. Side Setbacks

The minimum side setback may be reduced by two-thirds for nonconforming lots of record which were created and built upon prior to the effective date of this Ordinance.

7. Driveways, Parking Areas

Driveways and parking areas may be located within any required setback area provided that they shall not be located within fifteen (15) feet of the side or rear lot lines, unless a written agreement is signed by the abutters. Off street parking will be provided in accordance with the following standards: Dwellings – at least 2 spaces per unit; Hotels, Motels, Boarding Houses – 1 space per guest room; Restaurants, Clubs, Recreation facilities - 1 space per 4 seats; Stores and Offices – 1 space per each 300 square feet of floor area. In addition, all commercial buildings will be required to provide 1 parking space for each full-time employee; Buildings not listed – spaces shall be provided as for the most similar building which is listed.

8. Accessory Structures

When located beyond the rear of the principal building, accessory buildings no larger than 150 square feet in floor area may be located within the required side or rear setbacks provided that no structure shall be located within six (6) feet from a side or rear lot line.

9. Height of Structures

All principal and accessory structures shall not exceed fifty (50) feet in height. All expansions that increase the footprint of an existing structure shall not exceed fifty feet in height. The height of a structure shall be determined by using the vertical distance, as measured from halfway between the mean original grade at the downhill side of the structure and the mean original grade at the uphill side of the structure to the highest point of the structure, excluding chimneys, steeples, antennas, and cupolas.

This subsection does NOT apply to structures having no floor area, such as transmission towers, wind turbines, communication antennas and similar structures.

10. Corner Lots

The front setback requirement shall be observed along all roads abutting the lot.

11. Corner Lot Obstructions

All corner lots shall be kept free from visual obstruction for a distance of twenty-five (25) feet measured along the street lines.

12. Structures on Abutting Lots

Where a proposed structure would be abutted on both sides by existing structures, either on the same lot or adjoining lots, whose front setbacks are less than the required setback, the setback of the proposed structure may be reduced to that of the structure with the greatest front setback.

Section 4. Performance Standards

A. General Standards

1. Land Use Requirements

Except as hereinafter specified, no structure or land shall hereafter be used or occupied, and no structure or part thereof shall be erected, constructed, expanded, moved, altered, replaced, and no new lot shall be created except in conformity with all the regulations herein specified for the Town district in which it is located, unless a variance is granted by the Board of Appeals. Penalties can be assessed by the Code Enforcement Officer for violations of this Ordinance's provisions (see pg. 35)

2. Access to Property – Public or Private Road Access

Each property shall be provided with a right-of-way provided by a permanent, recorded easement.

3. Entrances to Roads and Streets

A Cherryfield Entry Permit is required from the Road Commissioner prior to establishing an entry to a town-maintained road or street, except in cases where a State Entry Permit is required for State Roads. The following are minimum standards for new or replacement driveway entrances:

- a. The culvert shall be supplied and installed by the applicant. A new culvert is preferred, but used is permissible if authorized by the Road Commissioner.
- b. Culvert diameter: minimum of 15 inches (12 inches if there is ledge, although with smaller size, freezing is a strong concern). Final size is determined by the amount of runoff in a given location.
- c. Length: minimum of 20 feet with a preference for 30 feet to prevent collapsing of the ends. A maximum length of 50 feet is allowed.
- d. Materials: Aluminum Clad Corrugated Metal Pipe or plastic corrugated pipe is permitted. Plastic (HDPE) corrugated pipe must meet or exceed AASHTO specification M294. For 24-inch and larger diameters, 14-gauge material is required. Below 24 inches, 16-gauge is required. The use of bituminous-coated corrugated metal pipe is prohibited.
- e. Design Standards: Where the driveway is pitched upward from the road, the shoulder grade should be maintained as far as practical. The objective is to prevent water flowing down the driveway and onto the road where icing is a problem in winter. Where maintaining shoulder grade is not practical, some other means of diverting water flow must be provided. Where the driveway is pitched upward or downward from the roadway, the driveway must be engineered so that a vehicle can come to a full stop before entering the roadway. This is to insure safety in bad weather conditions.
- f. The driveway will be located so as to provide the greatest length of unobstructed sight line in both directions for the driver entering the roadway.
- g. Each lot shall be provided with a driveway at least 10 feet in width. The edge of all driveways must be set back fifteen feet from side and rear lot lines. Driveway setbacks may be less than fifteen feet with the written agreement of all landowners abutting the proposed driveway.

4. Buffer Strips

The purpose of buffer strips is to separate and partially obstruct the view of one or more land uses or properties from one another. In addition, buffer strips can be used to minimize the noise of different land uses. No non-residential use may be erected or any use permitted unless a buffer strip is provided and maintained between any adjoining residential district or use and the non-residential structure or use.

a. Natural Features

The side and rear yards of non-residential facilities abutting residential districts shall attempt to maintain the district boundary in a natural state to provide a buffer of at least the setback distance.

b. Landscaping

When natural features such as slope, gullies, stands of trees, shrubbery or rock outcrops do not exist or are insufficient to provide a buffer, the developer shall provide a landscaped area at least thirty (30) feet wide. Where such landscaping is not feasible, as determined by the Code Enforcement Officer, the developer shall provide a fence at least six (6) feet high between the adjoining residential district and the non-residential use.

c. Effect of Buffering

Natural features, landscaping, or, if necessary, fencing or screening, should be expected to obstruct the view of the proposed development from abutting properties.

d. Fencing and Screening

Fencing and screening, when necessary, shall be properly maintained and located or constructed in such a manner that it can be maintained from the developer's property.

5. Explosive Materials

No flammable or explosive liquids, solids or gases shall be stored in bulk (more than 500 gallons) above ground unless they are located at least seventy-five (75) feet from any lot line, or forty (40) feet for underground storage, and greater than one thousand (1,000) feet from public water supply. All materials shall be stored in a manner and location which is in compliance with appropriate rules and regulations of the Maine Department of Public Safety and other appropriate Federal, State and local regulations.

6. Sanitary Provisions

- a.** The approval of building permit applications shall be subject to presentation of a completed site evaluation form (HHE-200) from the Maine Department of Human Services Bureau of Health Engineering that provides evidence of adequate soil conditions for subsurface wastewater disposal.
- b.** When two or more lots or buildings in different ownership share a common subsurface disposal system, the system shall be owned and maintained in common by a written agreement amongst the owners.
- c.** Industrial or commercial wastes shall require pretreatment at the industrial or commercial site. Pretreatment may include, but not be limited to, screening, grinding, sedimentation, pH adjustment, surface skimming, chemical oxidation, reduction and dilution. The disposal of industrial or commercial waste waters shall comply with the laws of the State of Maine concerning water pollution.

7. Storage of Materials

All materials stored outdoors shall be stored in such a manner as to prevent the breeding and harboring of insects, rats or other vermin. This shall be accomplished by enclosures in containers, raising materials above ground, separation of materials, prevention of stagnant water, extermination procedures or other means.

8. Water Quality Protection

No materials of any kind shall be permanently or temporarily placed or deposited directly into or in the flood plains of any river or stream, lake, pond or tidal waters or on the ice thereof where such material may fall or otherwise find its way into said water courses or tidal waters, nor shall such material be placed or deposited directly in pits, wells or on the ground surface except in conformity with applicable local, State, and Federal laws.

B. Specific Standards

1. Extractive Activities

Any extractive industry which requires a permit from the Maine Department of Environmental Protection under the Site Location of Development Act shall obtain written approval from the Department of Environmental Protection in addition to approval by the Planning Board under the site plan review procedures of this ordinance. Site plan approval by the Planning Board shall be conditioned upon State approval. In addition:

- a. The Planning Board may require a performance guarantee sufficient to cover the cost of rehabilitation of the site at the conclusion of operations.
- b. A buffer strip of not less than one hundred (100) feet shall be maintained between the location of any extraction of materials and all property lines.
- c. All areas of standing water exceeding two (2) feet in depth shall be entirely enclosed by a fence.
- d. No extraction of materials shall be permitted which creates a slope steeper than two (2) feet horizontal to one (1) foot vertical.
- e. Operation of equipment and extraction of materials from the site shall be permitted only Monday through Friday between the hours of 7:30 a.m. and 5:30 p.m.
- f. Suitable traffic control measures shall be made available by the operator at all access points to public streets. Truck routes shall be restricted to collector and arterial streets unless otherwise specified by the Planning Board. All loads shall be covered or trimmed a minimum of three (3) inches below the edges of the sideboard of truck bodies to prevent spillage of materials being transported.
- g. Upon cessation of the extraction of materials or upon the expiration of the Planning Board approval, the site shall be rehabilitated in accordance with a plan approved by the County Soil Conservation Service and the Planning Board.

2. Home Occupations

- a. Permitted home occupations shall be carried out without altering the residential character of the structure or neighborhood or changing the character of the lot from its principal use as a residence. A home occupation shall be permitted if it complies with all of the requirements of this Section.
- b. A home occupation shall be carried on by permanent residents of the dwelling unit, with not more than two employees who are not residents of the dwelling unit.
- c. The home occupation shall be carried on wholly within the principal or accessory structures. There shall be no outside storage or display of materials or products or equipment or vehicles.
- d. The Performance Standards of this ordinance shall apply (see Section 5.G).
- e. One non-illuminated sign, no larger than six (6) square feet may be erected on the premises.
- f. The sale of products shall be limited to those which are crafted, assembled, or substantially altered on the premises; to catalog items ordered off the premises by customers; and to items which are accessory and incidental to a service which is provided on the premises.

3. Industrial Facilities and Related Uses

- a. All business, service, repair, manufacturing, storage, processing, or display on property abutting or facing a residential use or property shall be conducted wholly with an enclosed building unless screened from the residential area.
- b. Doors, windows, loading docks, and other openings in structures shall be prohibited on sides of the structure adjacent to or across a street from a residential use or property.
- c. All other yards abutting or across a street from a residential use or property shall be continuously maintained in lawn or other landscaping unless screened from the residential use.
- d. Access points from a public road to industrial operations shall be so located as to minimize traffic congestion and to avoid directing traffic onto local access streets of a primarily residential character.
- e. All materials including wastes shall be stored, and all grounds shall be maintained in a manner which will not attract or aid the propagation of insects or rodents or create a health hazard.

4. Recreational Facilities

All recreational facilities shall meet the provisions below:

- a. Adequate off-street parking for the anticipated maximum attendance at any event shall be provided.
- b. Containers and facilities for rubbish collection and removal shall be provided.
- c. Screening, buffer areas, or landscape provisions shall be built, planted, or maintained, according to the "Buffer Zone" standards of this Ordinance, to protect adjacent residences from adverse noise, light, dust, smoke and visual impact.
- d. The proposed use shall not create a traffic hazard.
- e. Adequate sanitary facilities shall be provided.

Section 5. Site Plan Review

A. Purposes

The purposes of site plan review are to:

- 1. Provide a level of municipal review that would not otherwise occur for projects that could potentially impact the community.
- 2. Conserve the Town's natural beauty and historic character by ensuring that structures, signs and other improvements are sited and developed with due regard to the aesthetic qualities of the natural terrain and that proper attention is given to exterior appearances of structures, signs, and other improvements; and
- 3. Sustain the comfort, health, tranquility and contentment of residents, and thus to promote and protect the health, welfare and safety of the Town.

B. Applicability

Site Plan approval by the Planning Board in conformity with the criteria and standards of this Section, shall be required for uses in each district which specifically require site plan approval, regardless of size, and any change of use. This Ordinance shall apply to the construction or establishment of multi-family dwellings and non-residential uses.

C. Administration

- 1. **Pre-application Meeting.** Applicants are encouraged to schedule a meeting with the Planning Board, prior to a formal submission, to discuss their plans and gain an understanding of the Site Inventory Analysis review procedures, requirements and standards. The Planning Board may modify or waive specific application submission requirements when an applicant can show that such requirements are not relevant to the proposed project and the Board determines that because of the size of the project or circumstances of the site such requirements would not be applicable or would be an unnecessary burden upon the applicant and that such modification or waiver would not adversely affect the abutting landowners or the general health, safety and welfare of the Town.

2. **Applications in Writing.** All applications for site plan approval shall be made in writing to the Planning Board and/or Code Enforcement Officer (CEO) on the forms provided for this purpose. The Planning Board and/or CEO shall make an initial determination of the completeness of the application within thirty (30) days of its receipt. All applications shall be made by the owner of the property or his agent, as designated in writing by the owner.
3. **Fees.** An application for site plan approval shall be accompanied by an appropriate fee. A copy of the Schedule of Fees is available at the Town Office. This application fee shall be made by check payable to the Town of Cherryfield. This fee shall not be refundable.
4. **Planning Board Agenda.** The application for site plan review, together with the documentation required in these regulations, shall be placed on the Planning Board's agenda for consideration within thirty (30) days of its receipt. However, any application which the Planning Board and/or CEO initially determines to be incomplete shall not be placed on the agenda, but shall be returned to the applicant by the Planning Board and/or CEO with an indication of the additional information required. When this additional information has been supplied, the Planning Board and/or CEO shall place the application on the Planning Board's agenda. The Planning Board shall then make a final determination of the completeness of the application. Within sixty (60) days of the receipt of a completed application, as determined by the Planning Board and/or CEO, the Board shall act to approve or disapprove the site plan as submitted or amended.
5. **Disapproval.** If the Board shall vote to disapprove an application, the owner or his authorized agent shall be notified in writing and the specific causes of disapproval shall be noted.
6. **Approval.** If the Board shall vote to approve the site plan application, the Planning Board and/or CEO shall issue a building permit, provided that all other requirements of this Ordinance are met.

D. Professional Review

1. **Professional Services.** The Planning Board may require that an expert consultant or consultants review one or more submissions of an application and report as to compliance or non-compliance with this Ordinance, and advise if necessary, of procedures which will result in compliance. The consultant shall estimate the cost of such review and the applicant shall deposit with the Town the full estimated cost, which the Town shall place in an escrow account. The Town shall pay the consultant from the escrow account and reimburse the applicant if funds remain after payments are completed. The consultants shall be fully qualified to provide the required information.
2. **Additional Studies.** The Planning Board may require the applicant to undertake any study which it deems reasonable and necessary to insure that the requirements of the Ordinance are met. The costs of all such studies shall be borne by the applicant.
3. **Public Review.** Prior to taking final action on any site plan review application, the Planning Board may hold a hearing to afford the public the opportunity to comment on the application.

4. **Notice to Abutters.** Abutting property owners shall be notified by mail, by either the applicant, Planning Board Chair or Town Clerk, of a pending application for site plan review. This notice shall indicate the time, date, and place of Planning Board consideration of the application.
5. **Financial Guarantee.** The Planning Board may require the posting, prior to final approval of any plan, of a bond or escrow agreement in such amount as is approved by the Board as being reasonably necessary to ensure completion of all improvements required as conditions of approval of such plan, in such form as approved by the Board and Town Selectmen. The Town shall have access to the site at all times to review the progress of the work and shall have the authority to review all records and documents related to the project.
6. **Conditions.** The Planning Board may attach reasonable conditions to site plan approvals to ensure conformity with the standards and criteria of this Ordinance.
7. **Expiration of Approvals.** All site plan approvals shall expire within one (1) year of the date of issuance unless work thereunder is commenced.

E. Site Inventory and Analysis Review

The site inventory and analysis review shall be informational and shall not result in any formal approval or disapproval of the project by the Board. This review is intended to determine whether this is a major or minor project and to provide a clear understanding of the site and the opportunities and constraints they create for its use and development. The outcome of the review process shall be determination by the Board of the issues and constraints that must be addressed in the formal site plan review application.

The site inventory and analysis submission shall contain, at a minimum, the following:

1. The names and addresses of the owner of record and the applicant.
2. The names and addresses of all consultants working on the project.
3. Five (5) copies of an accurate scale plan of the parcel at a scale of not more than one hundred (100) feet to the inch showing at a minimum:
 - a. The name of the project, north arrow, date and scale;
 - b. The boundaries of the parcel;
 - c. The topography of the site as an appropriate contour interval (2 foot to 5 foot) depending on the nature of the use and character of the site;
 - d. Major natural features of the site including wetlands, streams, ponds, flood plains, groundwater aquifers, significant wildlife habitats or other important natural features;
 - e. Existing restrictions or easements on the site;
 - f. The location and size of existing utilities or improvements servicing the site;

- g. Soils information if on-site sewage disposal is proposed. This information should be detailed enough to allow those portions of the site not suitable for on-site disposal systems to be identified.
- 4. Five (5) copies of a narrative describing the existing conditions of the site, the proposed use and the constraints or opportunities created by the site. This submission should include any traffic studies, utility studies, market studies or other preliminary work that will assist the Planning Board in understanding the site and the proposed use.
- 5. Five copies of a site analysis plan at the same scale as the inventory plan highlighting the opportunities and constraints of the site. This plan should enable the Planning Board to determine which portions of the site are unsuitable for development or use, which portions of the site are unsuitable for on-site sewage disposal if public sewerage is not available, which areas of the site have development limitations (steep slopes, poor soils, wetlands, aquifers, wildlife habitat, scenic areas, flood plains, drainage, etc.) which must be addressed in the development plan, areas where there may be off-site conflicts or concerns (e.g., noise, lighting, traffic, etc.) and areas well suited to the proposed use.
- 6. A summary narrative of the key constraints and opportunities which need to be addressed in the development plan.

F. Site Plan Review Application

Applications for site plan review shall be submitted on application forms provided by the Town. The complete application form, required fees, and the required plans and related information shall be submitted to the Town Office who shall forward it to the Planning Board and/or CEO. The submission shall contain at least the following exhibits and information:

- 1. A fully executed and signed copy of the application for development review.
- 2. One (1) original of all maps and drawings on durable, permanent material.
- 3. Five (5) copies of written materials plus five (5) sets of maps or drawings containing the information listed below. The maps or drawings shall be at a scale sufficient to allow review of the items listed under approved criteria, but in no case shall be more than fifty (50) feet to the inch for that portion of the tract of land being proposed for development.
- 4. **General Information:**
 - a. Name of owner of record and address and applicant's name and address if different.
 - b. The name of the proposed project.
 - c. Names and addresses of all property owners within five (500) feet of the edge of the property line.
 - d. Boundaries of all contiguous property under the control of the owner or applicant regardless of whether all or part is being developed at this time.
 - e. Copy of tax map showing map and lot number of the parcel or parcels.

- f. A copy of the deed to the property, option to purchase the property or other documentation to demonstrate right, title, or interest in the property on the part of the applicant.
- g. The name, registration number and seal of the land surveyor, architect, engineer and/or similar professional who prepared the plan.

5. Existing Conditions:

- a. Zoning district classification of the property and the location of zoning district boundaries if the property is located in two (2) or more zoning districts or abuts a different district.
- b. The bearings and distances of all property lines of the property to be developed and the source of this information.
- c. Location and size of any existing sewer and water mains, culverts and drains on the property to be developed and of any that will serve the project from abutting streets or land.
- d. Location, names, and present widths of existing streets and rights-of-way within or adjacent to the proposed project.
- e. The location, dimensions and ground floor elevations of all existing buildings on the site.
- f. The location and dimensions of existing driveways, streets, parking and loading areas and walkways on the site.
- g. Location of intersecting roads or driveways within two hundred (200) feet of the site.
- h. The location of open drainage courses, wetlands, stands of trees, and other important natural features, with a description of such features to be retained.
- i. The direction of existing surface water drainage across the site.
- j. The location, front view and dimensions of existing signs.
- k. Location and dimensions of any existing easements and copies of existing covenants or deed restrictions.

