

2016

# Town of Cushing Maine Ordinances

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THE  
CUSHING ADDRESSING  
ORDINANCE

TOWN OF  
CUSHING, MAINE

ADOPTED MARCH 19, 1996

AMENDED MARCH 20, 2007

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## **ARTICLE I TITLE**

1. This ordinance is entitled and may be referred to as the "Road Naming and House Numbering Ordinance of the Town of Cushing, Maine" or it may be referred to by its short title of "Road Naming Ordinance" and will be referred to herein as "this ordinance."

## **ARTICLE II PURPOSE AND AUTHORITY**

1. The purpose of this ordinance is to enhance the easy and rapid location of properties for the delivery of public safety and emergency services, postal delivery and business delivery.
2. This ordinance is adopted pursuant to and consistent with the Municipal Home Rule Powers as provided for in Article VIII, Part 2, Section 1 of the Constitution of the State of Maine and Title 30-A M.R.S.A. Section 3001.

## **ARTICLE III DEFINITIONS**

1. For the purpose of this ordinance, the following definitions shall apply:
  - A. **Road** is any highway, road, street, avenue, lane, private way, fire road, or similar paved, gravel, or dirt way within the Town of Cushing.
  - B. **Improved property** is any property on which a more or less permanent structure has been erected or placed.

## **ARTICLE IV OFFICIAL MAP**

1. The Cushing Board of Selectman in cooperation and consultation with the Cushing Fire Department, the Cushing Rescue Squad, and the Cushing Postmaster shall have a map prepared to be entitled "Property Number Map of the Town of Cushing, Maine," which shall be adopted as the official map by which roads are named and property numbers assigned upon the signing and dating of said map by the Cushing Board of Selectmen and the Cushing Town Clerk, following a Public Hearing. Said map shall be made up and adopted within one hundred twenty (120) days of the effective date as provided for in Article IX of this ordinance.
2. Following its adoption as provided for above, the "Property Number Map of the Town of Cushing, Maine" shall be available to the public for reference at the Town Office. These copies of the map shall be updated and/or replaced by the Board of Selectmen with new maps as necessary.
- ~~3.~~ Assignment of numbers to properties, both on existing and proposed roads, shall be the responsibility of the Board of Selectmen or designee.

4. The Board of Selectmen shall be responsible for maintaining the following official records of the numbering system:
  - A. Property Number Map of the Town of Cushing, Maine; and
  - B. An alphabetical list of all property owners as identified by current assessment records, by last name, showing the assigned numbers; and
  - C. An alphabetical list of all roads with property owners listed in order of their assigned numbers.
5. Copies of the official records as listed in Article IV, Section 4 shall be deposited with the Cushing Fire Department and Cushing Rescue Squad for their use and shall be updated and/or replaced by the Board of Selectmen with new records from time to time as necessary.

## **ARTICLE V NAMING AND NUMBERING SYSTEM**

### **1. Road Names**

- A. Every public way and all roads with more than one property, improved or unimproved, shall have a name. That name shall be displayed on a sign mounted on a post at least (6) six feet above ground level. For town roads the signs shall have white letters on green background, for private roads the sign shall be white letters on a blue background.
- B. The Board of Selectmen of Cushing is the final authority in accepting names for such roads. A road name accepted by the Board of Selectmen of Cushing shall not constitute or imply acceptance of the road as a public way.
- C. Road names shall conform to U.S. Postal Service guidelines as published in their publication 28, *Postal Addressing Standards*, or as the same may be amended, superseded or replaced from time to time.

### **2. Property Numbers**

- A. Each residence and business property shall have a number indicating its position on the road on which it is located.
- B. In general, numbering shall begin at the end of the road closest to the most direct route from the Cushing Fire Station, as determined by the Board of Selectmen, with even numbers appearing on the left side of the road and odd numbers appearing on the right side of the road.

- C. In general, one whole number on each side of the road shall be assigned for every fifty (50) feet of road frontage, whether the property is improved or unimproved.
- D. Every improved property with more than one principal use or occupancy shall have a separate designator for each use or occupancy (i.e. 125 Razorville Road, Apt. 2).

## **ARTICLE VI NUMBERS AND NAMES TO BE POSTED**

1. Every owner of an improved property shall, within thirty (30) days of notification as defined in Article IX, Section 5 of this ordinance, or within thirty (30) days of new habitation, display and maintain in a conspicuous place on said property the number assigned.
  - A. Number on the Structure or Residence. Where the residence or structure is within fifty (50) feet of the edge of the road right-of-way, the assigned number may be displayed on the front of the residence or structure near the front door or entry. The number assigned shall be displayed in numeral form and be no less than five inches (5") high and shall be of some reflective material for better night visibility, or shall be numbered as in B.
  - B. Number at the Road Line. Where the residence or structure is over fifty (50) feet from the edge of the road right-of-way, the assigned number shall be displayed on a post, fence, wall, the mail box, or on some structure at the property line next to the walk or access drive to the residence or structure. The number assigned shall be displayed in numeral form and be no less than four inches (4") high and shall be of some reflective material for better night visibility.
  - C. Every person whose duty is to display the assigned number shall remove any different number that might be mistaken for, or confused with, the number assigned in conformance with this ordinance.
  - D. Interior location. All residents and other occupants are requested to post the assigned number and road name next to their telephone for emergency reference.

## **ARTICLE VII PROPOSED ROADS AND STRUCTURES**

1. Proposed roads shall be named and numbered in accordance with the provisions of Article V of this ordinance. All proposals for road names shall be subject to confirmation and possible alteration by the Cushing Board of Selectmen.
2. On any final plan submitted to the Cushing Board of Selectmen showing proposed roads, applicants shall mark on the plan lines or dots, in the center of the proposed roads every fifty (50) feet so as to aid the town in assigning numbers to properties.

3. No building or occupancy permits for new structures will be issued in the Town of Cushing unless the applicant demonstrates that they have applied for or received the assignment of a property number from the Cushing Board of Selectmen.

## ARTICLE VIII VIOLATIONS

1. Unlawful to deface assigned numbers or road signs.
  - A. No person may alter, deface, or remove any number placed on any property in accordance with this ordinance, except for repair or replacement within twenty-four (24) hours of such number.
  - B. No person may alter, deface, or remove any road sign erected in accordance with this ordinance, except for repair or replacement within twenty-four (24) hours of such sign.
2. Any violation of any provision of this ordinance shall be subject to a civil penalty, payable to the Town of Cushing, Maine, of not less than twenty-five dollars (\$25.00) nor more than one hundred fifty dollars (\$150.00), for each violation, together with attorney's and other legal fees incurred by the Town of Cushing, Maine in the enforcement of this ordinance, as provided for by law.
3. Each day a violation is permitted to continue following citation by the Cushing Code Enforcement Officer or the Cushing Board of Selectmen, or their designee shall constitute a separate offense.

## ARTICLE IX AMENDMENTS AND OTHER LEGAL PROVISIONS

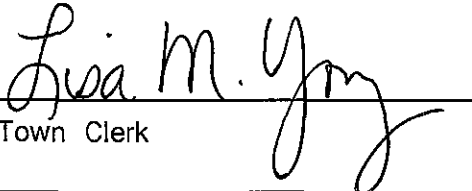
1. **Interpretation:** Interpretation of what may not be clear in this Ordinance shall be according to the intent of the Ordinance.
2. **Conflict with Other Ordinances:** Whenever the regulations of this Ordinance conflict with those of another Ordinance, the stricter shall apply.
3. **Severability:** If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions.
4. **Amendment:**
  - A. No regulation or amendment of this ordinance shall be adopted until after the Selectmen of the Town have held a public hearing thereon at least ten days before it is submitted to the legislative body for consideration. Public notice of the hearing shall be made at least ten days prior to the hearing.

- B. Amendments to this Ordinance shall be considered following petition, recommendation of the Cushing Fire Department and Cushing Rescue Squad, or motion of the Selectmen. For petitions, signatures numbering not less than 10% of the number of votes cast in the town in the last election for governor shall be required before the proposed amendment will be brought for a vote.

**5. Effective Date:**

- A. This ordinance shall be enacted and be of full force and effect on the day of approval of this ordinance by the voters of the Town of Cushing, in Town Meeting assembled.
- B. It shall be the duty of the Board of Selectmen to notify by mail each property owner required to display an assigned number and the United States Post Office of the new address within thirty (30) days of official adoption of the "Property Number Map of the Town of Cushing, Maine" as provided for in Article IV, Section 1 of this ordinance.
- C. It shall be the duty of each property owner assigned a property number to comply with this ordinance within thirty (30) days of notification in accordance with Article VI of this ordinance.
- D. It shall be the duty of each property owner of a new structure of a new structure assigned a property number to comply with this ordinance within thirty (30) days of habitation in accordance with Article VI of this ordinance.

"Attest. A true copy of an ordinance entitled The Cushing Addressing Ordinance, as certified to me by the municipal officers of the Town of Cushing, Maine, and adopted by the town meeting on the 19th day of March, 1996, and amended on the 20th day of March, 2007."

  
Town Clerk



## **TOWN OF CUSHING BUILDING NOTICE ORDINANCE**

Prior to construction of any building 10 feet by 10 feet or larger, (100 square ft), any addition and/or alteration, the property owner shall be required to file a notice of intent to build with the town clerk.

Failure to file a notice of intent shall constitute a violation subject to a fine to be determined by the selectmen.

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## ARTICLE I TITLE

1. This ordinance is entitled and may be referred to as the "Cemetery Ordinance of the Town of Cushing, Maine" or it may be referred to by its short title of "Cemetery Ordinance" and will be referred to herein as "this ordinance."

## ARTICLE II PURPOSE AND AUTHORITY

1. The purpose of this ordinance is to provide the inhabitants of the town of Cushing with a management policy for continuing administration and maintenance of public, private, and town owned cemeteries.
2. This ordinance establishes a Cemetery Board to administer this ordinance under the supervision of the Board of Selectman.
3. This ordinance is adopted pursuant to and consistent with the Municipal Home Rule Powers as provided for in Article VIII, Part 2, Section 1 of the Constitution of the State Of Maine and Title 30-A M.R.S.A Section 3001.

## ARTICLE III APPLICABILITY

1. This ordinance applies to all public, private, and town owned cemeteries and marked or unmarked burial sites within the boundaries of the Town of Cushing.

## ARTICLE IV EFFECTIVE DATE

1. This ordinance will become effective upon approval vote by the Town of Cushing.

## ARTICLE V CEMETERY BOARD

1. The Cemetery Board shall have three members appointed by the Board of Selectmen for a term of three years. The first appointments are to be for one, two, and three year term. The members will be chosen, one from the Board of Selectman, one from the Cushing Historical Society if available, and one member at large. The Board shall choose its own chairperson each year. The Board shall meet as necessary to fulfill the requirements of this ordinance.
2. The Cemetery Board shall meet as necessary to fulfill the requirements of this ordinance.