6. Commercial Development Activity Proposals:

- a. The location of all building setbacks, yards and buffers required by this Ordinance.
- b. The location, dimensions, and ground floor elevations of all proposed buildings on the site.

- c. The location and dimensions of proposed driveways, parking and loading areas, and walkways.
 - d. The location and dimensions of all provisions for water supply and wastewater disposal.
 - e. The direction of proposed surface water drainage across the site.
 - f. Location, front view, and dimensions of proposed signs.
 - g. Location and type of exterior lighting.
 - h. Proposed landscaping and buffering.
 - i. Copies of applicable State approvals and permits, provided however, that the Board may approve development plans subject to the issuance of specified State approvals and permits where it determines that it is not feasible for the applicant to obtain them at the time of development review.
 - j. A schedule of construction, including anticipated beginning and completion dates.
 - k. Space shall be provided on the plan for the signatures of the Planning Board and date together with the following words, "Approved: Town of Cherryfield Planning Board."
7. Applications for all major projects, commercial or residential, shall include the following additional information:
- a. Existing and proposed topography of the site at two (2) foot contour intervals, or such other intervals as the Planning Board may determine.
 - b. A storm water drainage and erosion control program showing:
 - (1) Existing and proposed method of handling storm water run-offs.
 - (2) The direction of flow of the run-off through the use of arrows.
 - (3) The location, elevation, and size of all catch basins, dry wells, drainage ditches, swales, retention basins, and storm sewers.
 - (4) Engineering calculations used to determine drainage requirements based upon the 25-year/24-hour storm frequency, if the project will significantly alter the existing drainage pattern due to such factors as the amount of new impervious surfaces such as paving and building area being proposed.
 - (5) Methods of controlling erosion and sedimentation during and after construction.
 - c. A groundwater impact analysis prepared by a ground-water hydrologist for projects involving common on-site water supply or sewage disposal facilities with a capacity of two thousand (2,000) gallons per day.

- d. A utility plan showing, in addition to provisions for water supply and wastewater disposal, the location and nature of electrical, telephone, and any other utility services to be installed on the site.
- e. A planting schedule keyed to the site plan and indicating the general varieties and sized of trees, shrubs, and other plants to be planted on the site.
- f. A traffic impact analysis demonstrating the impact of the proposed project on the capacity, level of service and safety of adjacent streets.
- g. A professional determination that there is an adequate water supply for this project without depleting or significantly degrading the underlying aquifers.
- h. The location, width, typical cross-section, grades and profiles of all proposed streets and sidewalks.
- i. Construction drawings for streets, sanitary sewers, water and storm drainage systems, designed and prepared by a professional engineer registered in the State of Maine.
- j. The location of any pedestrian ways, lots, easements, open spaces and other areas to be reserved for or dedicated to public use and/or ownership. For any proposed easement, the developer shall submit the proposed easement language with a signed statement certifying that the easement will be executed upon approval of the development. In the case of any streets or other ways dedicated to public ownership, the developer shall submit a signed statement that he will maintain such streets or ways year-round until they are accepted by the Town.
- k. A copy of such covenants or deed restrictions, if any, as are intended to cover all or part of the tract. Such covenants or deed restrictions shall be referenced on the plan.
- l. Written offers of dedication or conveyance to the town or a form satisfactory to the Town Attorney, of all land included in the streets, highways, easements, parks, or other open space dedicated for public use, and copies of agreements or other documents showing the manner in which open spaces, title to which is reserved by the developer, are to be maintained.
- m. If the development is a condominium or a clustered development, evidence that all requirements relative to establishment of a homeowners' association or condominium owners' association have been met. If the development is a clustered development, evidence shall be presented that all other requirements of this ordinance pertained to clustered development have been met. The submission shall include copies of the by-laws of any homeowners' or condominium association charged with maintaining common spaces and lands. Homeowners' associations or condominium documents shall clearly state that the association or condominium shall properly maintain private roadways serving the development after the developer has legally relinquished that responsibility and until such time as the Town may accept them as public ways.
- n. Cost of the proposed development and evidence of financial capacity to complete it. This evidence should be in the form of a letter from a bank or other source of financing

indicating the name of the project, amount of financing proposed, and interest in financing the project.

- o. A narrative and/or plan describing how the proposed development scheme relates to site inventory and analysis.
- p. Analysis of the impact on public safety and services.

G. Criteria and Standards

The following criteria and standards shall be utilized by the Planning Board in reviewing applications for site plan approval. The standards are not intended to discourage creativity, invention and innovation. The Planning Board may waive the criteria presented in this section upon a determination by the Planning Board that the criteria are not applicable to the proposed action or upon a determination by the Planning Board that the application of these criteria are not necessary to carry out the intent of this Ordinance. The Planning Board shall approve the site plan unless the plan does not meet the intent of one or more of the following criteria provided that the criteria are not first waived by the Planning Board.

- 1. Preservation of the Historic Character of the Town.** The project shall protect and maintain the character of the Historic Village (HV).
- 2. Protection of the Socio-Economic Stability of the Town.** The project shall contribute to orderly development and will protect the socio-economic stability of the Town and will not create an unduly adverse impact on community services and facilities such as: fire, police and rescue protection, road maintenance and safety and other public safety functions.
- 3. Preservation of Landscape.** The landscape shall be preserved in its natural state, insofar as practical, by minimizing tree and soil removal, retaining existing vegetation where desirable, and keeping any grade changes in character with the general appearance of neighboring areas. If a site includes a ridge or ridges above the surrounding areas and provides scenic vistas for surrounding areas, special attempts shall be made to preserve the natural environment of the skyline of the ridge. Existing vegetation and buffering landscaping are potential methods of preserving the scenic vistas. Environmentally sensitive areas such as wetlands, steep slopes, flood plains and unique natural features shall be maintained and preserved to the maximum extent. Natural drainage areas shall be preserved to the maximum extent.
- 4. Access to the Site.** Vehicular access to the site shall be on roads which have adequate capacity to accommodate the additional traffic generated by the development. Intersections on major access routes to the site which are functioning at a Level of Service of C or better prior to the development shall function at a minimum at Level of Service C after development. The determination of level of service shall be based on data available from the Maine Department of Transportation Bureau of Planning, Transportation Analysis Section. (Peak-hour Level of Service in MEDOT roads GIS data reflects the estimated peak hour level of service (A-F), based on speed limit, annual average daily traffic (AADT), capacity, access control and urban/rural status.) If any intersection is functioning at a Level of Service D or lower prior to the development, the

project shall not reduce the current level of service. The Planning Board may approve a development not meeting this requirement if the applicant demonstrates that:

- a. A public agency has committed funds to construct the improvements necessary to bring the level of access to this standard, or
 - b. The applicant will assume financial responsibility for the improvements necessary to bring the level of service to this standard and will guarantee the completion of the improvements within one (1) year of approval of the project.
- 5. Access into the Site.** Roads/driveways into the development shall provide for safe and convenient access and the following standards shall apply:
- a. Any exit driveway or proposed street shall be so designed as to provide a minimum sight distance of ten times the posted speed limit in each direction, as measured from the point at which the driveway or street meets the public or private right-of-way.
 - b. Points of access shall be located to avoid hazardous conditions or conflicts with existing turning movements and traffic flows.
 - c. The grade of any exit driveway or proposed street for a distance of one hundred feet from its intersection with any existing street shall be a maximum of three (3) percent.
 - d. The throat length of any entrance shall be of sufficient length to prevent incoming vehicles from queuing back onto the highway.
 - e. Driveways and entranceways shall be designed so that all maneuvering and parking of any vehicles shall take place outside the right of way of the highway and such that vehicles may exit the premises without backing onto the shoulder or traveled portion of the highway.
 - f. Except for forestry management and farming activities, lots on major collector roads shall be limited to one two-way or two one-way entrances.
 - g. The intersection of any access drive or proposed street shall function at a Level of Service of C following development if the project will generate four hundred (400) or more vehicle trips per twenty-four hour period or at a level which will allow safe access into and out of the project if less than four hundred (400) trips are generated.
 - h. Projects generating four hundred (400) or more vehicle trips per twenty-four (24) hour period shall provide two (2) or more separate points of vehicular access into and out of the site.
- 6. Internal Vehicular Circulation.** The layout of the site shall provide for the safe movement of passenger, service and emergency vehicles through the site and the following standards shall apply:
- a. Nonresidential projects shall provide a clear route for delivery vehicles with appropriate geometric design to allow turning and backing for vehicles expected to use the facility.

- b. Clear routes of access shall be provided and maintained for emergency vehicles to all portions of the site and shall be posted with appropriate language.
 - c. The layout and design of parking areas shall provide for safe and convenient circulation of vehicles throughout the lot and shall prohibit vehicles from backing out onto a street.
 - d. No parking shall be directly accessible from any public way. Parking spaces shall be provided as detailed in Section F., Page 11.
 - e. All streets and accessways shall be designed to follow the topographic and natural features of the site. The road network shall provide for vehicular and pedestrian safety, all-season emergency access, snow storage and delivery and collection services.
7. **Pedestrian Circulation.** The development plan shall provide for a system of pedestrian circulation within the development. This system shall connect with existing sidewalks if they exist in the vicinity of the project. The pedestrian network may be located either in the street right-of-way or outside of the right-of-way- in open space or recreation areas. The system shall be designed to link residential units with recreational and commercial facilities, other common facilities, school bus stops and existing sidewalks in the neighborhood.
8. **Environmental Standards.** The site plan shall be designed in accordance with the following applicable standards designed to protect the environment:
- a. Site preparation – any fill used shall consist of clean soil or gravel that is free of liquid or solid waste, or hazardous materials.
 - b. Conservation, erosion and sediment control. The following measures shall be included where applicable as part of any site plan review and approval.
 - (1) Stripping of vegetation, regrading or other development shall be done in such a way as to minimize erosion by phasing the development to minimize disturbed areas, and using erosion control measures installed and maintained in accordance with the Maine Erosion and Sediment Control BMPS, March 2003 DEPLW0588.
 - (2) Development shall preserve salient natural features, keep cut-fill operations to a minimum and ensure conformity with the topography so as to create the least erosion potential and so as to adequately handle surface water runoff.
 - (3) The disturbed area and the duration of exposure of the disturbed area shall be kept to a minimum. Disturbed areas shall be mulched on a weekly basis and before each storm event. Any disturbed areas not permanently stabilized within a thirty (30) day period shall be temporarily seeded and mulched to establish vegetation.
 - (4) The permanent (final) vegetation and mechanical erosion control measures shall be installed as soon as each phase of the site is completed and shall be installed in accordance with the Maine Erosion and Sediment Control BMPS, March 2003 DEPLW0588.

(5) Until the disturbed area is stabilized, sediment in the runoff water shall be trapped by the use of debris basins, sediment basins, silt traps or sediment barriers. Collected sediment shall be removed and disposed of in a manner that prevents further erosion in accordance with the Maine Solid Waste management laws and regulations.

(6) All potential sedimentation that may be caused by stripping vegetation, regrading or other development, shall be prevented from going beyond the project site boundary or into any protected natural resource through the use of sediment control measures installed and maintained in accordance with the Maine Erosion and Sediment Control BMPS, March 2003 DEPLW0588.

(7) Any activity on a stream, watercourse or swale or upon a floodway or right-of-way shall comply with the State's Natural Resources Protection Act, Title 38 M.R.S.A. Sections 480A-480S. Any such activity shall also be conducted in such a manner so as to maintain as nearly as possible the present state of the stream, watercourse, swale, floodway or right-of-way for the duration of the activity and shall be returned to its original or equal condition after such activity is completed.

(8) Maintenance of drainage facilities or watercourses originating and completely on private property is the responsibility of the owner to the point of open discharge at the property line or at a communal watercourse within the property.

c. Site conditions:

(1) During construction, the site shall be maintained and left each day in a safe and sanitary manner. The site area shall be regularly sprayed to control dust from construction activity.

(2) Developed areas shall be cleared of all stumps, litter, rubbish, brush, weeds, dead and dying trees, roots and debris, and excess or scrap building materials shall be removed or destroyed immediately upon the request and to the satisfaction of the Code Enforcement Officer and shall be disposed of in compliance with the Maine Solid Waste management laws and regulations.

(3) Changes in elevation. No change shall be made in the elevation or contour of any lot or site by the removal of earth to another lot or site other than as shown on an approved site plan. Minimal changes in elevations or contours necessitated by field conditions may be made only after approval by the Code Enforcement Officer.

9. Open Space. The site plan shall be designed in accordance with the following applicable standards designed to protect open spaces.

a. Open space areas shall be contiguous, where possible.

b. Open spaces as shown on any approved development plan shall contain a notation that common open space areas shall not be further developed for any other use.

c. When reviewing the location and type of open space designated in an application, the Planning Board shall require:

- (1) Buildings, accessways, and parking areas shall be designed and situated:
 - (a) To minimize alterations of the natural site;
 - (b) To avoid the adverse effects of shadows, noise and traffic as they relate to surrounding properties;
 - (c) To enhance the building and the neighborhood.
- (2) Diversity and originality in layout shall be encouraged.
- (3) Open space shall include irreplaceable natural features located on the tract (such as, but not limited to, stream beds, significant stands of trees, individual trees of significant size, rock outcroppings and traditional points of access to the water).
- (4) Open space intended for recreation or public use shall be determined by the size, shape, topographic and location requirements of the site.
10. **Relation of Proposed Buildings to Environment.** Proposed structures shall be related harmoniously to the terrain and to existing buildings in the vicinity that have a visual relationship to the proposed structures, so as to have a minimal adverse effect on the environmental and aesthetic qualities of the developed and neighboring areas.
11. **Surface Water Drainage.** Adequate provisions shall be made for surface drainage so that removal of surface waters will not adversely affect neighboring properties, downstream conditions, or the public storm drainage system and shall be held to a zero percent or less off-site increase in quantity after development. On-site absorption shall be utilized to minimize discharges whenever possible. All drainage calculations shall be based on a twenty-five year storm frequency. Emphasis shall be placed on the protection of floodplains and wetlands; preservation of stream corridors; establishment of drainage rights-of-way and the adequacy of the existing system; and the need for improvements, both on site and off site, to adequately control the rate, volume and velocity of storm drainage. Maintenance responsibilities shall be reviewed to determine their adequacy.
12. **Groundwater Protection.** The proposed site development and use shall not adversely impact either the quality or quantity of groundwater available to abutting properties or public water supply systems. Projects involving common on-site water supply or sewage disposal systems with a capacity of two thousand (2,000) gallons per day or greater shall demonstrate that the groundwater at the property line will comply, following development, with the standards for safe drinking water as established by the State of Maine.
13. **Water Supply.** The development shall be provided with a system of water supply that provides each use with an adequate supply of water meeting the standards of the State of Maine for drinking water.
14. **Sewage Disposal.** A sanitary sewer system shall be installed at the expense of the developer, or, if in the opinion of the Planning Board, service by a sanitary sewer system is not feasible, the Board may allow individual underground waste disposal systems to be used.

- a. Upstream sewage flows shall be accommodated by an adequately sized system through the proposed project for existing conditions and potential development in the upstream area or areas tributary to the proposed development.
 - b. All individual on-site systems shall be designed by a Licensed Site Evaluator in full compliance with the Maine State Plumbing Code, as amended. Upon the recommendation of the Local Plumbing Inspector, the Planning Board may require the location of reserve areas for replacement systems.
- 15. **Utilities.** Any utility installations above ground shall be located so as not to be unsightly or hazardous to the public and shall be landscaped or otherwise buffered so as to screen the components from public view.
- 16. **Advertising Features.** The size, location, texture and lighting of all exterior signs and outdoor advertising structures or features shall not detract from the layout of the property and the design of proposed buildings and structures and the surrounding properties, and shall not constitute hazards to vehicles and pedestrians.
- 17. **Special Features.** Exposed storage areas, exposed machinery installations, service areas, truck loading areas, utility buildings and structures and similar accessory areas and structures, shall be subject to such setbacks, screen plantings or other screening methods as shall reasonably be required to prevent their being incongruous with the existing or contemplated environment and the surrounding properties.
- 18. **Exterior Lighting.** All exterior lighting shall be designed to encourage energy efficiency, to ensure safe movement of people and vehicles, and to minimize adverse impact on neighboring properties and public ways. Adverse impact is to be judged in terms of hazards to people and vehicular traffic and potential damage to the value of adjacent properties. Lighting shall be directed downward to minimize glare and reflection on adjacent properties and the traveling public.
- 19. **Emergency Vehicle Access.** Provisions shall be made for providing and maintaining convenient and safe emergency vehicle access to all buildings and structures at all times.
- 20. **Landscaping.** Landscaping shall be designed and installed to define, soften, or screen the appearance of off-street parking areas from the public right-of-way and abutting properties, to enhance the physical design of the building (s) and site, and to minimize the encroachment of the proposed use on neighboring land uses. Particular attention shall be paid to the use of planting to break up parking areas.
- 21. **Waste Disposal.** The proposed project shall provide for adequate disposal of solid wastes and hazardous wastes.
 - a. All solid waste shall be disposed of at a licensed disposal facility having adequate capacity to accept the project's wastes.
 - b. All hazardous wastes shall be disposed of at a licensed hazardous waste disposal facility and evidence of a contractual arrangement with the facility shall be submitted.

Section 6. Preservation of Archaeological and Historic Resources

A. Purpose

The purpose of this section is to implement the historic preservation element of the Comprehensive Plan, to achieve preservation of pre-historic and historic resources, and to advance the following public purposes:

1. To preserve and protect archaeological, historic, architectural, cultural and aesthetic resources for the general welfare of the public and to enhance the environmental quality of the Town.
2. To strengthen the Town's economic base by the stimulation of the tourist industry.
3. To establish and improve property values.
4. To foster sympathetic economic development, and to manage growth.
5. To foster civic pride in the beauty and accomplishments of the Town's past.

B. Archaeological Resources

The following provisions are intended to prevent the disturbance of sites with potential or identified archaeological significance until their importance is documented.

1. **Identified Sites:** No activity which disturbs the ground such as trenching, grading, or excavating shall be commenced and no building permit or approval shall be issued within any "Area Sensitive for Prehistoric Archaeology" as identified by the map of Cherryfield of July 2005 provided by the Maine Historic Preservation Commission and made part of this ordinance, until the Maine Historic Preservation Commission has been notified of the nature of the proposed activity in writing by the owner of the property, a copy of the notice is provided to the Planning Board and/or Code Enforcement Officer, and a reconnaissance level archaeological survey is conducted - unless the Maine Historic Preservation Commission notifies the owner in writing that such a survey will not be needed. (A copy of the map of Areas Sensitive for Prehistoric Archaeology is attached.)

The survey requirement will be deemed satisfied if the Maine Historic Preservation Commission has not carried out a survey or responded to the owner in writing within 30 days or if the owner of the property has a reconnaissance level survey completed by a competent professional and provides a copy of the survey to the Maine Historic Preservation Commission and the Planning Board and/or Code Enforcement Officer.

The Archaeological Resource Potential Areas as identified on the map are on the edge of the "Blueberry Barrens," along the Narraguagus River Valley, along the West Branch of the Narraguagus River, that area between the two branches known as the Crotch, and along Tunk Stream. The two prehistoric archaeological sites (sites 60.1 and 60.2) known to exist within the town of Cherryfield are protected under Shoreland Zoning and Flood Plain Management Ordinance provisions that have been adopted by the Town.