## ARTICLE VI SCOPE

1. The Cushing Cemetery Board shall formulate, implement, and administer a policy to achieve the following requirements.
  - A: Create and maintain an inventory of Cushing cemeteries and burial site locations.
  - B: Ensure that the town is, and continues to be in compliance with Maine Statutes.
  - C: Arrange required and or necessary maintenance of cemeteries.
  - D: Ensure adequate access for the public to sites where municipal funds are expended for other than veterans.
  - E: Manage Town owned cemeteries as necessary to include:
    - a: Set plot pricing with the Board of Selectman. The price of plots include maintenance and will be priced \$500.00. This price to be adjusted as required.
    - b: Provide for sale of plots.
    - c: Maintain a database of cemetery lot/plot owners and burials.
    - d: Provide a plan for future growth, expansion, and maintenance.
    - f. Provide a report for the Annual Town Report.

## ARTICLE VII SALE OF TOWN OWNED CEMETERY PLOTS

1. The Selectman appointed to the Cemetery Board may, with binding effect, execute the transfer of title for town owned cemetery plots.

## ARTICLE VIII DEFINITIONS

1. For the purpose of this ordinance, the following definitions shall apply:
  - A: Public access is the access for the general public to traverse private property to visit a burial site or private cemetery.
  - B: Burial site is one or more unmarked graves at the same location.
  - C: Plot is sized for one grave or multiple urns.
  - D: Public Cemetery is where the general public has direct access.
  - E: Private Cemetery is where access is restricted.

## ARTICLE IX FUNDING

1. Funding shall be through town meetings.

## ARTICLE X VALIDITY AND CONFLICT

1. Should any section or provision of this ordinance be declared by the courts to be invalid, such decision shall not invalidate an other section or provision of this ordinance.
2. Whenever a provision of this ordinance conflicts with or is inconsistent with another provision of this Ordinance or another ordinance, regulation or statute, the more restrictive provision shall control.

Approved by Town Meeting  
March 2001

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An attest<sup>ed</sup> true copy:

'( ~ ~ ~ /4 ~  
Norma M. Gardner  
Town Clerk

## **TOWN OF CUSHING COASTAL WATERS MANAGEMENT ORDINANCE**

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## **SECTION 1: PURPOSE**

The purpose of this Ordinance is to manage recreational and commercial maritime activities so as to maintain order and safety in Cushing waters and harbors.

## **SECTION 2: AUTHORITY**

This Ordinance has been prepared under the authority granted to the Town by 38 M.R.S.A. § 1-§13.

## **SECTION 3: APPLICATION**

This Ordinance applies in all coastal and tidal waters of the Town.

## **SECTION 4: ADMINISTRATION**

Pursuant to 38 M.R.S.A. § 2 through 7, the responsibility for administration of this Ordinance shall be as follows:

### **4.1 Harbor Board authorization:**

The Cushing Harbor Board (Board) is authorized to:

- a. define channels and their boundary lines in harbors and waterways,
- b. assign suitable portions of harbors and other coastal and tidal waters for anchorages, mooring districts and aquaculture sites.
- c. establish regulations for their use,
- d. establish waiting list procedures,
- e. oversee the duties of the Harbor Master, and
- f. hear certain appeals as set forth below.

### **4.2 Harbor Master duties:**

A Cushing Harbor Master appointed annually by the Selectmen is authorized to:

- a. enforce and carry out regulations established by the Board,
- b. assign, vacate, move, remove and relocate specific moorings,
- c. Create waiting lists for mooring spaces.
- d. perform other statutory duties and responsibilities as set forth in 38 M.R.S.A. § 1-§13, or mandated by federal statute

### **4.3 Mooring fees**

The Selectmen may from time to time, on the recommendation of the Board, establish mooring fees.

## **SECTION 5: PLAN**

A districting plan for all Cushing waters is hereby established to implement the purposes of this Ordinance. The plan consists of a chart of locations and the regulations governing marine activities within them.

### 5.1 Chart of districts

A chart or charts shall be maintained of districts, mooring areas, individual moorings, anchorages and aquaculture sites, encompassing all coastal and tidal waters of the Town.

- a. The Harbor Master and Board shall maintain the digital chart or charts.
- b. The Harbor Master shall keep chart data current.
- c. The Board shall display the chart at the Town Office and update it annually.

### 5.2 Implementation

The mooring plan shall be implemented with the minimum possible disruption to the location of all current moorings and uses, except where a change would benefit current mooring owners without unduly disrupting others.

## **SECTION 6: MOORINGS**

### 6.1 Mooring permits

All moorings in Cushing waters shall require a mooring permit. No mooring shall be set or re-set except by written permission of the Harbor Master.

- a. For each commercial fishing vessel, a maximum of one boat mooring and one float used for storing fishing gear, moored in water too shallow for normal moorings, is allowed.
- b. For other vessels, recreational or commercial, a maximum of one mooring is allowed.
- c. For service and rental moorings, up to five moorings per shore access is allowed.
- d. For an aquaculture site, a Cushing permit is required as well as a state permit.