2. **Note - Other Areas:** If an artifact is uncovered during ground-disturbing activities in areas not identified as archaeological resource potential areas, the activities should be halted at once. To document all evidence for prehistoric use of this area, a voluntary program of reporting prehistoric finds has been implemented. If an artifact (e.g. arrowhead, stone tool, pottery, concentration of shells, etc.) is uncovered, the landowner is requested to document the find and its location as fully as possible and file such information as soon as possible with the Planning Board and/or CEO. Help with such documentation can be obtained through the Planning Board and/or Code Enforcement Officer, who may seek professional advice to determine if the artifact has significant diagnostic or temporal importance to the prehistory of this area.

In the event that any identifiable human remains are found, whether modern, historic or prehistoric, County Law Enforcement (e.g. the Sheriff) shall be notified immediately and the remains shall not be disturbed until they have been examined by the appropriate authority.

B. Historic Resources

The following provisions are intended to establish a waiting period prior to the demolition of a historically significant building or structure to allow for alternatives to be explored.

1. **Identified Resources:** No permit for the demolition, in whole or in part, of a historical building or structure listed on the Cherryfield Historic District Map and made a part of this Ordinance, shall be issued until forty-five (45) days after notice has been provided to the Town Manager and/or Code Enforcement Officer, and Maine Historic Preservation Commission, and has been published in a newspaper of general circulation in Washington/Hancock County. Upon completion of the forty-five (45) day notice period, the Planning Board and/or Code Enforcement Officer shall issue the demolition permit subject to the normal review and standards unless:

- a. The applicant has withdrawn the request, or
- b. A court of law has issued an injunction barring the issuance of the permit.

The forty-five (45) day notice period shall not apply to the demolition of accessory buildings or structures other than barns that are part of the "historic character" of the site, the removal of additions that are not part of the "historic character" of the building, or the demolition of the remains of a building resulting from a fire or destruction by a natural disaster.

Section 7. Sub-Division Requirements

See Town of Cherryfield Sub-Division Ordinance.

Section 8. Shoreland Requirements

See Town of Cherryfield Shoreland Ordinance.

Section 9. Flood Plain Requirements

See Town of Cherryfield Flood Plain Ordinance

Section 10. Administration, Enforcement and Penalties

A. Administering Bodies and Agents

1. Code Enforcement Officer

- a. Appointment.** A Code Enforcement Officer shall be appointed or reappointed annually by the Board of Selectmen.
- b. Powers and Duties.** The Code Enforcement Officer shall have the following powers and duties:
 - (1) Enforce the provisions of this Ordinance.
 - (2) Act upon building, construction, and use applications, and refer requests for variances and administrative appeals to the Board of Appeals.
 - (3) Enter any property at reasonable hours with the consent of the owner, occupant or agent to inspect the property or building for compliance with this Ordinance.
 - (4) Investigate complaints and reported violations.
 - (5) Keep written inspection reports and thorough records.
 - (6) Issue violation notices.
 - (7) Participate in appeals procedures.
 - (8) Appear in court when necessary
 - (9) Confer with citizens in the administration and enforcement of this Ordinance.
 - (10) Regularly attend meetings of the Board of Appeals and the Planning Board.
 - (11) Revoke a permit after notice and hearing if it was issued in error or if it was based on erroneous information.

- 2. Planning Board -** The Town Planning Board shall be responsible for reviewing and acting upon applications for building permits and site plan review approval. Following approvals, the Planning Board will issue a building permit.
- 3. Board of Appeals -** The Board of Appeals shall be responsible for deciding administrative and variance appeals in accordance with the requirements of Section 11.

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 nonconforming use.

1. **Building Permit.** A building permit shall be obtained for uses which are listed as permitted uses in Section 3 of this Ordinance.
2. **Site Plan Review.** Site plan review approval shall be obtained from the Planning Board for all uses which are listed as uses requiring site plan approval in Section 3 of this Ordinance.

C. Permit Application

1. **Application Form.** Every applicant for a permit shall submit a written application, including a scaled site plan, on a form provided by the Town Office.
2. **Authorization.** 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. **Date.** All applications shall be dated, and the Code Enforcement Officer or Planning Board, as appropriate, shall note upon each application the date and time of its receipt.
4. **Sewage Disposal and Plumbing Permits.** A soil evaluation and a septic system plan by a Licensed Soils Evaluator in full compliance with the Maine State Plumbing Code, as amended, must be submitted showing septic system design and all Maine State required plumbing permits, as determined by the Local Plumbing Inspector, must be completed prior to Planning Board Review.
5. **Application Fee.** An appropriate fee shall accompany the application. This application fee shall be made by check payable to the Town. A schedule of fees is available in the Town Office. No building permit shall be issued until the fee is paid. This fee shall not be refundable.

D. Procedure for Administering Permits

1. **Determination of Complete Application.** Within 30 days of the date of receiving a written application, the Planning Board and/or Code Enforcement Officer shall notify the applicant either that the application has been accepted as a complete application, or, if the application is incomplete, that specific additional material is needed to make the application complete.

2. **Public Hearing.** If a public hearing is held, it shall be held within 30 days of the date of acceptance of the complete application or at a time agreed upon by the Planning Board and the applicant.
3. **Timing of Actions.** The Planning Board or the Code Enforcement Officer, as appropriate, shall approve, approve with conditions, or deny all permit applications in writing within 30 days of a public hearing or, if no public hearing is held, within 30 days of the date of acceptance of the application. However, if the Planning Board has a waiting list of applications, a decision on the application shall occur within 30 days after the first available date on the Planning Board's agenda following receipt of the completed application, or within 30 days of the public hearing, if one is held or following acceptance of the complete application, if no hearing is held.
4. **Approval.** Permits shall be approved if the proposed use or structure is found to be in conformance with the purposes and provisions of this Ordinance.
5. **Burden of Proof.** The applicant shall have the burden of proving that a proposed land use activity is in conformity with the purposes and provisions of this Ordinance.

E. Expiration of Permit

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

F. Installation of Public Utility Service

No public utility, water district, sanitary district or any utility company of any kind may install services to any new structure located in the Town 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 municipal officials, indicating that installation has been completed.

G. Enforcement

1. Enforcement Procedure

- 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 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 shall 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, 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. In the case of violations in the 250-foot Shoreland Zone, the Code Enforcement Officer shall, on an annual basis, submit a summary of the record of such violations to the Director of the Bureau of Land Quality Control within the Department of Environmental Protection.
2. **Legal Action.** When the above action does not result in the correction or abatement of the violation or nuisance condition, the Board of Selectmen, 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 Town. The Board of Selectmen, or their authorized agent, are hereby authorized to enter into administrative consent agreements for the purpose of eliminating violations of this Ordinance and recording 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 town 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 substantial environmental damage.
3. **Fines.** Any landowner who orders or conducts any activity in violation of this Ordinance may be penalized as follows: A fine of not less than \$100.00 per month, nor more than \$2500.00 in total, except if the stated violation is corrected within 90 days of receipt of Notice of Violation from the Code Enforcement Officer, at which time the appropriate Building Application fee must be paid and all paperwork completed in full. Any appeal to the assessment of a fine must be brought to the Board of Appeals, within the 90 days after notification.

Section 11. Appeals

A. Appointment and Composition

1. The Board of Selectmen shall appoint members of the Board of Appeals.
2. The Board shall consist of three (3) members with service-staggered terms of three (3) years.
3. The Board shall elect annually a chairman and secretary from its membership. The secretary shall provide for the keeping of the minutes of the proceedings of the Board of Appeals, which shall show the vote of each member upon each question. All minutes of the Board shall be public record. The Planning Board shall be notified of all administrative appeals and variance appeals reviewed.

B. Powers and Duties

1. **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.
2. **Variance Appeals.** To authorize variances upon appeal, within the limitations set forth in this Ordinance.
 - a. Variances may be granted only from dimensional requirements including frontage, lot area, 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 performance standards of this ordinance except for the specific provision which has created the non-conformity and from which relief is sought;
- (2) The strict application of the terms of this Ordinance would result in undue hardship.

The term “undue hardship” shall mean all of the following:

- (a) That the land in question cannot yield a reasonable return unless a variance is granted;
 - (b) That the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;
 - (c) That the granting of a variance will not alter the essential character of the locality; and
 - (d) That the hardship is not the result of action taken by the applicant or a prior owner.
- d. The Board may grant a variance to a property owner for the purpose of making that property accessible to a person with a disability who is living on the property. The board 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 property 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 on the property. For the purposes of this subsection, a disability has the same meaning as a physical or mental handicap under Title 5, Section 455 and the term “structures necessary for access to or egress from the property” is defined to include railing, wall or roof systems necessary for the safety or effectiveness of the structure.

- e. 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.
- f. In areas subject to the Mandatory Shoreland Zoning Act, a copy of all variances granted by the Board of Appeals shall be submitted to the Department of Environmental Protection within fourteen (14) days of the decision.
- g. If a variance is granted under this section, a certificate indicating the name of the current property owner, identifying the property by reference to the last recorded deed in its chain of title and indicating the fact that a variance including any conditions on the variance, has been granted and the date of the granting, shall be prepared in recordable form. The certificate must be recorded in the local registry of deeds within 30 days of final approval of the variance or the variance is void. The variance is not valid until recorded as provided in this provision.

C. Appeal Procedure

1. **Time Limit.** 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.
2. **Written Notice.** Such appeal shall be made by filing with the Board of Appeals a written notice of appeal which includes:
 - a. A concise written statement indicating what relief is requested and why it 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 requested.
3. **Record of Case.** 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. **Public Hearing.** The Board of Appeals shall hold a public hearing on the appeal within thirty-five (35) days of its receipt of an appeal request.
5. **Decision by Board of Appeals.**
 - a. **Quorum.** 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.
 - b. **Majority Vote.** 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, remand the matter to the Code Enforcement Officer or the Planning Board, or to

decide in favor of the applicant on any matter which it is required to decide under this Ordinance, or to affect any variation in the application of this ordinance from its stated terms.

- c. **Burden of Proof.** The person filing the appeal shall have the burden of proof.
 - d. **Action on Appeal.** Following the public hearing on an appeal, the Board may affirm, affirm with conditions, or reverse the decision of the Code Enforcement officer or Planning Board. 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. When errors of administrative procedures or interpretations are found, the case shall be remanded back to the Code Enforcement Officer or Planning Board for correction.
 - e. **Time Frame.** 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.
 - f. **Findings.** 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 therefore, and the appropriate order, relief or denial thereof.
6. **Appeal to Superior Court.** Any aggrieved party who participated as a party during the proceedings before the Board of Appeals may appeal to Superior Court in accordance with State laws within thirty (30) days from the date of any decision of the Board of Appeals.
7. **Reconsideration.** The Board of Appeals may reconsider any decision reached within thirty (30) days of its prior decision. The Board may conduct additional hearings and receive additional evidence and testimony.

Section 12. Definitions

A. Construction of Language

In the interpretation and enforcement of this Ordinance, all words other than those specifically defined in the Ordinance shall have the meaning implied by their context in the ordinance or their ordinarily accepted meaning. In the case of any difference of meaning or implication between the text of this ordinance and any map, illustration, or table, the text shall control.

- The word “person” includes a firm, association, organization, partnership, trust, company, or corporation, as well as an individual or any other legal entity.
- The present tense includes the future tense, the singular number includes the plural and the plural numbers include the singular.
- The word “shall” and “will” are mandatory, the word “may” is permissive.
- The word “lot” includes the words “plot” and “parcel.”

- The word “building” includes the word “structure.”
- The word “used” or “occupied,” as applied to any land or building, shall be construed to include the words “intended, arranged, or designed to be used or occupied.”
- The words “Town” or “municipality” means the Town of Cherryfield, Maine.

B. Definitions

In this Ordinance the following terms shall have the following meanings:

Abutter: The owner of any property with one or more common boundaries, or across the street or stream from, the property involved in an application or appeal.

Accessory Use or Structure: A use or structure which is customarily both incidental and subordinate to the principal use or structure on the same lot only. The term “incidental” in reference to the principal use or structure shall mean both a subordinate and minor in significance to the principal use or structure, and b) attendant to the principal use or structure. Such accessory uses, when aggregated, shall not subordinate the alleged principal use of the lot.

Agriculture: The cultivation of soil, producing or raising crops, including gardening as a commercial operation. The term shall also include greenhouses, nurseries and versions thereof, but these two terms, when used alone, shall refer specifically to a place where flowers, plants, shrubs, and/or trees are grown for sale.

Alteration: Any change or modification in construction, or change in the structural members of a building or structure such as bearing walls, columns, beams or girders, or in the use of a building. The term shall also include change, modification, or addition of a deck, dormer, staircase, or roof of the building.

Aggrieved Party: A person whose land is directly or indirectly affected by the grant or denial of a permit or variance under this Ordinance, or a person whose land abuts or is across a road or street or body of water from 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.

Amusement Facility: Any private, commercial premises which are maintained or operated primarily for the amusement, patronage, or recreation of the public, containing four (4) or more table sports, pinball machines, video games, or similar mechanical or electronic games, whether activated by coins, tokens, or discs, or whether activated through remote control by the management.

Animal Breeding or Care: The keeping or raising of four or more animals, including domestic animals and pets, for any commercial use. This definition also includes kennels.

Authorized Agent: An individual or a firm that has written authorization to act on behalf of a property owner. The authorization shall be signed by the property owner(s).

Automobile Repair Shop: A business establishment engaged in general repair, engine rebuilding, or parts replacement. Automotive repair shall include body, frame, or fender

straightening and repair or painting and undercoating, and the sale of gasoline, other motor fuels or motor oil.

Automobile Graveyard, Junkyard: A place where three or more unregistered, unserviceable, discarded, worn-out, or junked automotive vehicles, or bodies, or engines thereof are gathered together.

Base Flood: The flood having a one percent chance of being equaled or exceeded in any given year, commonly called the 100-year flood.

Bed and Breakfast: Any dwelling in which transient lodging or boarding and lodging are provided and offered to the public by the owner for compensation for less than one week. This dwelling shall also be the full-time, permanent residence of its owner; otherwise, it shall be classified as a hotel/motel. There shall be no provision for cooking in any individual guest room.

Boarding, Lodging Facility: Any residential structure where lodging and/or meals are provided for compensation for a period of at least one week, and where a family residing in the building acts as proprietor or owner. When the criteria for a family residing in the building cannot be met, the building shall be classified as a hotel/motel. There shall be no provisions for cooking in any individual guest room.

Building: Any three (3) dimensional enclosure by any building materials or any space for any use or occupancy, temporary or permanent, including swimming pools, foundations or pilings in the ground, and all parts of any kind of structure above ground including decks, railings, dormers, and stairs, and excluding sidewalks, fences, driveways, parking lots, electrical transmission and distribution lines, and filed or garden walls or embankment retaining walls.

Building Height: The vertical distance between the highest point of the roof and the average grade of the existing or original ground adjoining the building. Refer to Notes (p. 12) on Height of Structures.

Business and Professional Offices: The place of business of doctors, lawyers, accountants, financial advisors, architects, surveyors, real estate and insurance businesses, psychiatrists, counselors, and the like or in which a business conducts its administrative, financial or clerical operations including banks and other financial services, but not retail sales nor activities utilizing trucks as part of the business operation.

Campground: Land upon which one or more cabins or tents are erected or trailers are parked for temporary use for a fee on sites arranged specifically for that purpose. The word "campground" shall include the words "camping ground" and "tenting grounds" and shall also include the conduct of such commercial activity as is desirable to support the patrons.

Cemetery: Property used for the interring of the dead.

Church: A building or structure, or group of buildings or structures, designed, primarily intended and used for the conduct of religious services, excluding school.

Civic, Convention Center: A building or complex of buildings that house municipal offices and services, and which may include cultural, recreational, athletic, convention and entertainment facilities owned and/or operated by a governmental agency.

Club: Any voluntary association of persons organized for social, religious, benevolent, literary, scientific, or political purposes; whose facilities, especially a clubhouse, are open to members and guests only and not the general public; and not engaged in activities customarily carried on by a business or for pecuniary gain. Such term shall include fraternities, sororities, and social clubs generally.

Cluster Development: A development consisting exclusively of residential dwelling units, planned, developed as a whole or in a programmed series of developments, and controlled by one developer on a tract of five (5) or more lots which contemplates an innovative, more compact grouping of dwelling units. Cluster developments treat the developed area as an entirety to promote flexibility in design, architectural diversity, the efficient use of land, a reduction in the size of road and utility systems, the creation of permanent, common open space, and the permanent retention of the natural characteristics of the land.

Code Enforcement Officer: A person appointed by the selectmen to administer and enforce this Ordinance.

Commercial Recreation: Any commercial enterprise which receives a fee in return for the provision of some recreational activity including but not limited to: campgrounds, racquet and tennis clubs, health facility, amusement parks, golf courses, gymnasiums and swimming pools, etc., but not including bowling alleys or amusement facilities as defined herein.

Commercial School: An institution which is operated for profit, but is not authorized by the State to award baccalaureate or high degrees, which offers classes in various skills, trades, professions, or fields of knowledge.

Commercial Use: Any activity carried out for pecuniary gain.

Community Center: A building which provides a meeting place for local, non-profit community organizations on a regular basis. The Center shall not be engaged in activities customarily carried on by a business.

Conforming: A building, structure, use of land, or portion thereof, which complies with the provisions of this Ordinance.

Congregate Housing: Residential housing consisting of private apartments and central dining facilities and within which a congregate housing supportive services program serves functionally impaired elderly or disabled occupants; the individuals are unable to live independently yet do not require the constant supervision or intensive health care available at intermediate care of skilled nursing facilities. Congregate housing shall include only those facilities which have been certified by the State of Maine as meeting all certification standards and guidelines for congregate housing facilities as promulgated by the Department of Human Services pursuant to the provisions of Maine State Statutes.

Constructed: Built, erected, altered, reconstructed, moved upon, or any physical operations on the premises which are required for construction. Excavation, fill, drainage, and the like, shall be considered a part of construction.

Day Care: Homes and Centers licensed as such by the Maine Department of Human Services.

Density: The number of dwelling units per area of land.

Development: Any man-made changes to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation, or drilling operations.

District: A specified portion of the town delineated on the land use map, within which certain regulations and requirements or various combinations thereof apply under the provisions of this Ordinance.

Duplex: A Two-Family dwelling.

Dwelling: Any building or structure or portion thereof designed or used for residential purposes.

Single-family Dwelling: Any structure containing only one (1) dwelling unit for occupation by not more than one (1) family.

Two-family Dwelling: A building containing only two (2) dwelling units, for occupation by not more than two (2) families.

Multi-family Dwellings: A building containing three (3) or more dwelling units, such buildings being designed exclusively for residential use and occupancy by three (3) or more families living independently of one another, with the number of families not exceeding the number of dwelling units.

Dwelling Unit: A room or suite of rooms used by a family as a habitation which is separate from other such rooms or suites of rooms, and which contains independent living, cooking, sleeping, bathing and sanitary facilities.

Essential Services: Facilities for the transmission or distribution of water, gas, electricity or essential communications or for the collection, treatment or disposal of wastes, including without limitation, towers, poles, wires, mains, drains, sewers, pipes, conduits, cables, fire alarm and police call boxes, traffic signals, hydrants and similar accessories but not buildings.