### 6.2 Mooring permit application procedures

- a. An application for a mooring location shall be submitted to the Harbor Master on an approved form with any fee set by the Selectmen. The application shall provide a sketch of the proposed mooring location, the type of use requested, the depth of water at Mean Low Water, the length of water frontage of any lot-owner-applicant's waterfront lot, a description of the proposed mooring type and size, and the size and type of any watercraft to be moored.
- b. An Army Corps of Engineers permit application shall accompany an application for a rental or service mooring. A Maine Department of Marine Resources permit application shall accompany an application for an aquaculture site. The Harbor Master shall have the right to approve the rental mooring application pending approval of the ACE. In the case of an aquaculture site the permit can be approved pending approval of Maine Department of Marine Resources.
- c. When the Harbor Master has determined that an application is complete, he/she shall inform the applicant in writing within fourteen days of any required revisions. If no revision is required, or on receiving the required revisions, the Harbor Master shall within 30 days either issue a permit or deny the application. If the application is denied, the Harbor Master shall inform the applicant in writing of the reason for the denial. If the application is

approved, the Harbor Master shall either assign a mooring location or place the applicant's name on a waiting list for moorings in the area requested.

d. An applicant may appeal a denial to the Board within 30 days.

e. Denial of an application may be appealed to the Cushing Harbor Board within 30 days.

### 6.3 Mooring assignment

The Harbor Master shall assign mooring sites based on the use permitted, the navigation requirements of the area, the mooring efficiency of the area, the need for access to piers, wharf space and docks, and prescribed priorities.

### 6.4 Mooring assignment priorities

Mooring sites shall be assigned by the Harbor Master on a first come, first serve basis to permit holders, subject to the following priority assigned by the Board. Owners of lots with at least 100 feet of water frontage as of July 1, 1987 already have mooring privileges and may apply for additional mooring assignments according to the following allocation system (38 M.R.S.A. §3):

a. To owners of riparian lots, located as close to the lot as is safe for the watercraft or use requested, as provided by 38 M.R.S.A. §3;

b. To Cushing resident owners of commercial fishing watercraft.

c. To Cushing resident owners of recreational vessels and other commercial vessels, without distinction.

d. To Cushing residents or entities owned by residents for service or rental moorings.

e. To Cushing residents for an aquaculture site.

f. To non-resident owners of recreational watercraft.

g. To non-residents or entities owned by non-residents for rental moorings.

h. For an additional mooring or for a mooring site relocation.

i. To non-residents or entities owned by non-residents for an aquaculture site.

### 6.5 Nature of permits and assignments

a. Permits are issued for the duration of the use requested and the conditions that support the use – for example, a particular watercraft, good tackle condition, water depth and other specific site conditions unchanged.

b. Permits and location assignments are not transferable on sale of mooring tackle, or by sale, gift, inheritance or other means.

c. Permits issued for priorities 6.4.a through 6.4.i are limited to five years.

d. Unless a mooring was permitted as a rental mooring, its rental is not permitted.



e. Assignment of a mooring location confers no right, title or interest in submerged lands or intertidal lands owned by the State.

f. Assignees may change watercraft at a mooring only by permission of the Harbor Master. Permission for larger or different watercraft shall be granted only if, in the judgment of the Harbor Master, the change will not adversely affect the safety of watercraft moored or navigating in the surrounding area.

#### 6.6 Waiting lists

The Harbor Master shall maintain a list of applicants for moorings in each mooring area where no more watercraft can be safely moored, showing the priority of each applicant.

#### 6.7 Mooring relocations

To improve the efficiency of a mooring area, or for the safety of watercraft or for other harbor management improvements, the Harbor Master may direct the mooring site of any watercraft or float to be vacated and the mooring tackle moved to a new location at the owner's expense. The Harbor Master's decision may be appealed to the Cushing Harbor Board within 30 days.

#### 6.8 Mooring tackle

All new and existing mooring blocks shall be of sufficient size and weight, and chain or rope of sufficient strength and sound condition, and together configured to properly secure the moored watercraft in the conditions and surroundings of the mooring location.

a. A mooring marker attached to a mooring line shall be of sufficient size and buoyancy to remain afloat when not attached to the watercraft.

b. Mooring owners are responsible for inspecting their moorings annually. Boat and mooring owners may be held liable for damages caused by faulty, inadequate or improperly maintained moorings, chains, lines, bitts, etc. The retrieval of mooring tackle that has failed and lies on the bottom is the sole responsibility of the mooring owner.

c. The Harbor Master may, at his/her discretion, direct a mooring to be hauled or may hire a diver to inspect a mooring at any time at the owner's expense if the Harbor Master has reasonable cause to believe the mooring is unsafe.

d. If the master or owner of any watercraft neglects or refuses to remove or replace a mooring when so directed by the Harbor Master, the Harbor Master shall cause the mooring to be removed or shall make such changes as to make the mooring safe as required, at the owner's or master's expense, and shall collect from the master or owner of the watercraft the cost incurred. The owner of the tackle shall be liable for all expenses incurred to comply with the Harbor Master's order, as provided by 38 M.R.S.A. §4.

#### 6.9 Mooring markings

Moorings shall be marked as set forth below.

a. Each mooring marker shall bear the number of its permit and assignment, and the watercraft or owner's name or initials.

b. Service moorings shall be marked by a white ball bearing the permit number and the word PRIVATE.

- c. Rental moorings shall be marked by a white ball bearing the permit number and the word RENTAL.
- d. Aquaculture moorings shall be marked by a white ball bearing the permit number issued by Maine Department of Marine Resources.
- e. A float that is not attached to a wharf by traditional means shall display reflective tape.

#### 6.10 Non-compliance

In response to non-compliance with any provision of this section, the Harbor Master may deny a permit application, revoke a permit, or direct mooring tackle to be removed from Cushing waters at an owner's expense. The Harbor Master's decision may be appealed to the Board within 30 days.

### SECTION 7: MOORING DISTRICTS

#### 7.1 Mooring district A: Hornbarn Cove and Meduncook River

a. **Location.** This district includes all waters north of a line starting at the north end of Crotch Island, 43-58.36N X 69-18.589W and extending east to the mainland.

b. **Area off Hornbarn Cove.** Small boats shall be moored in shallower waters preserving deeper waters for larger boats. At the Harbor Master's discretion, floats may be required to increase usable mooring space. Mooring permit holders shall share the cost of the floats.

#### c. **Meduncook River mooring field configuration**

1. Mooring placement shall not encroach on the Meduncook River channel or hinder its use by commercial and recreational boaters.

2. Floats anchored at both ends shall be used for the majority of moorings.

a. The Harbor Master shall designate the type of float, its placement and anchoring method. Standard type moorings may be allowed on a case by case basis.

b. Where floats are allowed to be attached to one another to increase the mooring capacity of a mooring area, they shall have anchoring devices between them to limit movement.

c. Where floats accommodate more than one boat, boats shall be assigned a designated docking location alongside the float. Docking locations shall enable each boat to dock and un-dock under conditions of strong river current.

3. No anchoring shall be permitted in the Meduncook River.

#### 7.2 Mooring district B: Davis Cove, west side of Gay Island.

a. **Location.** All waters extending south of the north end of Crotch Island, including Davis Cove.

b. Mooring placement shall not encroach on the narrow channel.

c. Anchorage shall be allowed clear of moorings and channels.

7.3 Mooring district C: Pleasant Point gut, inner and outer harbors.

a. **The inner harbor** includes all waters inside the line from near the Mark Ames property 43-57.506N X 69-17.640W extending to the north end of Gay Island 43-57.388N X 69-17.535W.

b. A waiting list for moorings in this harbor shall be maintained by the Harbor Master.

c. **The outer harbor** includes all waters outside the inner harbor to green can #5.

d. The placement of all moorings in the outer harbor shall be designated by the Harbor Master. Small boats shall be moored in shallower waters preserving deeper waters for larger boats.

e. A 5 mph speed limit shall be posted in these areas.

7.4 Mooring district D: Maple Juice Cove.

a. Maple Juice Cove includes all waters inside the line from the tip of Stones Point to the tip of Bird Point.

b. The placement of all moorings shall be designated by the Harbor Master. Small boats shall be moored in shallower waters preserving deeper waters for larger boats.

c. An anchorage is provided in the middle of the Cove where no permanent moorings shall be permitted, defined by:

North point 43-58.627N X 69-16.615W  
SW point 43-58.535N X 69-16.768W  
South point 43-58.423N X 69-16.467W  
East point 43-58.533N X 69-16.332W.

7.5 Mooring district E: St. George River except Maple Juice Cove and the Pleasant Point gut harbor.

a. As the river narrows, care shall be taken in designating moorings to keep the channel open north of Broad Cove.

c. Anchorage shall be allowed clear of moorings and channels.

## **SECTION 8: ABANDONED WATERCRAFT**

### **8.1 Prohibition**

No person shall abandon or cause to be abandoned any watercraft, or related equipment or appurtenances within the waters of Cushing, whether on a mooring or at anchor. Nor shall any person abandon or cause to be abandoned any watercraft, vessel or hull upon any shoreline, dock, pier, wharf, float, mooring, or at anchor except with the express consent and approval of the owner of the dock, pier, wharf, float, mooring, shoreline, or in the case of anchored watercraft, the consent and approval of the Harbor Master.

### **8.2 Presumption**

Any watercraft, vessel, hulk or raft left within the waters of Cushing which has been unattended for a period of seven (7) days without the express consent and approval of the

owner of the dock, float, mooring, shoreline or in the case of anchored watercraft, the consent and approval of the Harbor Master shall be declared abandoned.

### 8.3 Procedures

When in the opinion of the Harbor Master a vessel has been abandoned he/she shall take possession of such vessel and shall make reasonable efforts to identify and notify the owner. If the Harbor Master deems an abandoned watercraft to be a nuisance, a threat to navigation or a safety hazard, he/she may impound the watercraft until such time as all procedures pursuant to 25 M.R.S.A. §3501-3507 have been complied with. All expenses and fines pursuant to 38 M.R.S.A. §12, and the net proceeds of any auction, shall accrue to the Town.

## **SECTION 9: OPERATING RESTRICTIONS**

### 9.1 Operator restrictions

Whoever operates any watercraft, vessel, water ski, surfboard, personal watercraft or similar device, however propelled, on or in waters of Cushing

- a. recklessly, or
- b. in a manner which endangers any person or property, or
- c. while intoxicated or under the influence of any narcotic drug, barbiturate or marijuana

shall be guilty of a Class E crime as provided in M.R.S.A. 38.