Extractive Industries: The excavation, processing or storage of soil, topsoil, peat, loam, sand, gravel, rock or other mineral deposits, not including:

1. The excavation of material incidental to and at the site of approved construction of buildings, driveways or parking areas;
2. The excavation of material incidental to and at the site of construction or repair of streets; and

3. The excavation, processing or storage of less than ten (10) cubic yards of material on a lot within a one year period.

Family: One or more persons occupying a dwelling and living as a single housekeeping unit, as distinguished from a group occupying a tourist home, rooming house, hotel, motel or inn.

Filling: Depositing or dumping any matter on or into the ground or water.

Flood or Flooding:

1. A general and temporary condition of partial or complete inundation of normally dry land areas from:
 - a. The overflow of inland or tidal waters.
 - b. The unusual and rapid accumulation or runoff of surface waters from any source.
2. The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves as a result of erosion or anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as a flash flood or an abnormal tidal surge, or by some similar unusual and unforeseeable event which results in flooding as defined in paragraph one (1) of this definition.

Flood Insurance Rate Map: The official map of a community on which the Administrator of the Federal Insurance Administration has delineated both the special hazard areas and the risk premium zones.

Flood Plain: The land area susceptible to being inundated by water from any source (see definition of "flooding").

Floodway or Regulatory Floodway: The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot, and in Zone A is considered to be the channel of a river or other water course and the adjacent land areas to a distance of one-half the width of the floodplain, as measured from the normal high water mark to the upland limit of the floodplain.

Forestry: The operation of timber tracks, tree farms, forest nurseries, the gathering of forest products, or the performance of forest services.

Frontage, Road: the horizontal, straight-line distance between the intersections of the side lot lines with the road right-of-way.

Frontage, Shore: The horizontal distance, measured in a straight line, between the intersections of the lot lines with the shoreline at normal high water elevation.

Garage: An accessory building, or part of a principal building, including a carport, used primarily for the storage of motor vehicles as an accessory use.

Gasoline Service Station: Any place of business at which gasoline, other motor fuels or motor oil are sold to the public for use in a motor vehicle, regardless of any other business on the premises.

Hardship: See “Undue Hardship.”

Hazardous Material: Any gaseous, liquid or solid materials, either in pure form or incorporated into other materials, designated as hazardous by the Maine Department of Environmental Protection.

Home Occupation: An occupation or profession which is carried on in no more than 25% of the ground area of a detached, single-family dwelling unit by the full-time permanent occupant of the dwelling, which is clearly incidental and secondary to the use of the dwelling for residential purposes and which does not change the character thereof (by way of illustration and not of limitation, the term “home occupation” shall include the production of food products (such as breads, cookies or preserves), rugs, birdhouses, fishing flies, and quilts.) The term “home occupation” shall include both professional and personal services, within the limits on number of employees established in Section 4 of this Ordinance. A retail sales outlet does not qualify as a home business unless the item sold is a product of the owner’s labor, (e.g. manufactured, produced, created, grown).

Hospital: An institution providing, but not limited to, overnight health services, primarily for in-patients, and medical or surgical care for the sick or injured, including as an integral part of the institution such related facilities as laboratories, out-patient departments, training facilities, central services facilities, and staff offices.

Hotel/Motel: A commercial building or group of buildings built to accommodate for a fee travelers and other transient guests who are staying for a limited duration with sleeping rooms, each rental unit having its own private bathroom and its own separate entrance leading either to the outdoors or to a common corridor or hallway. A hotel may include restaurant facilities where food is prepared and meals served to its guests and other customers.

Kennel: An establishment, in which more than four (4) dogs or four (4) cats are sold, housed, bred, boarded, or trained for a fee.

Lot: An area of land in one ownership, or one leasehold, with ascertainable boundaries established by deed or instrument of record, or a segment of land ownership defined by lot boundary lines on a land subdivision plan duly approved by the Planning Board and recorded in the County Registry of Deeds.

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

Lot, Corner: A lot with at least two contiguous sides abutting upon a street or right of way.

Lot, Coverage: The percentage of a lot covered by all buildings.

Lot Lines: The lines bounding a lot as defined below:

1. **Front Lot Line:** Interior lots: the line separating the lot from a street right-of-way.
Corner lot or through lot: the line separating the lot from either street right-of-way.
Where a right-of-way does not exist or cannot be determined, the front lot line shall be the edge of the paved or graveled area of the road.
2. **Rear Lot Line:** The lot line opposite the front lot line. On a lot pointed at the rear, the rear lot line shall be an imaginary line between the side lot lines parallel to the front lot line, not less than ten (10) feet long, lying farthest from the front lot line. On a corner lot, the rear lot line shall be opposite the front lot line of least dimension.
3. **Side Lot Line:** Any lot line other than the front lot line or rear lot line.

Lot of Record: A parcel of land, a legal description of which or the dimensions of which are recorded on a document or map on file with the County Register of Deeds.

Lot, Shorefront: Any lot abutting a body of water that is regulated by the Shoreland Zoning Ordinance.

Lot, Through: Any interior lot having frontages on two more or less parallel streets or rights-of-way or between a street and a body of water, or a right-of-way and a body of water, or between two bodies of water, as distinguished from a corner lot. All sides of through lots adjacent to streets, rights-of-way, and bodies of water shall be considered frontage, and setbacks shall be provided as required.

Lot Width: The distance between the side boundaries of the lot measured at the front setback line.

Manufactured Housing: A structural unit or units designed for occupancy and constructed in a manufacturing facility and transported, by the use of its own chassis or an independent chassis, to a building site.

Mobile Home Park: A parcel of land under unified ownership approved by the town for the placement of three (3) or more manufactured homes.

Neighborhood "Convenience" Stores: A store of less than 1,500 square feet of floor space intended to service the convenience of a residential neighborhood primarily with the sale of merchandise, including such items as, but not limited to, basic foods, newspapers, emergency home repair articles, and other household items, but not to include "sit-down" dining or "eat-in" foods or take out windows

Net Residential Density: The number of dwelling units per minimum lot size.

Nonconforming: A building, structure, use of land, or portion thereof, legally existing at the effective date of adoption or amendment of this Ordinance which thereafter fails to conform to all applicable provisions of this Ordinance.

Nursing Home: A privately operated establishment where maintenance and personal or nursing care are provided for persons who are unable to care for themselves.

Parks and Recreation: Non-commercially operated recreation facilities open to the general public including, but not limited to playgrounds, parks, monuments, green strips, open space, mini-parks, athletic fields, boat launching ramps, piers and docks, picnic grounds, swimming pools, and wildlife and nature preserves, along with any necessary accessory facilities, rest rooms, bath houses, and the maintenance of such land and facilities. The term shall not include campgrounds, or commercial recreation and amusement centers.

Permitted Use: Uses which are listed as permitted uses in the various districts set forth in this Ordinance. The term shall not include prohibited uses.

Pharmacy, General: A retail establishment that stores, prepares and dispenses legal drugs, and may also sell general merchandise to the public.

Pharmacy, Sole Source or Drug Dispensary: A facility that exists for the purpose of dispensing chemical substances in the form of narcotic drugs for specific therapeutic purposes, and may also offer counseling along with the drug treatment. Such facilities may only dispense to patients with legal and applicable Doctor's Prescriptions.

Planned Unit Development: A development of land that is under unified control and is planned and developed as a whole in a single development operation or programmed series of development stages. The development often includes a mixture of uses and may include streets, buildings, open spaces, and other site features.

Planning Board: The Planning Board of the Town of Cherryfield, Maine.

Principal Use: The primary use and chief purpose of a lot or structure.

Public and Private Schools: Primary and secondary schools, or parochial schools, which satisfy either of the following requirements: the school is not operated for a profit or as a gainful business; or the school teaches courses of study which are sufficient to qualify attendance in compliance with State compulsory education requirements.

Public Utility: Any person, firm, corporation, municipal department, board or commission authorized to furnish gas, steam, electricity, waste disposal, certain communication facilities, transportation or water to the public.

Restaurant: An establishment where meals are prepared and served to the public for consumption on the premises and/or where foods and beverages are served directly to occupants of motor vehicles or directly to pedestrian traffic from an exterior service opening or counter, or any combination of the foregoing.

Retail Business: A business establishment engaged in the sale, rental, or lease of goods or services to the ultimate consumer for direct use or consumption and not for resale.

Right-of-way: All public or private roads and streets, State and Federal highways, private ways (now called public easements), and public land reservations for the purpose of public access, including utility rights-of-way.

Road: An existing State, County, or Town way or a street dedicated for public use and shown upon a plan duly approved by the Planning Board and recorded in the County Registry of Deeds or a road dedicated for public use and shown on a plan duly recorded in

the County Registry of Deeds prior to the establishment of the Planning Board and the grant to the Planning Board of its power to approve plans. The term shall also include private, undedicated roads which are described on a recorded document. The term "road" shall not include those ways which have been discontinued or abandoned.

Setback: The minimum horizontal distance from a lot line to the nearest part of a building, including porches, steps, and railings.

Shopping Center: Any concentration of two or more retail stores or service establishments under one ownership or management containing 15,000 square feet or more of gross floor space.

Structure: Anything constructed or erected, the use of which requires a fixed location on or in the ground or in the water, or an attachment to something having a fixed location on the ground, including buildings, billboards, signs, commercial park rides and games, carports, porches, and other building features, including stacks and antennas, but not including sidewalks, fences, driveways, parking lots, and field or garden walls or embankment retaining walls.

Swimming Pool: A man-made receptacle or excavation designed to hold water to a depth of at least twenty-four (24) inches, primarily for swimming or bathing, whether in-ground or above the ground.

Telecommunications Towers: Structures without floor area constructed for wireless communications purposes, consisting of antennas, antenna support structures, towers and receivers. Such structures may be required to meet minimum State standards.

Undue Hardship: As used in this Ordinance, the words "undue Hardship" shall mean all of the following:

1. That the land in question cannot yield a reasonable return unless a variance is granted; and
2. That the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood; and
3. That the granting of a variance will not alter the essential character of the locality; and
4. That the hardship is not the result of action taken by the applicant or a prior owner.

A variance is not justified unless all elements are present in the case.

Use: The manner in which land or a structure is arranged, designed or intended, or is occupied.

Variance: A relaxation of the terms of this Ordinance where such relaxation will not be contrary to the public interest where, owing to conditions peculiar to the property, and not the result of the actions of the applicants, a literal enforcement of the Ordinance would result in undue hardship. Variances permissible under this Ordinance are limited to height of buildings, structures, lot size, yard and open spaces sizes, frontage, and setbacks. No variance shall be granted for the establishment of any use otherwise prohibited, nor shall a

variance be granted because of the presence of non-conformities in the immediate or adjacent districts.

Well Drilling: Well drilling is the high volume extraction of ground water for the purpose of bottling or commercial high volume sale or irrigation. Excluded are residential homes, home businesses, hotels/motels and other business establishments.

Wetland: All coastal and freshwater wetlands. "Coastal Wetlands" are all tidal and sub-tidal lands including all areas below an identifiable debris line left by tidal action, all areas with vegetation present that is tolerant of salt water and occurs primarily in a salt water habitat, and any swamp, marsh, bog, beach, flat or other contiguous lowland which is subject to tidal action or normal storm flowage at any time excepting periods of maximum storm activity. Coastal wetlands may include portions of coastal sand dunes. Fresh water wetlands are all lands identified by the Department of Inland Fisheries and Wildlife in accordance with Title 38 M.R.S.A. Section 407A, or areas identified by the United States Environmental Protection Agency having jurisdiction under Section 404 of the Clean Water Act.



MIXED USE DISTRICT

20,000 sq. ft. lot size



RURAL DISTRICT

40,000 sq. ft. lot size



HISTORIC VILLAGE OVERLAY

20,000 sq. ft. lot size



FLOATING INDUSTRIAL DISTRICT

NOTE: This area is designed to allow for one (1) industrial park complex after which no further industrial development is anticipated

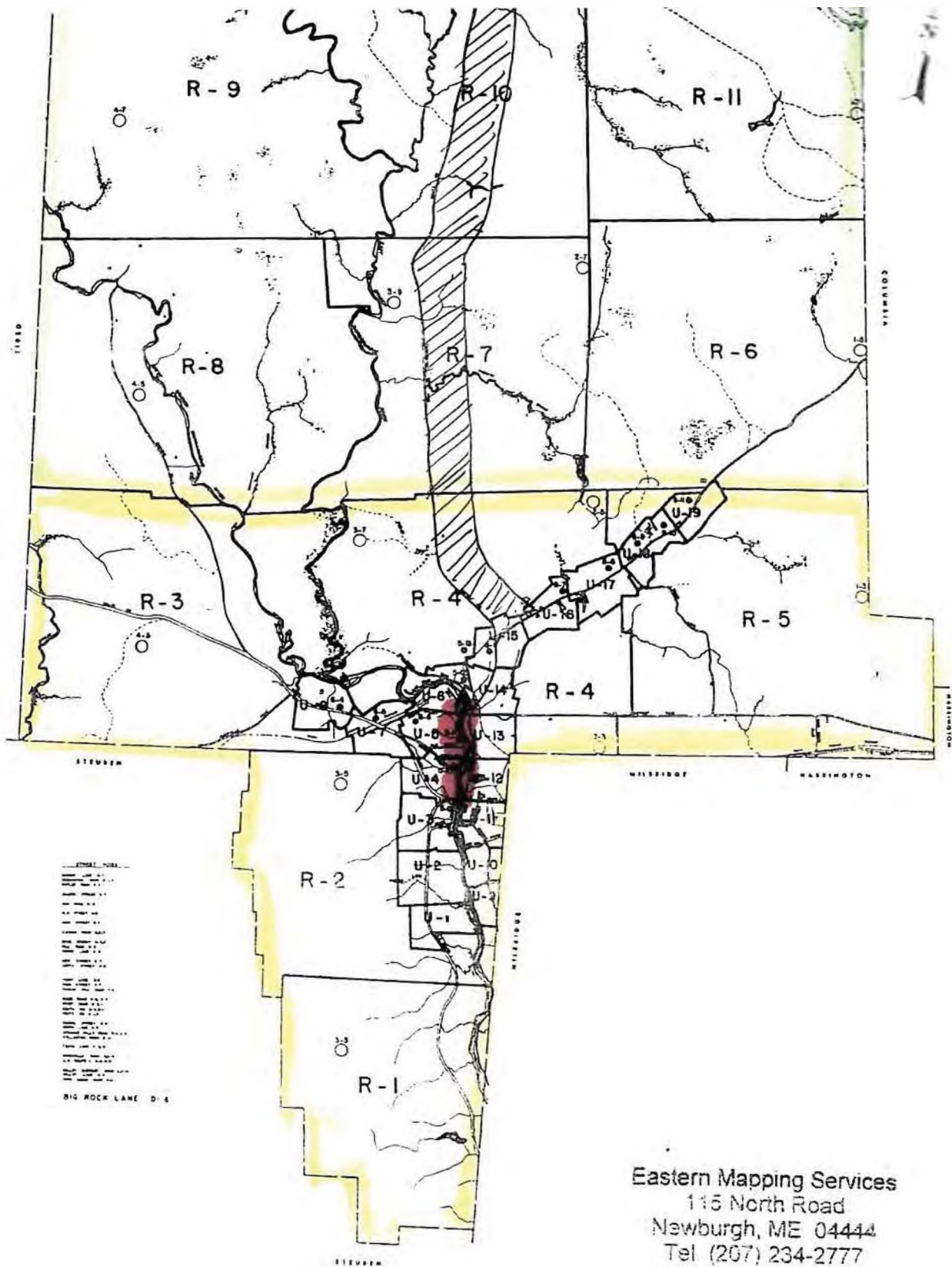
LEGEND

U-1	URBAN	MAP SHEET
	SCALE	1" = 100'
R-1	RURAL	MAP SHEET
	SCALE	1" = 500'
6-6	PHOTO	CENTER
•	URBAN	ENLARGEMENT
3-3	PHOTO	CENTER
○	RURAL	ENLARGEMENT

PREPARED BY PHOTOGRAMMETRIC METHODS BY

JOHN E. O'DONNELL & ASSOCIATES
AUBURN, MAINE

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 Updated April 1, 2006

PROPERTY MAP

CHERRYFIELD

MAINE

INDEX

Shoreland Zoning Ordinance for the Municipality of Cherryfield, Maine

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Shoreland Zoning Ordinance for the Municipality of Cherryfield, Maine

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 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.

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 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 all land areas within 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 or located below the normal high-water line of a water body or within a wetland.

NOTE: Coastal wetlands, by definition, include all areas affected by tidal action, not just those areas where salt marshes and salt meadows exist. Cobble and sand beaches, mudflats, and rocky ledges, below the maximum spring tide are all considered to be coastal wetlands.

4. Effective Date

A. Effective Date of Ordinance and Ordinance Amendments. This Ordinance, which was adopted by the Cherryfield legislative body on March 12, 2007, shall not be effective unless approved by the Commissioner of the Department of Environmental Protection. A certified copy of the Ordinance, or Ordinance Amendment, attested and signed by the Municipal Clerk, shall be forwarded to the Commissioner for approval. If the Commissioner fails to act on this Ordinance or Ordinance Amendment, within forty-five (45) days of his/her receipt of the Ordinance, or 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 this Ordinance, or Ordinance Amendment, if the Ordinance, or Ordinance Amendment, is approved by the Commissioner.

B. Sections 15(O) and 15(O-1). Section 15(O) is repealed on the statutory date established under 38 M.R.S.A. section 438-A(5), at which time Section 15(O-1) shall become effective. Until such time as Section 15(O) is repealed, Section 15(O-1) is not in effect.

NOTE: The statutory date established under 38 M.R.S.A. section 438-A(5) is the effective date of

state-wide timber harvesting standards. That date is “the first day of January of the 2nd year following the year in which the Commissioner of Conservation determines that at least 252 of the 336 municipalities identified by the Commissioner of Conservation as the municipalities with the highest acreage of timber harvesting activity on an annual basis for the period 1992-2003 have either accepted the state-wide standards or have adopted an ordinance identical to the state-wide standards.” 38 M.R.S.A. section 438-A(5) further provides that “the Commissioner of Conservation shall notify the Secretary of State in writing and advise the Secretary of the effective date of the state-wide standards.”

5. Availability. A certified copy of this Ordinance shall be filed with the Municipal 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 majority vote of the legislative body. Copies of amendments, attested and signed by the Municipal 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 his/her 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.

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(s) which is (are) made a part of this Ordinance:

- (1) Resource Protection
- (2) Limited Residential
- (3) Limited Commercial
- (4) General Development I
- (5) General Development II
- (6) Commercial Fisheries/Maritime Activities
- (7) Stream Protection

B. Scale of Map. The Official Shoreland Zoning Map shall be drawn at a scale of not less than: 1 inch = 2000 feet. District boundaries shall be clearly delineated 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 Municipal Clerk and shall be located in the municipal office. In the event the municipality does not have a municipal office, the Municipal Clerk shall be the custodian of the map.

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 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.

NOTE: The Maine Supreme Judicial Court has held that the Official Shoreland Zoning Map is the primary tool to which to refer in determining district boundaries under ordinances that are not more explicit in their district descriptions than the language of the Guidelines, and that where there is inconsistency between the Map and these general text descriptions of the shoreland districts as provided in the minimum guidelines, the Map prevails.

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 nonconforming 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 structures, non-conforming uses and nonconforming lots.

C. Non-conforming Structures

(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 and is in accordance with subparagraphs (a) and (b) below.

(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 tributary stream or the upland edge of a wetland, that portion of the structure shall not be expanded, as measured in floor area or volume, by 30% or more, during the lifetime of the structure. If a replacement structure conforms with the requirements of Section 12(C)(3), and is less than the required setback from a water body, tributary stream or wetland, the replacement structure may not be expanded if the original structure existing on January 1, 1989 had been expanded by 30% in floor area and volume since that date.

(b) 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 or its designee, basing its decision on the criteria specified in Section 12(C)(2) Relocation, below. If the completed foundation does not extend beyond the exterior dimensions of the structure, except for expansion in conformity with Section 12(C)(1)(a) above, and the foundation does not cause the structure to be elevated by more than three (3) additional feet, as measured from the uphill side of the structure (from original ground level to the bottom of the first floor sill), it shall not be considered to be an expansion of the structure.

(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 or its designee, 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.

In determining whether the building relocation 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 native tree, three (3) feet in height, for every tree removed. If more than five trees are planted, no one species of tree shall make up more than 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.

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 reestablished 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.

(b) 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.

(3) Reconstruction or Replacement. Any non-conforming structure which is located less than the required setback from a water body, tributary stream, or wetland and which is removed, or damaged or destroyed, regardless of the cause, by more than 50% 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 (18) 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 or its designee in accordance with the purposes of this Ordinance. In no case shall a structure be reconstructed or replaced so as to increase its nonconformity.

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 floor area and volume of the reconstructed or replaced structure at its new location. If the total amount of floor area and volume 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)(2) 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 50% or less of the market value, or damaged or destroyed by 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 year of such damage, destruction, or removal. In determining whether the building reconstruction or replacement meets the setback to the greatest practical extent the Planning Board or its designee shall consider, in addition to the criteria in Section 12(C)(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, tributary stream, 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 shall require written documentation from the applicant, regarding the probable effects on public health and safety, erosion and sedimentation, water quality, fish and wildlife habitat, vegetative cover, visual and actual points of public access to waters, natural beauty, floodplain 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)(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 a 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 in the CFMA district, 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

(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 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 Built Lots:** If two or more contiguous lots or parcels are in a 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 there is compliance with 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.

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 2 or more contiguous lots, at least one of which is nonconforming, owned by the same person or persons on March 12, 1990 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 100 feet of shore frontage and at least 20,000 square feet of lot area; or

(b) Any lots that do not meet the frontage and lot size requirements of Section 12(E)(3)(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.

13. Establishment 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 Limited Commercial, General Development I, or Commercial Fisheries/Maritime Activities Districts need not be included within the Resource Protection District.

(1) Areas within 250 feet, horizontal distance, of the upland edge of freshwater wetlands, salt marshes and salt meadows, and wetlands associated with great ponds and rivers, which are rated "moderate" or "high" value waterfowl and wading bird habitat, including nesting and feeding areas, by the Maine Department of Inland Fisheries and Wildlife (MDIF&W) that are depicted on a Geographic Information System (GIS) data layer maintained by either MDIF&W or the Department as of May 1, 2006. For the purposes of this paragraph, "wetlands associated with great ponds and rivers" shall mean areas characterized by non-forested wetland vegetation and hydric soils that are contiguous with a great pond or river, and have a

surface elevation at or below the water level of the great pond or river during the period of normal high water. "Wetlands associated with great ponds or rivers" are considered to be part of that great pond or river.

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

- Habitat for species appearing on the official state or federal lists of endangered or threatened species;
- high and moderate value deer wintering areas and travel corridors as defined by the Department of Inland Fisheries and Wildlife;
- high and moderate value waterfowl and wading bird habitats, including nesting and feeding areas as defined by the Department of Inland Fisheries and Wildlife;
- critical spawning and nursery areas for Atlantic sea run salmon as defined by the Maine Atlantic Sea Run Salmon Commission; and
- shorebird nesting, feeding and staging areas and seabird nesting islands as defined by the Department of Inland Fisheries and Wildlife.

(2) Floodplains along rivers and floodplains along artificially formed great ponds along rivers, defined by the 100 year floodplain 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 floodplain soils. This district shall also include 100 year floodplains adjacent to tidal waters as shown on FEMA's Flood Insurance Rate Maps or Flood Hazard Boundary Maps.

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

(4) 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, 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.

D. Other significant areas which should be included in this district to fulfill the purposes of this Ordinance, such as, but not limited to, existing public access areas and certain significant archaeological and historic sites deserving of long-term protection as determined by the municipality after consultation with the Maine Historic Preservation Commission.

B. Limited Residential District. The Limited Residential District includes those areas suitable for residential and recreational development. It includes areas other than those in the Resource Protection District, or Stream Protection District, and areas which are used less intensively than those in the Limited Commercial District, the General Development Districts, or the Commercial Fisheries/Maritime Activities District.

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

D. General Development I District. The General Development I District includes the following types of existing, intensively developed areas:

(1) Areas of two or more contiguous acres devoted to commercial, industrial or intensive recreational activities, or a mix of such activities, including but not limited to the following:

(a) Areas devoted to manufacturing, fabricating or other industrial activities;

(b) Areas devoted to wholesaling, warehousing, retail trade and service activities, or other commercial activities; and

(c) Areas devoted to intensive recreational development and activities, such as, but not limited to amusement parks, race tracks and fairgrounds.

(2) Areas otherwise discernible as having patterns of intensive commercial, industrial or recreational uses.

E. General Development II District. The General Development II District includes the same types of areas as those listed for the General Development I District. The General Development II District, however, shall be applied to newly established General Development Districts where the pattern of development at the time of adoption is undeveloped or not as intensively developed as that of the General Development I District.

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

In areas adjacent to great ponds classified GPA and adjacent to rivers flowing to great ponds classified GPA, the designation of an area as a General Development District shall be based upon uses existing at the time of adoption of this Ordinance. There shall be no newly established General Development Districts or expansions in area of existing General Development Districts adjacent to great ponds classified GPA, and adjacent to rivers that flow to great ponds classified GPA.

NOTE: See definition of "great pond classified GPA" in Section 17.

F. 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 winds and waves;

(2) Slope of the land within 250 feet, horizontal distance, of the shoreline;

(3) Depth of the water within 150 feet, horizontal distance, of the shoreline;

(4) Available support facilities including utilities and transportation facilities; and

(5) Compatibility with adjacent upland uses.

G. 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 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.

14. Table of Land Uses. All land use activities, as indicated in Table 1, Land Uses in the Shoreland Zone, located on the following page, shall conform to 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:

Y- Allowed (no permit required but the use must comply with all applicable land use standards.)

N - Prohibited

PB - Allowed with permit issued by the Planning Board.

CEO - Allowed with permit issued by the Code Enforcement Officer

LPI - Allowed with permit issued by the Local Plumbing Inspector

RP - Resource Protection GD General Development I and General Development II

LR - Limited Residential CFMA - Commercial Fisheries/Maritime Activities

LC - Limited Commercial SP - Stream Protection

NOTE: The term "functionally water-dependent use" as defined, includes a very diverse group of uses ranging from large, industrial facilities that receive shipments by water or use water for cooling, to traditional commercial fishing enterprises, and public shorefront parks.

TABLE 1. LAND USES IN THE SHORELAND ZONE

LAND USE	DISTRICT					
	SP	RP	LR	LC	GD	CFMA
1. Non-intensive recreational uses not requiring structures such as hunting, fishing and hiking	Y	Y	Y	Y	Y	Y
2. Motorized vehicular traffic on existing roads and trails	Y	Y	Y	Y	Y	Y
3. Forest management activities except for timber harvesting & land management roads	Y	Y	Y	Y	Y	Y
4. Timber harvesting	Y	CEO	Y	Y	Y	Y
5. Clearing or removal of vegetation for activities other than timber harvesting	CEO	CEO	Y	Y	Y	Y
6. Fire prevention activities	Y	Y	Y	Y	Y	Y
7. Wildlife management practices	Y	Y	Y	Y	Y	Y
8. Soil and water conservation practices	Y	Y	Y	Y	Y	Y
9. Mineral exploration	N	Y ²	Y ²	Y ²	Y ²	Y ²
10. Mineral extraction including sand and gravel extraction	N	PB ³	PB	PB	PB	PB
11. Surveying and resource analysis	Y	Y	Y	Y	Y	Y
12. Emergency operations	Y	Y	Y	Y	Y	Y
13. Agriculture yes	Y	PB	Y	Y	Y	Y
14. Aquaculture	PB	PB	PB	Y	Y	Y
15. Principal structures and uses:						
A. One and two family residential, including driveways	PB ⁴	PB ⁹	CEO	CEO	CEO	N
B. Multi-unit residential	N	N	PB	PB	PB	N
C. Commercial	N	N 10	N ¹⁰	PB	PB	PB ⁵
D. Industrial	N	N	N	N	PB	PB ⁵
E. Governmental and institutional	N	N	PB	PB	PB	PB ⁵
F. Small non-residential facilities for educational, scientific, or nature interpretation purposes	PB ⁴	PB	CEO	CEO	CEO	PB ⁵
16. Structures accessory to allowed uses	PB ⁴	PB	CEO	CEO	Y	Y
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	CEO ¹¹	CEO ¹¹	CEO ¹¹	CEO ¹¹	CEO ¹¹	CEO ¹¹
b. Permanent	PB	PB	PB	PB	PB	PB ⁵
18. Conversions of seasonal residences to year-round residences	LPI	LPI	LPI	LPI	LPI	N
19. Home occupations	PB	PB	PB	CEO	Y	Y
20. Private sewage disposal systems for allowed uses	LPI	LPI	LPI	LPI	LPI	LPI
21. Essential services	PB ⁶	PB ⁶	PB	PB	PB	PB
A. Roadside distribution lines (34.5kV and lower)	CEO ⁶	CEO ⁶	Y ¹²	Y ¹²	Y ¹²	Y ¹²
B. Non-roadside or cross-country distribution lines involving ten poles or less in the shoreland zone	PB ⁶	PB ⁶	CEO	CEO	CEO	CEO
C. Non-roadside or cross-country distribution lines involving eleven or more poles in the shoreland zone	PB ⁶	PB ⁶	PB	PB	PB	PB
D. Other essential services	PB ⁶	PB ⁶	PB	PB	PB	PB
22. Service drops, as defined, to allowed uses	Y	Y	Y	Y	Y	Y
23. Public and private recreational areas involving minimal structural development	PB	PB	PB	CEO	CEO	CEO ⁵
24. Individual, private campsites	CEO	CEO	CEO	CEO	CEO	CEO
25. Campgrounds	N	N ⁷	PB	PB	PB	N
26. Road construction	PB	N ⁵	PB	PB	PB	PB ⁵
27. Land management roads	Y	PB	Y	Y	Y	Y
28. Parking facilities	N	N ⁷	PB	PB	PB	PB ⁵
29. Marinas	PB	N	PB	PB	PB	PB
30. Filling and earth moving of <10 cubic yards	CEO	CEO	Y	Y	Y	Y
31. Filling and earth moving of >10 cubic yards	PB	PB	CEO	CEO	CEO	CEO
32. Signs	Y	Y	Y	Y	Y	Y
33. Uses similar to allowed uses	CEO	CEO	CEO	CEO	CEO	CEO
34. Uses similar to uses requiring a CEO permit	CEO	CEO	CEO	CEO	CEO	CEO
35. Uses similar to uses requiring a PB permit	PB	PB	PB	PB	PB	PB

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

²Requires permit from the Code Enforcement Officer if more than 100 square feet of surface area, in total, is disturbed.

³In RP not allowed in areas so designated because of wildlife value.

⁴Provided that a variance from the setback requirement is obtained from the Board of Appeals.

⁵Functionally water-dependent uses and uses accessory to such water dependent uses only (See note on previous page).

⁶See further restrictions in Section 15(L)(2).

⁷Except when area is zoned for resource protection due to flood plain criteria in which case a permit is required from the PB.

⁸Except as provided in Section 15(H)(4).

15. Land Use Standards. All land use activities within the shoreland zone shall conform with the following provisions, if applicable.

A. Minimum Lot Standards

	Minimum Lot Area (sq. ft.)	Minimum Shore Frontage (ft.)
(1)		
(a) Residential per dwelling unit		
(i) Within the Shoreland Zone Adjacent to Tidal Areas	30,000	150
(ii) Within the Shoreland Zone Adjacent to Non-Tidal Areas	40,000	200
(b) Governmental, Institutional, Commercial or Industrial per principal structure		
(i) Within the Shoreland Zone Adjacent to Tidal Areas, Exclusive of Those Areas Zoned for Commercial Fisheries and Maritime Activities	40,000	200
(ii) Within the Shoreland Zone Adjacent to Tidal Areas Zoned for Commercial Fisheries and Maritime Activities	NONE	NONE
(iii) Within the Shoreland Zone Adjacent to Non-tidal Areas	60,000	300
(c) Public and Private Recreational Facilities		
(i) 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, principal governmental, institutional, commercial or industrial 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, principal structure, or use.

B. Principal and Accessory Structures

(1) 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, except that in the General Development I District the setback from the normal high-water line shall be at least twenty five (25) feet, horizontal distance, and in the Commercial Fisheries/Maritime Activities District there shall be no minimum setback. In the Resource Protection District the setback requirement shall be 250 feet, horizontal distance, except for structures, roads, parking spaces or other regulated objects specifically allowed in that district in which case the setback requirements specified above shall apply.

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) All principal structures along Significant River Segments as listed in 38 M.R.S.A. section 437 (see Appendix B), shall be set back a minimum of one hundred and twenty-five (125) feet, horizontal distance, from the normal high-water line and shall be screened from the river by existing vegetation. This provision does not apply to structures related to hydropower facilities.

(c) For principal structures, water and wetland setback measurements shall be taken from the top of a coastal bluff that has been identified on Coastal Bluff maps as being “highly unstable” or “unstable” by the Maine Geological Survey pursuant to 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 or 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.

NOTES: All tidal land which is subject to tidal action during the maximum spring tide is coastal wetland. 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 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 floor area.

(3) 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 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.

(4) The total footprint 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 area previously developed, except in the General Development District adjacent to tidal waters and rivers that do not flow to great ponds classified GPA, and in the Commercial Fisheries/Maritime Activities District, where lot coverage shall not exceed seventy (70) percent.

(5) 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 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 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 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 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;

NOTE: If the wall and associated soil disturbance occurs within 75 feet, horizontal distance, of a water body, tributary stream or coastal wetland, a permit pursuant to the Natural Resource Protection Act is required from the Department of Environmental Protection.

(6) 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 and Uses Extending Over or Below the Normal High-Water Line of a Water Body or Within a Wetland.

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

- (2) The location shall not interfere with existing developed or natural beach areas.
- (3) The facility shall be located so as to minimize adverse effects on fisheries.
- (4) 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 area. A temporary pier, dock or wharf in non-tidal waters shall not be wider than six feet for non-commercial uses.
- (5) 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 body or wetland as an operational necessity.
- (6) 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.
- (7) No existing structures built on, over or abutting a pier, dock, wharf 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.
- (8) Except in the General Development Districts and 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) 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 set back a minimum of one hundred (100) feet, horizontal distance, from the normal high-water line of a great pond classified GPA or a river flowing to a great pond classified GPA, and 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 not associated with campgrounds are allowed 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 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.

(3) 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 a gravel pad, and no structure except a canopy shall be attached to the recreational vehicle.

(4) The clearing of vegetation for the siting of the recreational vehicle, tent or similar shelter in a Resource Protection District shall be limited to 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 landowner 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 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

NOTE: 22 M.R.S.A. section 1471-U requires municipal ordinances that apply to pesticide storage, distribution or use be filed with the Maine Board of Pesticides Control, 28 State House Station, Augusta, ME 04333.

(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

(1) 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 General Development I District and Commercial Fisheries/Maritime Activities District shall be no less than fifty (50) feet, horizontal distance, from the shoreline or tributary stream if the Planning Board finds that no other reasonable alternative exists further from the shoreline or tributary stream.

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

(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 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 alternative exists as determined by the Planning Board. If no other reasonable alternative 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 placed so as to avoid sedimentation of the water body, tributary stream, or wetland. On slopes of greater than twenty (20) percent 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 (20) percent.

Section 15 (H)(1) 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 access to permitted structures within the setback area shall comply fully with the requirements of Section 15(H)(1) except for that portion of the road or driveway necessary for direct access to the structure.

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

(3) New permanent roads are not allowed within the shoreland zone along Significant River Segments except:

(a) To provide access to structures or facilities within the zone; or

(b) When the applicant demonstrates that no reasonable alternative route exists outside the shoreland zone. When roads must be located within the shoreland zone they shall be set back as far as practicable from the normal high-water line and screened from the river by existing vegetation.

(4) New roads and driveways are prohibited in a Resource Protection District except that the Planning Board may grant a permit to construct a road or driveway to provide access to permitted uses within the district. A road or driveway may also be approved by the Planning Board in a Resource Protection District, upon a finding that no reasonable alternative route or location is available outside the district. When a road or driveway is permitted in a Resource Protection District the road 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) 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(Q).

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

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

(a) 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 (10) percent or less.

(c) On sections having slopes greater than ten (10) percent, ditch relief culverts shall be placed at approximately a thirty (30) degree angle downslope from a line perpendicular to the centerline 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) 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 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 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 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 allowed 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 allowed 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 stormwater.

(2) 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 Maine DEP prior to construction of a project consisting of 20,000 square feet or more of impervious area or 5 acres or more of a developed area in an urban impaired stream watershed or most-at-risk lake watershed, or a project with 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 acre or more of disturbed area but less than 1 acre impervious area (20,000 square feet for most-at-risk lakes and urban impaired streams) and less than 5 acres of developed area. Furthermore, a Maine Construction General Permit is required if the construction will result in one acre or more of disturbed area.

K. Septic Waste Disposal

(1) All subsurface sewage disposal systems shall be installed in conformance with the State of Maine Subsurface Wastewater Disposal Rules, and the following: a) 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 b) 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) Where feasible, the installation of essential services shall be limited to existing public ways and existing service corridors.

(2) The installation of essential services, other than road-side distribution lines, is not allowed in a Resource Protection or Stream Protection District, except to provide services to a permitted use within 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) 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) 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 Section 15 (M)(4) below.

(2) 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) Developers of new gravel pits along Significant River Segments shall demonstrate that no reasonable mining site outside the shoreland zone exists. When gravel pits must be located within the zone, they shall be set back as far as practicable from the normal high-water line and no less than seventy-five (75) feet and screened from the river by existing vegetation.

(4) 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, 38 M.R.S.A., section 1301 and the solid waste management rules, Chapters 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 1/2:1) slope or flatter.

(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.

(5) 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 of manure shall be accomplished in conformance with the *Manure Utilization Guidelines* published by the Maine Department of Agriculture on November 1, 2001, and the Nutrient Management Law (7 M.R.S.A. sections 4201-4209).

(2) 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) 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 Conservation Plan may be available through the local Soil and Water Conservation District office.

(4) 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; nor 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) 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.