9.2 Excessive noise is regulated by State statute.

## **SECTION 10: SAFE OPERATING SPEEDS**

The speed limit in Cushing harbors shall be headway only. It shall be unlawful to operate a vessel in such a manner as to cause a wash, wake, or waves that damage, endanger or unreasonably disturb any person, wharf, float, or vessel anchored, moored, or tied up to any pier, float, dock or wharf while within an area of one hundred (100) yards from any float or mooring or within two hundred (200) feet of an anchored boat or vessel. The Harbor Master shall place 'No Wake' buoys to protect shoreline from erosion as necessary.

## **SECTION 11: APPEALS**

11.1 The Board, acting as a Board of appeals pursuant to 30-A M.R.S.A. §2691, shall hear an appeal by any aggrieved person affected directly or indirectly by a decision, order, rule, act or failure to act by the Harbor Master or his or her deputies. In its decision, the Board shall grant or deny relief from any order, rule, act or failure to act by the Harbor Master or his or her deputies, except that in no instance shall its decision violate State or Federal regulations, or this Ordinance.

11.2 An appeal shall be submitted to the Town Clerk on a form provided by the Board, and shall describe the complaint and the relief sought. The original appeal form shall be kept on file at the Town Office. A copy shall be forwarded to the Chairman of the Board.

11.3 The Board shall act on any appeal within forty-five (45) days of its receipt by the Town. An extension of the forty-five (45) day requirement may be mutually agreed in writing between the applicant and the Town. The Board shall set a hearing date taking into consideration the schedules of the applicant and Board members. Notice of the hearing shall be posted at the Town Office not less than seven (7) days prior to the hearing.

11.4 At the hearing, the Board shall hear any oral or documentary evidence that is relevant and material. Appellants, defendants or their agents shall have the right to present oral and documentary evidence, to submit rebuttal evidence, and to conduct reasonable cross-examinations.

11.5 The minutes of the hearing, together with all documentary evidence presented in the proceeding, shall constitute the official record of the appeal. The record shall include a written statement of the Board's findings and conclusions and its decision, and shall be filed at the Town Office. Notice of the decision shall be mailed or hand delivered to appellants and defendants or their agents within seven (7) days of a decision, and copied to the Harbor Master.

11.6 An appeal to Superior Court may be made within forty five (45) days from any act or decision of the Board.

## **SECTION 12: VIOLATIONS**

12.1 Any person who orders or conducts any activity in violation of this ordinance shall be guilty of a misdemeanor subject to a minimum fine of \$100 up to a maximum of \$2500 for each violation in accordance with 30-A M.R.S.A. §4452.

12.2 A person is guilty of failure to obey an order of the Harbor Master if the person intentionally, knowingly and recklessly fails to obey any lawful order of the Harbor Master authorized by this Ordinance pursuant to 38 M.R.S.A. Chapter 1. Failure to obey an order of a Harbor Master is a Class E crime, subject to a penalty of a maximum of six (6) months imprisonment and/or a five hundred dollar (\$500) fine to be recovered on complaint by the Harbor Master before the District Court.

## **SECTION 13: CONFLICT OF REGULATIONS**

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 or state, the more restrictive provision shall control.

## **SECTION 14: SEVERABILITY**

If any section, subsection, clause, phrase or word of these Regulations is for any reason held to be invalid, such decision shall not affect the validity of any other section, subsection, paragraph, sentence, clause, phrase or word of this Ordinance.

## **SECTION 15: EFFECTIVE DATE AND POSTING**

15.1 On the date of its approval by the voters of the Town of Cushing, this Ordinance shall become effective, and the Coastal Waters Management Ordinance adopted in 2003 shall be deemed repealed.

15.2 A copy of this Ordinance certified by the Town Clerk shall be retained in Town files. Its accessibility to any member of the public shall be posted in a public place. Copies of this Ordinance shall be made available to the public at a reasonable cost at the expense of the person making the request. The mooring waiting list and the procedure for adding names to it shall be posted in traditional public posting places.

## **SECTION 16: AMENDMENT**

This Ordinance may be amended by majority vote of the registered voters of the Town of Cushing.

## **SECTION 17: DEFINITIONS**

In general all words and terms used in this Ordinance shall have their customary dictionary meanings. More specifically, certain words and terms are defined below as they are used in this Ordinance.

**Anchorage.** Location where watercraft may be anchored, moored or otherwise berthed at a dock.

**Aquaculture.** The culture and husbandry of sea plants and animals.

**Army Corps of Engineers (A. C. E.) Permit.** Permit issued by the Army Corps of Engineers that is required for floats, rental moorings and service moorings.

**Berth.** Place where a watercraft lies when at anchor or made fast to a dock, float, slip, mooring, or other facility that secures watercraft.

**Commercial Watercraft.** Watercraft that generate income by their use and operation.

**Dinghy.** Small watercraft. Skiff, punt, tender.

**Dock.** Pier or wharf. A permanent platform contiguous with the shoreline used to berth, load and unload vessels.

**Float.** Floating platform used for storage, staging and transport of goods, or for berthing of vessels.

**Headway.** The minimum speed necessary to maintain steerage.

**Mooring.** Term including all equipment and methods used to secure a watercraft to a specific location on the water, other than those that are connected to the shore.

**Mooring permit.** Permit issued by the Harbor Master to an applicant, authorizing the applicant to use a specific location for a specific purpose in a specific manner.

**M.R.S.A.** Maine Revised Statutes Annotated.

**Recreational watercraft.** Watercraft used primarily for recreational purposes.

**Rental mooring.** Mooring site assigned to an individual or business, the use of which is rented or leased.

**Resident.** A person who is an owner of Cushing property, or who is a registered Cushing voter, or who resides in Cushing for at least 180 days a year.