O. Timber Harvesting

(1) In a Resource Protection District abutting a great pond, timber harvesting shall be limited to the following:

(a) Within the strip of land extending 75 feet, horizontal distance, inland from the normal high-water line, timber harvesting may be conducted when the following conditions are met:

(1) The ground is frozen;

(2) There is no resultant soil disturbance;

(3) The removal of trees is accomplished using a cable or boom and there is no entry of tracked or wheeled vehicles into the 75-foot strip of land;

(4) There is no cutting of trees less than 6 inches in diameter; no more than 30% of the trees 6 inches or more in diameter, measured at 4 ½ feet above ground level, are cut in any 10-year period; and a well-distributed stand of trees and other natural vegetation remains; and

(5) A licensed professional forester has marked the trees to be harvested prior to a permit being issued by the municipality.

(b) Beyond the 75 foot strip referred to in Section 15(O)(1)(a) above, timber harvesting is permitted in accordance with paragraph 2 below except that in no case shall the average residual basal area of trees over 4 ½ inches in diameter at 4 1/2 feet above ground level be reduced to less than 30 square feet per acre.

(2) Except in areas as described in Section 15(O)(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 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 other water bodies, tributary streams, or the upland edge of a wetland, there shall be no clearcut openings and a well-distributed stand of trees and other vegetation, including existing ground cover, shall be maintained.

(ii) At distances greater than one-hundred (100) feet, horizontal distance, of a great pond classified GPA or a river flowing to a great pond classified GPA, and greater than seventy-five (75) feet, horizontal distance, of the normal high-water line of other water bodies or the upland edge of a wetland, harvesting operations shall not create single clearcut openings greater than ten-thousand (10,000) square feet in the forest canopy. Where such openings exceed five-thousand (5000) square feet they shall be at least one hundred (100) feet, horizontal distance, apart. Such clearcut openings shall be included in the calculation of total volume removal. Volume may be considered to be equivalent to basal area.

(b) No accumulation of slash shall be left within fifty (50) feet, horizontal distance, 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 or tributary stream shall be removed.

(d) 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 ground disturbance.

(e) 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.

(f) 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.

(g) 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, horizontal distance, 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, horizontal distance. 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, horizontal distance, from the normal high-water line of a water body or upland edge of a wetland.

O-1. Timber Harvesting – Statewide Standards [Effective on effective date established in Section 4(B)]

(1) Shoreline integrity and sedimentation. Persons conducting timber harvesting and related activities must take reasonable measures to avoid the disruption of shoreline integrity, the occurrence of sedimentation of water, and the disturbance of water body and tributary stream banks, water body and tributary stream channels, shorelines, and soil lying within water bodies, tributary streams and wetlands. If, despite such precautions, the disruption of shoreline integrity, sedimentation of water, or the disturbance of water body and tributary stream banks, water body and tributary stream channels, shorelines, and soil lying within water bodies, tributary streams and wetlands occurs, such conditions must be corrected.

(2) Slash treatment. Timber harvesting and related activities shall be conducted such that slash or debris is not left below the normal high-water line of any water body or tributary stream, or the upland edge of a wetland. Section 15(O-1)(2) does not apply to minor, incidental amounts of slash that result from timber harvesting and related activities otherwise conducted in compliance with this section.

(a) Slash actively used to protect soil from disturbance by equipment or to stabilize exposed soil, may be left in place, provided that no part thereof extends more than 4 feet above the ground.

(b) Adjacent to great ponds, rivers and wetlands:

- (i) No accumulation of slash shall be left within 50 feet, horizontal distance, of the normal high-water line or upland edge of a wetland; and
- (ii) Between 50 feet and 250 feet, horizontal distance, of the normal high-water line or upland edge of a wetland, all slash larger than 3 inches in diameter must be disposed of in such a manner that no part thereof extends more than 4 feet above the ground.

(3) Timber harvesting and related activities must leave adequate tree cover and shall be conducted so that a well-distributed stand of trees is retained. This requirement may be satisfied by following one of the following three options:

(a) Option 1 (40% volume removal), as follows:

- (i) Harvesting of no more than 40 percent of the total volume on each acre of trees 4.5 inches DBH or greater in any 10 year period is allowed. Volume may be considered to be equivalent to basal area;
- (iii) A well-distributed stand of trees which is windfirm, and other vegetation including existing ground cover, must be maintained; and,
- (iv) Within 75 feet, horizontal distance, of the normal high-water line of rivers, streams, and great ponds, and within 75 feet, horizontal distance, of the upland edge of a freshwater or coastal wetlands, there must be no cleared openings. At distances greater than 75 feet, horizontal distance, of the normal high-water line of a river or great pond or upland edge of a wetland, timber harvesting and related activities must not create single cleared openings greater than 14,000 square feet in the forest canopy. Where such openings exceed 10,000 square feet, they must be at least 100 feet, horizontal distance, apart. Such cleared openings will be included in the calculation of total volume removal. Volume may be considered equivalent to basal area.

(b) Option 2 (60 square foot basal area retention), as follows:

- (i) The residual stand must contain an average basal area of at least 60 square feet per acre of woody vegetation greater than or equal to 1.0 inch DBH, of which 40 square feet per acre must be greater than or equal to 4.5 inches DBH;
- (ii) A well-distributed stand of trees which is windfirm, and other vegetation including existing ground cover, must be maintained; and,
- (iii) Within 75 feet, horizontal distance, of the normal high-water line of water bodies and within 75 feet, horizontal distance, of the upland edge of wetlands, there must be no cleared openings. At distances greater than 75 feet, horizontal distance, of the normal high-water line of a river or great pond, or upland edge of a wetland, timber harvesting and related activities must not create single cleared openings greater than 14,000 square feet in the forest canopy. Where such openings exceed 10,000 square feet, they must be at least 100 feet, horizontal distance, apart. Such cleared openings will be included in the calculation of the average basal area. Volume may be considered equivalent to basal area.

(c) Option 3 (Outcome based), which requires: An alternative method proposed in an application, signed by a Licensed Forester or certified wildlife professional, submitted by the landowner or designated agent to the State of Maine Department of Conservation's Bureau of Forestry (Bureau) for review and approval, which provides equal or better protection of the shoreland area than this rule. Landowners must designate on the Forest Operations Notification form required by 12 M.R.S.A. chapter 805, subchapter 5 which option they choose to use. If landowners choose Option 1 or Option 2, compliance will be determined solely on the criteria for the option chosen. If landowners choose Option 3, timber harvesting and related activities may not begin until the Bureau has approved the alternative method.

The Bureau may verify that adequate tree cover and a well-distributed stand of trees is retained through a field procedure that uses sample plots that are located randomly or systematically to provide a fair representation of the harvest area.

(4) Skid trails, yards, and equipment operation. This requirement applies to the construction, maintenance, and use of skid trails and yards in shoreland areas.

(a) Equipment used in timber harvesting and related activities shall not use river, stream or tributary stream channels as travel routes except when surface waters are frozen and snow covered, and the activity will not result in any ground disturbance.

(b) Skid trails and yards must be designed and constructed to prevent sediment and concentrated water runoff from entering a water body, tributary stream, or wetland. Upon termination of their use, skid trails and yards must be stabilized.

(c) Setbacks:

- (i) Equipment must be operated to avoid the exposure of mineral soil within 25 feet, horizontal distance, of any water body, tributary stream, or wetland. On slopes of 10 percent or greater, the setback for equipment operation must be increased by 20 feet, horizontal distance, plus an additional 10 feet, horizontal distance, for each 5 percent increase in slope above 10 percent. Where slopes fall away from the resource, no increase in the 25-foot setback is required.
- (ii) Where such setbacks are impracticable, appropriate techniques shall be used to avoid sedimentation of the water body, tributary stream or wetland. Such techniques may include the installation of sump holes or settling basins, and/or the effective use of additional ditch relief culverts and ditch water turnouts placed to avoid sedimentation of the water body, tributary stream, or wetland. If, despite such precautions, sedimentation or the disruption of shoreline integrity occurs, such conditions must be corrected.

(5) Land Management Roads. Land management roads, including approaches to crossings of water bodies, tributary stream channels, and freshwater wetlands, ditches and other related structures, must be designed, constructed, and maintained to prevent sediment and concentrated water runoff from directly entering the water body, tributary stream or wetland. Surface water on or adjacent to water crossing approaches must be diverted through vegetative filter strips to avoid sedimentation of the watercourse or wetland. Because roadside ditches may not extend to the resource being crossed, vegetative filter strips must be established in accordance with the setback requirements in Section 15(O-1)(7) of this rule.

(a) Land management roads and associated ditches, excavation, and fill must be set back at least:

(i) 100 feet, horizontal distance, from the normal high-water line of a great pond, river or freshwater or coastal wetland;

(ii) 50 feet, horizontal distance, from the normal high-water line of streams; and

(iii) 25 feet, horizontal distance, from the normal high-water line of tributary streams

(b) The minimum 100 foot setback specified in Section 15(O-1)(5)(a)(i) above may be reduced to no less than 50 feet, horizontal distance, and the 50 foot setback specified in Section 15(O-1)(5)(a)(ii) above may be reduced to no less than 25 feet, horizontal distance, if, prior to construction, the landowner or the landowner's designated agent demonstrates to the Planning Board's satisfaction that no reasonable alternative exists and 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 placed to avoid sedimentation of the water body, tributary stream or wetland. If, despite such precautions, sedimentation or the disruption of shoreline integrity occurs, such conditions must be corrected.

(c) On slopes of 10 percent or greater, the land management road setback must be increased by at least 20 feet, horizontal distance, plus an additional 10 feet, horizontal distance, for each 5 percent increase in slope above 10 percent.

(d) New land management roads are not allowed within the shoreland area along Significant River Segments as identified in 38 M.R.S.A. section 437, nor in a Resource Protection District, unless, prior to construction, the landowner or the landowner's designated agent makes a clear demonstration to the Planning Board's satisfaction that no reasonable alternative route exists outside the shoreland zone, and that the new road must be set back as far as practicable from the normal high-water line and screened from the river by existing vegetation.

(e) Ditches, culverts, bridges, dips, water turnouts and other water control installations associated with roads must be maintained on a regular basis to assure effective functioning. Drainage structures shall deliver a dispersed flow of water into an unscarified filter strip no less than the width indicated in the setback requirements in Section 15(O-1)(7). Where such a filter strip is impracticable, appropriate techniques shall be used to avoid sedimentation of the water body, tributary stream, or wetland. Such techniques may include the installation of sump holes or settling basins, and/or the effective use of additional ditch relief culverts and ditch water turnouts placed to avoid sedimentation of the water body, tributary stream, or wetland. If, despite such precautions, sedimentation or the disruption of shoreline integrity occurs, such conditions must be corrected.

(f) Road closeout and discontinuance. Maintenance of the water control installations required in Section 15(O-1)(5)(e) must continue until use of the road is discontinued and the road is put to bed by effective installation of water bars or other adequate road drainage structures at appropriate intervals, constructed to avoid surface water flowing over or under the water bar, and extending a sufficient distance beyond the traveled way so that water does not reenter the road surface.

(g) Upgrading existing roads. Extension or enlargement of presently existing roads must conform to the provisions of Section 15(O-1). Any nonconforming existing road may continue to exist and to be maintained, as long as the nonconforming conditions are not made more nonconforming.

(h) Exception. Extension or enlargement of presently existing roads need not conform to the setback requirements of Section 15(O-1)(5)(a) if, prior to extension or enlargement, the landowner or the landowner's designated agent demonstrates to the Planning Board's satisfaction that no reasonable alternative exists and 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 placed to avoid sedimentation of the water body, tributary stream, or wetland. If, despite such precautions, sedimentation or the disruption of shoreline integrity occurs, such conditions must be corrected.

(i) Additional measures. In addition to the foregoing minimum requirements, persons undertaking construction and maintenance of roads and river, stream and tributary stream crossings must take reasonable measures to avoid sedimentation of surface waters.

(6) Crossings of water bodies. Crossings of rivers, streams, and tributary streams must allow for fish passage at all times of the year, must not impound water, and must allow for the maintenance of normal flows.

(a) Determination of flow. Provided they are properly applied and used for the circumstances for which they are designed, methods including but not limited to the following are acceptable as a means of calculating the 10 year and 25 year frequency water flows and thereby determining water crossing sizes as required in Section 15(O-1): The United States Geological Survey (USGS) Methods; specifically: Hodgkins, G. 1999. Estimating the Magnitude of Peak Flows for Streams in Maine for Selected Recurrence Intervals. U.S. Geological Survey. Water Resources Investigations Report 99-4008. 45 pp.

(b) Upgrading existing water crossings. Extension or enlargement of presently existing water crossings must conform to the provisions of Section 15(O-1). Any nonconforming existing water crossing may continue to exist and be maintained, as long as the nonconforming conditions are not made more nonconforming; however, any maintenance or repair work done below the normal high-water line must conform to the provisions of Section 15(O-1).

(c) Other Agency Permits. Any timber harvesting and related activities involving the design, construction, and maintenance of crossings on water bodies other than a river, stream or tributary stream may require a permit from the Land Use Regulation Commission, the Department of Environmental Protection, or the US Army Corps of Engineers.

(d) Any timber harvesting and related activities involving the design, construction, and maintenance of crossings of freshwater wetlands identified by the Department of Inland Fisheries and Wildlife as essential wildlife habitat require prior consultation with the Department of Inland Fisheries and Wildlife.

(e) Notice to Bureau of Forestry. Written notice of all water crossing construction maintenance, alteration and replacement activities in shoreland areas must be given to the Bureau prior to the commencement of such activities. Such notice must contain all information required by the Bureau, including:

(i) a map showing the location of all proposed permanent crossings;

(ii) the GPS location of all proposed permanent crossings;

(iii) for any temporary or permanent crossing that requires a permit from state or federal agencies, a copy of the approved permit or permits; and

(iv) a statement signed by the responsible party that all temporary and permanent crossings will be constructed, maintained, and closed out in accordance with the requirements of this Section.

(f) Water crossing standards. All crossings of rivers require a bridge or culvert sized according to the requirements of Section 15(O-1)(6)(g)) below. Streams and tributary streams may be crossed using temporary structures that are not bridges or culverts provided:

(i) concentrated water runoff does not enter the stream or tributary stream;

(ii) sedimentation of surface waters is reasonably avoided;

(iii) there is no substantial disturbance of the bank, or stream or tributary stream channel;

(iv) fish passage is not impeded; and,

(v) water flow is not unreasonably impeded.

Subject to Section 15(O-1)(6)(f)(i-v) above, skid trail crossings of streams and tributary streams when channels of such streams and tributary streams are frozen and snow-covered or are composed of a hard surface which will not be eroded or otherwise damaged are not required to use permanent or temporary structures.

(g) Bridge and Culvert Sizing. For crossings of river, stream and tributary stream channels with a bridge or culvert, the following requirements apply:

- (i) Bridges and culverts must be installed and maintained to provide an opening sufficient in size and structure to accommodate 10 year frequency water flows or with a cross-sectional area at least equal to 2 1/2 times the cross-sectional area of the river, stream, or tributary stream channel.
- (ii) Temporary bridge and culvert sizes may be smaller than provided in Section 15(O-1)(6)(g)(i) if techniques are effectively employed such that in the event of culvert or bridge failure, the natural course of water flow is maintained and sedimentation of the water body or tributary stream is avoided. Such crossing structures must be at least as wide as the channel and placed above the normal high-water line. Techniques may include, but are not limited to, the effective use of any, a combination of, or all of the following:

- 1. use of temporary skidder bridges;
- 2. removing culverts prior to the onset of frozen ground conditions;
- 3. using water bars in conjunction with culverts;
- 4. using road dips in conjunction with culverts.

(iii) Culverts utilized in river, stream and tributary stream crossings must:

- 1. be installed at or below river, stream or tributary stream bed elevation;
- 2. be seated on firm ground;
- 3. have soil compacted at least halfway up the side of the culvert;
- 4. be covered by soil to a minimum depth of 1 foot or according to the culvert manufacturer's specifications, whichever is greater; and
- 5. have a headwall at the inlet end which is adequately stabilized by riprap or other suitable means to reasonably avoid erosion of material around the culvert.

(iv) River, stream and tributary stream crossings allowed under Section 15(O-1), but located in flood hazard areas (i.e. A zones) as identified on a community's Flood Insurance Rate Maps (FIRM) or Flood Hazard Boundary Maps (FHBM), must be designed and constructed under the stricter standards contained in that community's National Flood Insurance Program (NFIP). For example, a water crossing may be required to pass a 100- year flood event.

(v) Exception. Skid trail crossings of tributary streams within shoreland areas and wetlands adjacent to such streams may be undertaken in a manner not in conformity with the requirements of the foregoing subsections provided persons conducting such activities take reasonable measures to avoid the disruption of shoreline integrity, the occurrence of sedimentation of water, and the disturbance of stream banks, stream channels, shorelines, and soil lying within ponds and wetlands. If, despite such precautions, the

disruption of shoreline integrity, sedimentation of water, or the disturbance of stream banks, stream channels, shorelines, and soil lying within ponds and wetlands occurs, such conditions must be corrected.

(h) Skid trail closeout. Upon completion of timber harvesting and related activities, or upon the expiration of a Forest Operations Notification, whichever is earlier, the following requirements apply:

(i) Bridges and culverts installed for river, stream and tributary stream crossings by skid trails must either be removed and areas of exposed soil stabilized, or upgraded to comply with the closeout standards for land management roads in Section 15(O-1)(6)(i) below.

(ii) Water crossing structures that are not bridges or culverts must either be removed immediately following timber harvesting and related activities, or, if frozen into the river, stream or tributary stream bed or bank, as soon as practical after snowmelt.

(iii) River, stream and tributary stream channels, banks and approaches to crossings of water bodies and tributary streams must be immediately stabilized on completion of harvest, or if the ground is frozen and/or snow-covered, as soon as practical after snowmelt. If, despite such precautions, sedimentation or the disruption of shoreline integrity occurs, such conditions must be corrected.

(i) Land management road closeout. Maintenance of the water control features must continue until use of the road is discontinued and the road is put to bed by taking the following actions:

(i) Effective installation of water bars or other adequate road drainage structures at appropriate intervals, constructed to reasonably avoid surface water flowing over or under the water bar, and extending sufficient distance beyond the traveled way so that water does not reenter the road surface.

(ii) Water crossing structures must be appropriately sized or dismantled and removed in a manner that reasonably avoids sedimentation of the water body or tributary stream.

(iii) Any bridge or water crossing culvert in roads to be discontinued shall satisfy one of the following requirements:

1. it shall be designed to provide an opening sufficient in size and structure to accommodate 25 year frequency water flows;

2. it shall be designed to provide an opening with a cross-sectional area at least $3 \frac{1}{2}$ times the cross-sectional area of the river, stream or tributary stream channel; or

3. it shall be dismantled and removed in a fashion to reasonably avoid sedimentation of the river, stream or tributary stream.

If, despite such precautions, sedimentation or the disruption of shoreline integrity occurs, such conditions must be corrected.

(7) Slope Table

Filter strips, skid trail setbacks, and land management road setbacks must be maintained as specified in Section 15(O-1), but in no case shall be less than shown in the following table.

Average slope of land between exposed mineral soil and the shoreline (percent)	Width of strip between exposed mineral soil and shoreline feet along surface of the ground)
0	25
10	45
20	65
30	85
40	105
50	125
60	145
70	165

P. Clearing or Removal of Vegetation for Activities Other Than Timber Harvesting

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

(2) Except in areas as described in Section 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, and 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 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 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 Section 15(P)(2)(b) a "well-distributed stand of trees" adjacent to a great pond classified GPA or a river or stream flowing to a great pond classified GPA, shall be defined as maintaining a rating score of 24 or more in each 25-foot by 50-foot rectangular (1250 square feet) area as determined by the following rating system.

Diameter of Tree at 4-1/2 feet Above Ground Level (inches)	Points
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 16 per 25-foot by 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 trees between 4 and 8 inches in diameter, three trees between 8 and 12 inches in diameter, and two trees over 12 inches in diameter, the rating score is: $(4 \times 1) + (2 \times 2) + (3 \times 4) + (2 \times 8) = 36$ 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 25-foot by 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 is Ordinance;

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

For the purposes of Section 15(P)(2)(b) "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 ($4 \frac{1}{2}$) feet above ground level for each 25-foot by 50-foot rectangle area. If five saplings do not exist, no woody stems less than two (2) inches in diameter can be removed until 5 saplings have been recruited into the plot.

Notwithstanding the above provisions, no more than 40% of the total volume of trees four (4) inches or more in diameter, measured at $4 \frac{1}{2}$ 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) paragraphs (2) and (2)(a) above.

(d) Pruning of tree branches, on the bottom $\frac{1}{3}$ 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.

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 area necessary.

(3) 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 allowed on any lot, in any ten (10) year period, selective cutting of not more than forty (40) percent of the volume of trees four (4) inches or more in diameter, measured $4 \frac{1}{2}$ feet above

ground level. 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 any purpose, including but not limited to, principal and accessory structures, driveways, lawns and sewage disposal areas, exceed in the aggregate, 25% of the lot area within the shoreland zone or ten thousand (10,000) square feet, whichever is greater, including land previously cleared. This provision shall not apply to the General Development or Commercial Fisheries/Maritime Activities Districts.

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

(5) 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. 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 also 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 rip-rap.

(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. 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 riprap.

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, tributary stream or wetland.

T. Archaeological Site. 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 permitting authority, 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 permitting authority. The permitting authority shall consider comments received from the Commission prior to rendering a decision on the application.

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 30-A M.R.S.A. section 2691.

(3) Planning Board. A Planning Board shall be created 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 nonconforming use. 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) A permit is not required for the replacement of an existing road culvert as long as:

(a) The replacement culvert is not more than 25% longer than the culvert being replaced;

(b) The replacement culvert is not longer than 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) 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 1 or level 2 approved list, and unreasonable erosion and sedimentation is prevented by means of adequate and timely temporary and permanent stabilization measures.

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

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 appropriate official as indicated in Section 14.

(2) 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 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.

(3) All applications shall be dated, and the Code Enforcement Officer or Planning Board, as appropriate, shall note upon each application the date and time of its receipt.

(4) If the property is not served by a public sewer, 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 or use would require the installation of a subsurface sewage disposal system.

D. Procedure for Administering Permits. Within 35 days of the date of receiving a written application, the Planning Board or Code Enforcement Officer, as indicated in Section 14, 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 or the Code Enforcement Officer, as appropriate, 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 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 to 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 protect archaeological and historic resources as designated in the comprehensive plan;
- (7) Will not adversely affect existing commercial fishing or maritime activities in a Commercial Fisheries/Maritime Activities district;
- (8) Will avoid problems associated with floodplain development and use; and
- (9) 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 statute administered by the municipality.

E. Special Exceptions. In addition to the criteria specified in Section 16(D) 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) There is no location on the property, other than a location within the Resource Protection District, where the structure can be built.
 - (2) The lot on which the structure is proposed is undeveloped and was established and recorded in the registry of deeds of the county in which the lot is located before the adoption of the Resource Protection District.
 - (3) All proposed buildings, sewage disposal systems and other improvements are:
 - (a) Located on natural ground slopes of less than 20%; and
 - (b) Located outside the floodway of the 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 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 1/2 the width of the 100-year flood-plain.
- (4) The total ground-floor area, including cantilevered or similar overhanging extensions, of all principal and accessory structures is limited to a maximum of 1,500 square feet. This limitation shall not be altered by variance.

(5) All structures, except functionally water-dependent structures, are set back from the normal high-water line of a water body, tributary stream or upland edge of a wetland to the greatest practical extent, but not less than 75 feet, horizontal distance. In determining the greatest practical extent, the Planning Board 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.

F. 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.

G. 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.

H. 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 administrative appeals, on an appellate basis, where it is alleged by an aggrieved party that there is an error in any order, requirement, decision, or determination made by, or failure to act by, the Planning Board in the administration of this Ordinance; and to hear and decide administrative appeals on a de novo basis where it is alleged by an aggrieved party that there is an error in any order, requirement, 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. 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.

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

(2) Variance Appeals. 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 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:

- a. That the land in question cannot yield a reasonable return unless a variance is granted;
- b. That the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;
- c. That the granting of a variance will not alter the essential character of the locality; and
- d. That the hardship is not the result of action taken by the applicant or a prior owner.

(d) Notwithstanding Section 16(H)(2)(c)(ii) above, the Board of Appeals 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 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.

(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 municipal officials 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.

(3) 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 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 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 record of the Planning Board proceedings are inadequate, the Board of Appeals may remand the matter to the Planning Board for additional fact finding.

(4) 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, except for enforcement-related matters as described in Section 16(H)(1)(a) above. Such an appeal shall be taken within thirty (30) days of the date of the official, written decision appealed from, and not otherwise, except that the Board, upon a showing of good cause, may waive the thirty (30) day requirement.

(ii) Applications for appeals shall be made by filing with the Board of Appeals a written notice of appeal 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 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.

(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.

(b) Decision by Board of Appeals

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

(ii)

(ii) The person filing the appeal shall have the burden of proof.

(iii) The Board 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.

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

(5) Appeal to Superior Court. Except as provided by 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.

(6) Reconsideration. In accordance with 30-A M.R.S.A. section 2691(3)(F), the Board of Appeals may reconsider any decision within forty-five (45) days of its prior decision. A request to the Board to reconsider a decision must be filed within ten (10) days of the decision that is being reconsidered. A vote to reconsider and the action taken on that reconsideration must occur and be completed within forty-five (45) days of the date of the vote on the original decision. Reconsideration of a decision shall require a positive vote of the majority of the Board members originally voting on the decision, and proper notification to the landowner, petitioner, planning board, code enforcement officer, and other parties of interest, including abutters and those who testified at the original hearing(s). The Board may conduct additional hearings and receive additional evidence and testimony. Appeal of a reconsidered decision to Superior Court must be made within fifteen (15) days after the decision on reconsideration.

I. 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 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 a biennial basis, a summary of this record shall be submitted to the Director of the Bureau of Land and Water Quality within the Department 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 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 violates 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 \$100 nor more than \$2500 per violation for each day that the violation continues. However, in a resource protection district the maximum penalty is increased to \$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. 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.

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; dairy animals and dairy products; poultry and poultry products; livestock; fruits and vegetables; and ornamental and greenhouse products. Agriculture does not include forest management and timber harvesting activities.

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 at 4 1/2 feet above ground level and inclusive of bark.

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

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 – State of Maine Department of Conservation's Bureau of Forestry

Campground - 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 subtidal lands; all lands with vegetation present that is tolerant of salt water and occurs primarily in a salt water or estuarine habitat; and any swamp, marsh, bog, beach, flat or other contiguous low land that is subject to tidal action during the highest tide level for the year in

which an activity is proposed as identified in tide tables published by the National Ocean Service. Coastal wetlands may include portions of coastal sand dunes.

NOTE: All areas below the maximum spring 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," 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.

Cross-sectional area – the cross-sectional area of a stream or tributary stream channel is determined by multiplying the stream or tributary stream channel width by the average stream or tributary stream channel depth. The stream or tributary stream channel width is the straight line distance from the normal high-water line on one side of the channel to the normal high-water line on the opposite side of the channel. The average stream or tributary stream channel depth is the average of the vertical distances from a straight line between the normal high-water lines of the stream or tributary stream channel to the bottom of the channel.

DBH – the diameter of a standing tree measured 4.5 feet from ground level.

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; and also includes 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.

Disruption of shoreline integrity - the alteration of the physical shape, properties, or condition of a shoreline at any location by timber harvesting and related activities. A shoreline where shoreline integrity has been disrupted is recognized by compacted, scarified and/or rutted soil, an abnormal channel or shoreline cross-section, and in the case of flowing waters, a profile and character altered from natural conditions.

Driveway - a vehicular access-way less than five hundred (500) feet in length serving two single-family dwellings or one two-family dwelling, 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 similar pipelines; municipal sewage lines, collection or supply systems; and associated storage tanks. Such systems may include towers, poles, wires, mains, drains, pipes, conduits, cables, fire alarms and police call boxes, traffic signals, hydrants and similar accessories, but shall not include service drops or buildings which are necessary for the

furnishing of such services.

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

Expansion of use - the addition of one or more months to a use's operating season; or the use of more floor area or ground area devoted to a particular use.

Family - one or more persons occupying a premises and living as a single housekeeping unit.

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

Floor area - the sum of the horizontal areas of the floor(s) of a structure enclosed by exterior walls, plus the horizontal area of any unenclosed portions of a structure such as porches and decks.

Forest management activities - timber cruising and other forest resource evaluation activities, pesticide or fertilizer application, management planning activities, timber stand improvement, pruning, regeneration of forest stands, and other similar or associated activities, exclusive of timber harvesting and the construction, creation or maintenance of roads.

Forested wetland - a freshwater wetland dominated by woody vegetation that is six (6) meters tall (approximately twenty (20) feet) or taller.

Forest Stand - a contiguous group of trees sufficiently uniform in age class distribution, composition, and structure, and growing on a site of sufficiently uniform quality, to be a distinguishable unit.

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

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

1. Of ten or more contiguous acres; or of less than 10 contiguous acres and adjacent to a surface water body, excluding any river, stream or brook, such that in a natural state, the combined surface area is in excess of 10 acres; and
2. Inundated or saturated by surface or ground water at a frequency and for a duration sufficient to support, and which under normal circumstances do support, a prevalence of wetland vegetation typically adapted for life in saturated soils.

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

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 that can not 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, finfish and shellfish processing, fish storage and retail and wholesale fish marketing facilities, waterfront dock and port facilities, shipyards and boat building facilities, marinas, navigation aids, basins and channels, retaining walls, industrial uses dependent upon water-borne transportation or requiring large volumes of cooling or processing water that can not reasonably be located or operated at an

inland site, and uses that primarily provide general public access to coastal or inland waters.
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 38 M.R.S.A. 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.

Harvest Area - the area where timber harvesting and related activities, including the cutting of trees, skidding, yarding, and associated road construction take place. The area affected by a harvest encompasses the area within the outer boundaries of these activities, excepting unharvested areas greater than 10 acres within the area affected by a harvest.

Height of a structure - the vertical distance between the mean original (prior to construction) grade at the downhill side of the structure and the highest point of the structure, excluding chimneys, steeples, antennas, and similar appurtenances that have no floor area.

Home occupation - 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 nonconformity 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 nonconforming 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 not be limited to a gravel pad, parking area, fire place, or tent platform.

Industrial - The assembling, fabrication, finishing, manufacturing, 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.

Land Management Road - a route or track consisting of a bed of exposed mineral soil, gravel, or other surfacing materials constructed for, or created by, the passage of motorized vehicles and used primarily for timber harvesting and related activities, including associated log yards, but not including skid trails or skid roads.

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 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, and which may also provide accessory services such as boat and related sales, boat repair and construction, indoor and outdoor storage of boats and marine equipment, bait and tackle shops and marine fuel service facilities.

Market value - 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 - a residential structure containing three (3) or more residential dwelling units.

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, does 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, 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.

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 predominantly 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.”

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.

For piers, docks, wharves, bridges and other structures and uses extending over or beyond the normal high-water line or within a wetland:

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

Permanent: Structures which remain in or over the water for seven (7) months or more 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 premises.

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

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 floodplain soils - the following soil series as described and identified by the National Cooperative Soil Survey:

Fryeburg, Hadley, Limerick, Lovewell, Medomak, Ondawa, Alluvial, Cornish, Charles, 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 pick-up camper, travel trailer, tent trailer, camp trailer, and motor home. In order to be considered as a vehicle and not as a structure, the unit 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.

Residual basal area - the average of the basal area of trees remaining on a harvested site.

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.

Residual Stand - a stand of trees remaining in the forest following timber harvesting and related Activities

River - a free-flowing body of water including its associated floodplain 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 cordgrass (*Spartina alterniflora*). More open areas often support widgeon grass, eelgrass, and Sago pondweed.

Salt meadow - Areas of a coastal wetland that support salt tolerant plant species bordering the landward side of salt marshes or open coastal water, where the soil is saturated during the growing season but which is rarely inundated by tidal water. Indigenous plant species include salt meadow cordgrass (*Spartina patens*) and black rush; common threesquare occurs in fresher areas.

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

1. in the case of electric service
 - a. the placement of wires and/or the installation of utility poles is located entirely upon the premises of the customer requesting service or upon a roadway right-of-way; and
 - b. the total length of the extension is less than one thousand (1,000) feet.
2. in the case of telephone service
 - a. the extension, regardless of length, will be made by the installation of telephone wires to existing utility poles, or
 - b. the extension requiring the installation of new utility poles or placement underground is less than one thousand (1,000) feet in length.

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

Shore frontage - the length of a lot bordering on a water body or wetland measured in a straight line between the intersections of the lot lines with the shoreline.

Shoreland zone - the land area located within two hundred and fifty (250) feet, horizontal distance, of the normal high-water line of any great pond or river; within 250 feet, horizontal distance, of the upland edge of a coastal wetland, including all areas affected by tidal action; within 250 feet of the

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

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

Significant River Segments - See Appendix B or 38 M.R.S.A. section 437.

Skid Road or Skid Trail - a route repeatedly used by forwarding machinery or animal to haul or drag forest products from the stump to the yard or landing, the construction of which requires minimal excavation.

Slash - the residue, e.g., treetops and branches, left on the ground after a timber harvest.

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 edition of a United States Geological Survey 7.5 minute series topographic map, or if not available, a 15-minute series topographic map, to the point where the body of water becomes a river or flows to another water body or wetland within the shoreland area.

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

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

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

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 maximum spring 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 or removal of trees shall be regulated pursuant to Section 15 (P), *Clearing or Removal of Vegetation for Activities Other Than Timber Harvesting*.

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

Tributary stream – means a channel between defined banks created by the action of surface water,

which is characterized by the lack of terrestrial vegetation or by the presence of a bed, devoid of topsoil, containing waterborne deposits or exposed soil, parent material or bedrock; and which is connected hydrologically with other water bodies. "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.

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 maximum spring tide level, including all areas affected by tidal action. For purposes of a freshwater wetland, the upland edge is formed where the soils are not saturated for a duration sufficient to support wetland vegetation; or where the soils support the growth of wetland vegetation, but such vegetation is dominated by woody stems that are six (6) meters (approximately twenty (20) foot) tall or taller.

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

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.

Volume of a structure - the volume of all portions of a structure enclosed by roof and fixed exterior walls as measured from the exterior faces of these walls and roof.

Water body - any great pond, river or stream.

Water crossing - any project extending from one bank to the opposite bank of a river, stream, tributary stream, or wetland whether under, through, or over the water or wetland. Such projects include but may not be limited to roads, fords, bridges, culverts, water lines, sewer lines, and cables as well as maintenance work on these crossings. This definition includes crossings for timber harvesting equipment and related activities.

Wetland - a freshwater or coastal wetland.

Windfirm - the ability of a forest stand to withstand strong winds and resist windthrow, wind rocking, and major breakage.

Woody Vegetation - live trees or woody, non-herbaceous shrubs.

APPENDIX A

38 §437. Significant river segments identified

For purposes of this ordinance, significant river segments in Cherryfield include the following:

Narraguagus River. The Narraguagus River from the ice dam above the railroad bridge in Cherryfield to the Deblois town line.

April 21, 2015
Final Copy

Town of Cherryfield
Wind Energy Ordinance

Section 1: Purpose

The purpose of this ordinance is to regulate the placement and construction of commercial wind energy systems, so as to preserve the Town's visual character, minimize adverse environmental impacts, and protect the public health, safety and welfare of the residents of Cherryfield.

Section 2: Authority

This ordinance is enacted pursuant to the Town of Cherryfield's home rule authority under 30-A M.R.S. section 3001 *et seq.* and Maine's growth management statute, 30-A M.R.S. section 4353.

Section 3: Effective Date: Applicability

(a) Effective Date.

This ordinance shall take effect upon approval by the voters of the Town of Cherryfield at a regular or special Town meeting or Town referendum election duly called for this purpose.

(b) Applicability.

Notwithstanding 1 M.R.S. section 302, this ordinance shall apply to all commercial wind energy systems proposed within the Town of Cherryfield that have not received final permit approvals from all applicable permitting authorities as of the effective date of this ordinance.

Section 4: Conflicts with Other Ordinances

In the event of a conflict between this ordinance and any ordinance of the Town of Cherryfield previously enacted, as related to commercial wind energy systems, the provisions of this ordinance shall be controlling.

Section 5: Permitting Authority

Installation or operation of a commercial wind energy system must be permitted through the Town of Cherryfield Planning Board. No person, entity, firm or corporation shall build or operate a commercial wind energy system in the Town of Cherryfield except in compliance with a final permit issued by the Planning Board following an application and hearing as provided in this ordinance.

The Planning Board shall have authority to approve a separate permit for one or more meteorological ("met") towers, for the purpose of evaluating the local wind resource on a proposed commercial wind energy system project site, prior to submission of a full project application under this ordinance. Permits for meteorological towers shall be submitted and approved in accordance

with the provisions of the Town of Cherryfield Land Use Ordinance, subject to the following additional requirements:

- i. Meteorological towers shall not exceed 400 feet height.
- ii. Meteorological towers shall be of free-standing mast, open lattice or monopole construction, with or without supporting cables or guy lines.
- iii. Permits for meteorological towers shall be valid for a maximum of five (5) years after final permit approval, with the tower to be removed within six (6) months after expiration of the permit, at the applicant's expense, unless the tower is subsequently incorporated into a full application for a commercial wind energy system permit as a permanent facility.
- iv. Prior to approval of a separate meteorological tower permit, the Planning Board shall require the applicant to provide a third-party estimate of tower decommissioning and removal costs. As a condition of permit approval, the Planning Board shall require the applicant to provide adequate security, in the form of a letter of credit, surety bond, performance bond or cash escrow, to fund decommissioning and removal costs.

Section 6: Permitted Locations

Subject to the other requirements of this Ordinance, wind energy systems shall be allowed only within the areas depicted in the area map attached hereto as Appendix 1.

In the event of uncertainty concerning the physical location of the permitted area boundary, the boundary as depicted in Appendix 1 shall be deemed to follow the nearest boundaries of tax map parcels depicted in the Town of Cherryfield assessors' maps existing as of the date of enactment of this Ordinance.