**Service mooring.** Mooring site assigned to a business or individual conducting business within the Town of Cushing, used to moor watercraft owned by the business, used to moor

watercraft which are serviced by the business, or used as a maneuvering device for leaving or entering a berth.

**Storm mooring.** Mooring used when seeking shelter in emergencies or severe weather.

**Vessel.** Any watercraft used or capable of being used for transportation.

**Watercraft.** Any mobile floating apparatus, without distinction as to method of propulsion, including vessels, skiffs, boats, rafts, floats, and airplanes.

**Wharf.** See Dock.

**TOWN OF CUSHING**  
**Emergency Management Ordinance**

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**Purpose:**

Cushing benefits from emergency services which are supplied through the town Fire Department. It is important that the structure and operation of these services are maintained. Training, drills, and coordination with County, State, and Federal agencies are necessary for efficient emergency response. This ordinance defines the roles and responsibilities of an Emergency Management Director, who is responsible to the Select Board keep the Town's emergency response capabilities up to date and operational.

**Short Title:**

This Ordinance shall be known and may be cited and referred to as the "Emergency Management Ordinance of the Town of Cushing. Authorized under Title 37-B MRSA § 782

**Definition:**

Emergency Management Director (EMD) shall mean the appointed town official responsible for performing the four phases of Emergency Management (preparedness, response, recovery and mitigation) and for liaison with the Knox County Emergency Management Agency.

**Establishment:**

The Town of Cushing Office of Emergency Management (OEM) and the position of Emergency Management Director for the town of Cushing is hereby created. The Select Board may appoint additional OEM staff members, Assistants or Deputies, as needed.

**Appointment, Term and Removal:**

The Select Board shall appoint the EMD pursuant to Title 37-B MRSA § 782. This appointment shall be annual and made by the 30<sup>th</sup> of March of each year. The Select Board will appoint an EMD Assistant to support the EMD. EMD will recommend qualified person(s) to Select Board for Assistant position. The Select Board may remove the EMD or Assistant for cause. (*Duties of EMD Assistant to be defined.*)

**Oath of the Emergency Management Director:**

Once the EMD has been appointed, the EMD shall take an oath of office as described in Title 30-A MRSA § 2526.



**Duties of the Emergency Management Director:**

- A. Prepare and update a Hazard Risk and Vulnerability Assessment.
- B. Prepare and maintain the Town of Cushing Emergency Operations Plan.
- C. Prepare and maintain a list of locally available disaster resources.
- D. Develop procedures for the organization, staffing, activation and operation of the Town of Cushing Emergency Operations Center (EOC).
- E. Coordinate and maintain written emergency and disaster Mutual Aid Agreements with the approval of the Select Board.
- F. Provide Emergency Management training to town officials, planners, and emergency responders.
- G. Develop and implement a Disaster Exercise program.
- H. Attend County Local Emergency Managers meetings.
- I. Maintain records and submit information as required for compliance with county, state and federal regulations and/or guidelines.
- J. Provide Disaster Preparedness information to town residents.
- K. Complete and report Initial Damage Assessments (form 7's) to Knox EMA.
- L. When necessary, serve as liaison between the town and county/state/federal officials during disaster recovery.
- M. Complete and submit applications for grants which may become available and beneficial for improving emergency management and response capability for the Town of Cushing.
- N. Serve as NIMS (National Incident Management System) Coordinator for the Town of Cushing.

**Membership of the Emergency Operations Center (EOC):**

When directed by any one of the Select Board or by the EMD, the EOC will be established and manned. The EOC may be co-located with the Knox County EOC when operations dictate. At the discretion of the Select Board or EMD, the following town officials may be included on the EOC staff:

- A. Select Board member
- B. Emergency Management Director (EMD)
- C. Assistant EMD
- D. Town Clerk and Treasurer
- E. Code Enforcement Officer
- F. Town Constable
- G. Fire Chief or Deputy
- H. Fire Warden
- I. EMS Service Chief
- J. Road Commissioner
- K. Animal Control Officer

**Adoption of the National Incident Management System:**

The Town of Cushing hereby establishes the National Incident Management System (NIMS) as the municipal standard for all hazards incident management. This system provides a consistent approach for Federal, State, and municipal governments to work together more effectively and efficiently to prevent, prepare for, respond to and recover from domestic incidents, regardless of cause, size or complexity. NIMS will utilize standardized terminology, standardized organizational structures, interoperable communications, consolidated action plans, unified command structures, uniform personnel qualification standards, uniform standards for planning, training, and exercising, comprehensive resource management, and designated incident facilities during emergencies or disasters. The NIMS Incident Command System (ICS) will be utilized by all Cushing emergency and disaster responders for all hazards incident management.

**Disasters and States of Emergency:**

The local EMD is empowered to make any reasonable request for assistance from adjacent towns pursuant to established Mutual Aid Agreements. The EMD may recommend to the Select Board that a State of Emergency be declared for the town when appropriate. The EMD shall coordinate requests for assistance from other regional, county, state or federal agencies through the County EMA Director during emergencies or disasters.

**Compensation:**

The EMD shall be compensated for duties rendered by an annual stipend as appropriated at town meeting.