Section 7: Applications

Applications for approval of a commercial wind energy system shall be submitted and processed as applications for site plan review under section 5 of the Town of Cherryfield Land Use Ordinance. In addition to the application, fee and supporting materials required by section 5 of the Land Use Ordinance, the application shall include the following:

- i. Applicant's standing - evidence of the applicant's right, title or interest in the project parcel(s) sufficient to maintain a land use permit application. Evidence for this purpose may consist of a deed showing title in the applicant; a non-expired purchase and sale agreement or option to purchase; a lease or memorandum thereof; a non-expired option to lease; or written permission from the owner(s) of record to apply for the permit as agent for the owner(s) of record.
- ii. Site location map – a USGS quadrangle map (sized no smaller than 8 1/2" x 11") of the property on which the wind energy system is proposed, with the general area cross-hatched or otherwise graphically identified.

iii. Tax Map – a Town of Cherryfield property tax map (sized no smaller than 8 1/2" x 11") on which the wind energy system is proposed, with the property cross-hatched or otherwise geographically identified.

iv. Project description – including specific information regarding the type, size, tower type and height, rotor material and diameter, rated power output, performance, safety and noise, manufacturer, model and serial number of the wind energy system.

v. Site plan of the subject property – showing the planned location of the wind energy system as well as the location of and distance to setback lines, adjoining property lines, roads, easements, ROWs, habitable structures, utility lines, great ponds, streams and wetlands, proposed access roads, significant wildlife habitat, and any erosion control measures.

vi. Description of normal and emergency shutdown procedures – an automatic braking, governing or feathering system shall be required to prevent uncontrolled rotation.

vii. Copy of utility contract – if connecting to the publicly regulated utility grid is proposed, a copy of the Interconnection Feasibility study between the applicant and the utility verifying that the proposed construction is acceptable, and / or other evidence making clear that the utility is aware of the proposed connection and finds it acceptable.

viii. Photographs – photos of the proposed site.

ix. A visual analysis composed of elevation drawings of the proposed wind energy system and any other proposed structures, showing height above ground level. The analysis shall also indicate the color treatment of the system's components and any visual screening incorporated into the site that is intended to lessen the system's visual prominence.

x. A landscaping plan indicating the proposed placement of the tower on the site; location of existing trees and other significant site features; and the method of fencing, if any.

xi. Design documents or other evidence of compliance with the design standards of section 8(a) of this ordinance.

Upon request of the applicant, the Planning Board shall have authority to waive any submittal requirements under this ordinance or under section 5 of the Land Use Ordinance as provided in section 5(C)(1) of the Land Use Ordinance.

Section 8: Approval Standards

The Planning Board shall not approve an application for a commercial wind energy system unless a majority of the Planning Board members present and voting on the application affirmatively finds that the application and proposed project will meet the following approval standards:

(a) Design Standards.

i. All components of a wind energy system used to generate electricity including blades and all necessary parts shall have a radius of not more than two hundred seventy-five feet (275'); the minimum distance between the ground and any wind turbine blades shall be twenty-five feet (25') as measured at the lowest arc of the blades; and the wind energy system shall be designed such that unauthorized public access is prevented for a minimum of twelve feet (12') above the ground.

ii. A wind energy system shall be equipped with both manual and automatic over-speed controls.

iii. A wind energy system shall incorporate non-reflective surfaces to minimize any visual glare from the system's facilities.

iv. All on-site collection lines associated with the wind energy system shall be installed underground except for "tie-ins" to any public utility company transmission poles, towers and lines and /or generator lead lines. This standard may be modified by the Planning Board if the project terrain is determined to be unsuitable for underground installation. Generator lead lines may be installed above ground.

v. The wind energy system shall be lighted required by Federal Aviation Administration laws and regulations. To the extent allowed by such regulations, the system design shall incorporate proximity lighting or other lighting design features to minimize the visual impact of the system's facilities on other properties and "night sky" vistas.

vi. The wind energy system shall not display any permanent or temporary signs, writing, symbols, logos or any graphic representation of any kind except appropriate manufacturer's or installer's identification and warning signs.

(b) Electromagnetic Interference.

A wind energy system shall be designed and operated so as to minimize disruptive electromagnetic interference with signal transmission or reception beyond the project site. Complaints that the wind energy system, following construction, is causing disruptive electromagnetic interference beyond the project site shall be subject to the complaint resolution process set out in section 11(e) below.

(c) Setbacks.

All wind energy system towers shall be setback from all property lines of non-participating parcels a minimum of two thousand, five hundred feet (2,500'). All other facilities of the wind energy system (service buildings, generator lead lines, etc.) shall be subject to the setback requirements of the Land Use Ordinance. To provide a safety or "fall" zone, wind energy system towers that are set back less than 2,500 feet from the boundary line of a participating parcel shall be set back a minimum of 150% of the tower height from any occupied structures on the participating parcel concerned.

(d) Height.

A wind energy system shall have a maximum height of six hundred feet (600') as measured from the ground to the tower's highest point, including maximum blade sweep at the highest point of rotation.

(e) Noise.

The wind energy system shall not exceed 45 dBA as measured at the adjoining property lines of non-participating parcels and habitable structures, except during short-term weather events such as severe wind storms.

(f) Other Permits.

A wind energy system must receive all permits required by other governmental authorities to be approved under this ordinance. Other governmental permits include, without limitation, Site Location of Development Law approval by the Maine Department of Environmental Protection and any required wetlands permits from the Army Corps of Engineers. The Planning Board shall have authority to conditionally approve a permit under this ordinance for a wind energy facility subject to receipt of final permit approval from other governmental authorities.

(g) Community Benefit Agreement.

Applicants for approval of a wind energy system must demonstrate compliance with the host community benefit requirements of the Maine Wind Energy Act, 35-A M.R.S. section 3454. Upon preliminary approval of a host community benefit agreement for the project by the Cherryfield town selectmen, the Planning Board may conditionally approve a wind energy system application, such approval to become final without further action by the Planning Board upon final approval of the host community benefit agreement by the Cherryfield town meeting.

(i) Road Use Agreement.

Applicants for approval of a wind energy system permit must provide evidence that they have entered into a road use agreement with the Town of Cherryfield, satisfactory to and approved by the Town selectmen, to prevent or repair damage caused by operation of over-size and over-weight vehicles on Town roads during project construction. The Planning Board may conditionally approve a wind energy system permit, subject to compliance with this requirement prior to the start of project construction.

The Planning Board may waive the requirement of a road use agreement, if all access to the project for construction purposes shall be via state highways and / or private access roads. If the road use agreement is waived by the Planning Board, the project permit shall include a condition that no Town roads shall be used to access the project for project construction purposes.

(j) Decommissioning.

The applicant shall provide a third-party estimate of the cost of decommissioning and removal of the wind energy system at the end of its useful life and shall provide adequate security, in the form of a letter of credit, surety bond, performance bond or cash escrow, to fund decommissioning and removal costs. For this purpose, the Planning Board may accept the applicant's surety bond or other financial assurances provided to the Maine Department of Environmental Protection in connection with the applicant's Site Location of Development Law application, if the bond or other financial assurances include provisions granting the Town the right to access the security concerned in the event of a decommissioning default.

Section 9: Hearings

Upon a finding by the Planning Board that an application meets the submittal requirements of this ordinance, the Planning Board shall conduct hearings and render a decision as provided in section 5 of the Land use Ordinance.

As part of its review, the Planning Board shall conduct at least one public hearing at which residents of the Town of Cherryfield shall be entitled to express their views and provide information to the Board. In reaching its decision, the Board shall consider only that information presented that the Board determines to be relevant to the applicable approval criteria.

The Planning Board shall render a decision within the time required by section 5 of the Land Use Ordinance, unless the applicant consents in writing or at a public meeting of the Board to an extension.

Section 10: Appeals

Notwithstanding section 11 of the Land Use Ordinance, all appeals from the Planning Board's decision on a permit application shall be made to the Maine Superior Court, in accordance with Rule 80B of the Maine Rules of Civil Procedure. Any appeal for this purpose must be filed within thirty (30) days after Planning Board's final vote on the application.

Section 11: Enforcement

(a) Violations.

It shall be a violation of this ordinance to:

- (i) Construct or operate a commercial wind energy system without first obtaining the permit required under this ordinance;
- (ii) Construct or operate a commercial wind energy system without first obtaining any permit for the project required by other governmental authorities;
- (iii) Operate a commercial wind energy system following suspension or revocation of any required permit; or

(iv) Operate a commercial wind energy system in a manner contrary to the conditions or requirements of any required permit.

(b) Enforcement.

Any violation of this ordinance, including violations of permit conditions, shall be subject to prosecution and fines as a land use violation under 30-A M.R.S. section 4452, subject to the complaint resolution process set out in subsection (e) below, when applicable.

It shall be the duty of the Code Enforcement Officer (CEO) to enforce provisions of this ordinance. The CEO shall conduct on-site inspections of permitted projects to ensure compliance with all applicable laws and conditions attached to permit approvals. The CEO shall also investigate complaints of alleged violations of this ordinance. If the CEO finds a violation of this ordinance, he/she shall notify in writing the person responsible for the violation, indicate the nature of the violation and indicate the action necessary to correct the violation. This may include any discontinuance of illegal use of land, buildings or structures; work being done; removal of illegal buildings or structures; and abatement of nuisance conditions.

(c) Noise Complaints.

Upon complaint of an abutter, ambient and maximum decibel measurements shall be performed by an agent designated by the Code Enforcement Officer. The report shall be submitted to the Planning Board for information.

If the maximum decibel rating is exceeded, the owner of the commercial wind energy system shall be notified by the CEO in writing and given ninety days (90) from notification of the violation in which to correct the violation.

(d) Legal Actions.

When written notices of violation do not result in the correction or abatement of the violation, the CEO, in conjunction with the municipal officers, may institute any and all actions and proceedings. Such actions may be either legal or equitable, including seeking injunctions of violations and/or imposition of fines. The municipal officers may enter into administrative consent agreements for the purpose of eliminating violations of this ordinance and recovering fines without Court action, or by consent agreement in court. Fines for violations, including maximum fines, shall be as provided in 30-A M.R.S. section 4452. Fines will begin at \$100.00 per day. Every day the violation continues to exist following receipt of a written notice of violation shall be considered a separate offense. If the violation continues beyond 60 days, the minimum fine will double to \$200.00 per day. Administrative consent agreements shall not allow a violation of this ordinance to continue unless there is clear and convincing evidence that abatement of the violation will result in a threat or hazard to public health and safety or will result in substantial environmental damage.

(e) Complaint Resolution Process.

Prior to commencement of legal action by the Town with respect to uncorrected violations of this ordinance based on resident or landowner complaints concerning noise or electromagnetic interference, the Town and the project permit holder shall engage in a complaint resolution process as follows:

i. The Town shall provide an initial notice to the permit holder, in writing, within thirty (30) days after the Town's receipt of a complaint. The Town's initial notice need not be in the form of a notice of violation. At a minimum, the Town and the permit holder shall hold a minimum of two informal meetings within thirty (30) days after the Town's initial notice, to attempt to resolve the complaint issue(s). The resident(s) or landowner(s) making the complaint shall be notified of the meeting dates and shall be given the opportunity to attend and participate.

ii. If the complaint has not been resolved at the first meeting, the Town and the permit holder shall each involve a senior manager at the second meeting.

iii. If the informal meetings fail to resolve the issue(s), the Town or the permit holder may request mediation before a qualified third-party within thirty (30) days following the second informal meeting. Mediation shall be by mutual agreement of the Town and the permit holder only. In the event the Town and the permit holder agree to mediation, each shall bear its own costs for participation in the mediation process, including payment of one-half of any mediation fees.

Section 12: Abandonment

A commercial wind energy system that does not generate electricity for sale to utility or commercial customers for twelve (12) consecutive months at any time after commencement of commercial operation shall be considered abandoned and shall be dismantled and removed from the property by the owner within one hundred twenty days (120) of receipt of notice from the town.

Upon failure of the owner to remove the system within the required period, the Town shall have the right, but not the obligation, to access the decommissioning fund or security for this purpose

The owner of a commercial wind energy system may request in writing that the Planning Board grant an extension of up to one (1) year if the owner is actively pursuing sale or repair of the wind energy system for a future resumption of use, or is actively seeking a new purchaser of the system's electricity production following expiration of a long-term power purchase agreement.

Section 13: Definitions

(a) Commencement of Commercial Operation. The date on which a commercial wind energy system first delivers electric power to utility or commercial purchasers through the regional electric grid.

(b) Commercial Wind Energy System. Non-utility facilities for generating and transmitting electric power from wind for sale to publicly-owned utilities or other purchasers via the regional electrical transmission grid. The term "commercial wind energy system" includes but

is not limited to wind towers, turbines, nacelles, blades, gearboxes, generator lead lines, meteorological (“met”) towers, non-utility transformers and electric substations, service buildings and necessary private access roads.

(c) Collection Lines. Electrical lines installed as part of a Wind Energy System to collect power generated by individual Wind Turbines.

(d) Generator Lead Lines. Long-distance electrical transmission lines and associated towers, insulators, etc., installed in conjunction with a Commercial Wind Energy System for the purpose of transmitting power generated by the Commercial Wind Energy System as a whole to the regional electrical transmission grid.

(e) Non-Commercial Wind Energy System. Facilities for generating electric power from wind primarily for direct use by the owner of the facilities concerned on the same site, which may include incidental sales of excess electric power to public utility companies operating within the State of Maine through a system of “feed-in” tariffs, reverse metering or similar programs. To qualify as a non-commercial wind energy system, the power generation facilities proposed for any single parcel within the Town of Cherryfield must consist of three or fewer towers with a maximum tower height, including blade sweep, of 195 feet; with no turbine having a baseplate generating capacity rating of more than 100 kilowatts (kW). Non-commercial wind energy systems are not subject to the requirements of this ordinance, but shall remain subject to the applicable provisions of the Town of Cherryfield Land Use Ordinances.

(f) Occupied Structure. A building or other enclosed structure that is regularly used for residential, business, commercial, educational or recreational purposes that result in persons being within the building or structure concerned for extended periods on a daily or near-daily basis. Buildings such as storage buildings or vehicle barns that are subject to occasional, short or infrequent visits are not Occupied Structures for the purposes of this ordinance.

(g) Participating Parcel. Land outside of the Project Parcel, that nonetheless is subject to a deeded easement in favor of the Wind Energy System owner or developer, allowing effects of the Wind Energy System, such as noise, blade glint and shadow flicker, to extend onto the land that is subject to the easement.

(h) Project Parcel. All land owned or leased by the owner of a commercial wind energy system as a site for the location of generating facilities, including areas that are subject to a deeded wind energy easement allowing construction of Wind Energy Systems on the land that is subject to the easement.

(i) Tower. The structure supporting a wind turbine and nacelle. Towers for commercial wind energy systems shall be of a self-supporting monopole type, without an open latticework or supporting cables or guy lines. Notwithstanding section 3(E) and (3)(F)(9) of the Town of Cherryfield Land Use Ordinance, the enclosed area at the base of a monopole tower for a commercial wind energy system shall not be considered to be “floor area” for the purposes of the Land Use Ordinance’s building height provisions.

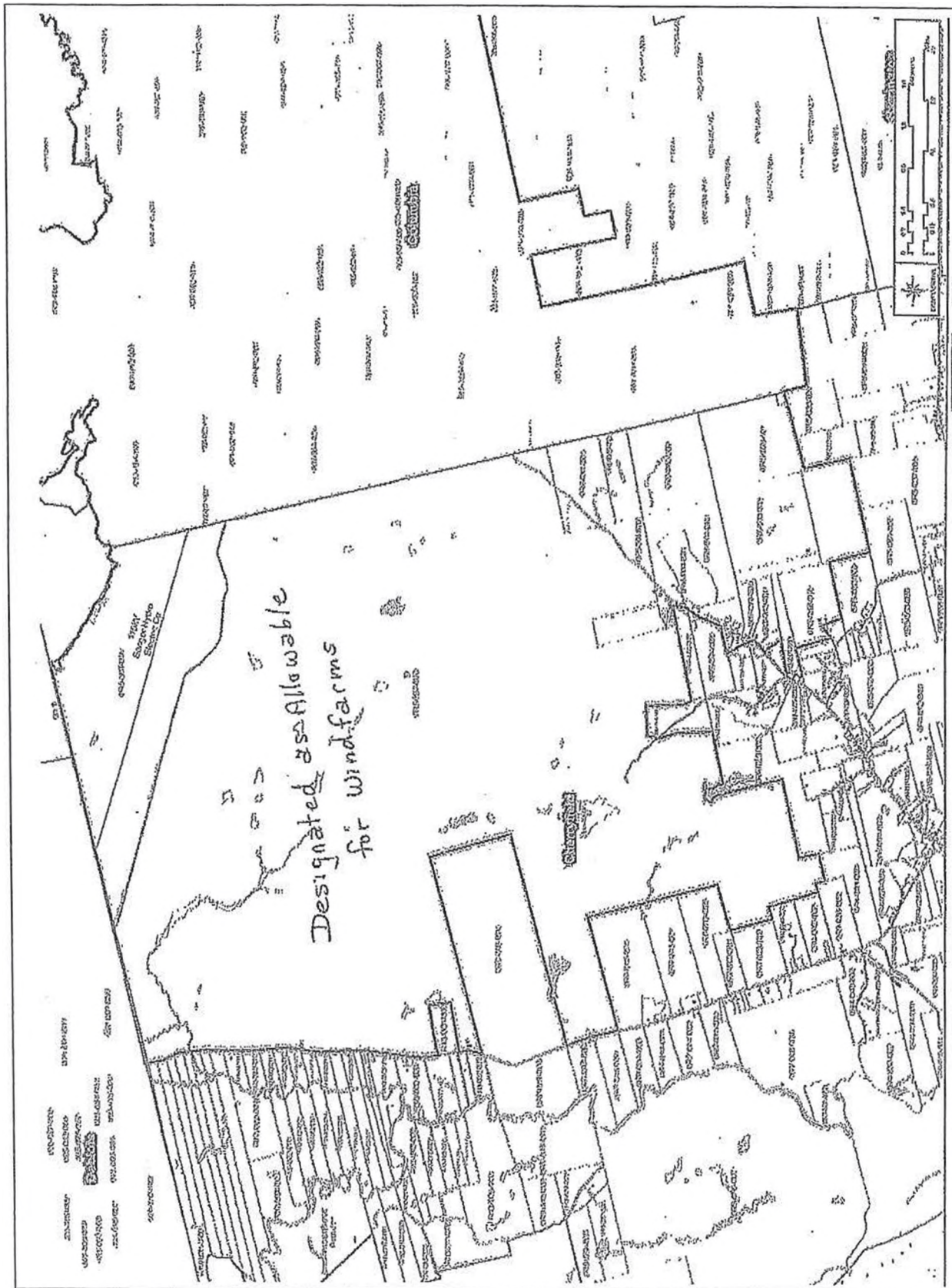
(j) Wind Turbine. The blades, rotor, and associated mechanical and electrical conversion

components mounted on top of a supporting tower.

(k) Other Definitions. Other technical terms not expressly defined herein shall be defined as provided in the Maine Wind Energy Act, 35-A M.R.S. chapters 34 and 34-A and State of Maine regulations thereunder; The Maine Site Location of Development Act, 38 M.R.S. section 481 *et seq.* and State of Maine regulations promulgated thereunder; or if otherwise undefined, according to common usage and understanding within the wind energy industry.

Non-technical terms not expressly defined herein shall be defined as provided in the Town of Cherryfield Land Use Ordinance. If not defined in the Land Use Ordinance, they shall be given their common or ordinary meaning (“dictionary” definition), unless the context within this ordinance clearly requires a different construction.

APPENDIX 1 – Permitted Area for Wind Energy Systems



Cherryfield Historic District Map Detail (L. Hubbell 1991)