**Training:**

The EMD shall attend training provided by the Knox County Emergency Management Agency (KXEMA), Maine Emergency Management Agency (MEMA), or FEMA relating to the duties required by this ordinance. The EMD is expected to pursue and receive qualification as a State of Maine Basic Emergency Manager.

# FLOODPLAIN MANAGEMENT ORDINANCE

## FOR THE

### TOWN OF CUSHING, MAINE

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ENACTED: March 22, 2016  
Date

EFFECTIVE: March 22, 2016  
Date

CERTIFIED BY: Lisa M. Young  
Signature

CERTIFIED BY: Lisa M. Young  
Print Name

Town Clerk  
Title

Affix Seal

# **FLOODPLAIN MANAGEMENT ORDINANCE**

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## **ARTICLE I-PURPOSE AND ESTABLISHMENT**

Certain areas of the Town of Cushing, Maine are subject to periodic flooding, causing serious damages to properties within these areas. Relief is available in the form of flood insurance as authorized by the National Flood Insurance Act of 1968.

Therefore, the Town of Cushing, Maine has chosen to become a participating community in the National Flood Insurance Program, and agrees to comply with the requirements of the National Flood Insurance Act of 1968 (P.L. 90-488, as amended) as delineated in this Floodplain Management Ordinance.

It is the intent of the Town of Cushing, Maine to require the recognition and evaluation of flood hazards in all official actions relating to land use in the floodplain areas having special flood hazards.

The Town of Cushing has the legal authority to adopt land use and control measures to reduce future flood losses pursuant to Title 30-A MRSA, Sections 3001-3007, 4352, 4401-4407, and Title 38 MRSA, Section 440.

The National Flood Insurance Program, established in the aforesaid Act, provides that areas of the Town of Cushing having a special flood hazard be identified by the Federal Emergency Management Agency and that floodplain management measures be applied in such flood hazard areas. This Ordinance establishes a Flood Hazard Development Permit system and review procedure for development activities in the designated flood hazard areas of the Town of Cushing, Maine.

The areas of special flood hazard, Zones A, AE, AH, and VE for the Town of Cushing, Knox County, Maine, identified by the Federal Emergency Management Agency in a report entitled "Flood Insurance Study - Knox County, Maine," dated July 6, 2016 with accompanying "Flood Insurance Rate Map" dated July 6, 2016 with panels: 320D, 328D, 329D, 333D, 336D, 337D, 338D, 339D, 341D, 527D, 529D, 531D, 532D, 533D, 534D, 537D, 541D, 551D, derived from the county wide digital Flood Insurance Rate Map entitled "Digital Flood Insurance Rate Map, Knox County, Maine," are hereby adopted by reference and declared to be a part of this Ordinance.

## **ARTICLE II - PERMIT REQUIRED**

Before any construction or other development (as defined in Article XIV), including the placement of manufactured homes, begins within any areas of special flood hazard established in Article I, a Flood Hazard Development Permit shall be obtained from the Code Enforcement Officer except as provided in Article VII. This permit shall be in addition to any other permits which may be required pursuant to the codes and ordinances of the Town of Cushing, Maine.

## **ARTICLE III - APPLICATION FOR PERMIT**

The application for a Flood Hazard Development Permit shall be submitted to the Code Enforcement Officer and shall include:

- A. The name, address and phone number of the applicant, owner, and contractor;
- B. An address and a map indicating the location of the construction site;

- C. A site plan showing location of existing and/or proposed development, including but not limited to structures, sewage disposal facilities, water supply facilities, areas to be cut and filled, and lot dimensions;
- D. A statement of the intended use of the structure and/or development;
- E. A statement of the cost of the development including all materials and labor;
- F. A statement as to the type of sewage system proposed;
- G. Specification of dimensions of the proposed structure and/or development;

[Items H-K.3. apply only to new construction and substantial improvements.]

H. The elevation in relation to the National Geodetic Vertical Datum (NGVD), North American Vertical Datum (NAVD), or to a locally established datum in Zone A only, of the:

1. base flood at the proposed site of all new or substantially improved structures, which is determined:
  - a. in Zones AE, AH, and VE from data contained in the "Flood Insurance Study - Knox County, Maine," as described in Article I; or,
  - b. in Zone A:
    - (1) from any base flood elevation data from federal, state, or other technical sources (such as FEMA's Quick-2 model, FEMA 265), including information obtained pursuant to Article VI.K. and IX.D.;
    - (2) from the contour elevation extrapolated from a best fit analysis of the floodplain boundary when overlaid onto a USGS Quadrangle Map or other topographic map prepared by a Professional Land Surveyor or registered professional engineer, if the floodplain boundary has a significant correlation to the elevation contour line(s); or, in the absence of all other data,
    - (3) to be the elevation of the ground at the intersection of the floodplain boundary and a line perpendicular to the shoreline which passes along the ground through the site of the proposed building.
2. highest and lowest grades at the site adjacent to the walls of the proposed building;
3. lowest floor, including basement; and whether or not such structures contain a basement; and,
4. level, in the case of non-residential structures only, to which the structure will be floodproofed;

- I. A description of an elevation reference point established on the site of all developments for which elevation standards apply as required in Article VI;
- J. A written certification by a Professional Land Surveyor, registered professional engineer or architect, that the base flood elevation and grade elevations shown on the application are accurate
- K. The following certifications as required in Article VI by a registered professional engineer or architect:
  - 1. a Floodproofing Certificate (FEMA Form 81-65, as amended), to verify that the floodproofing methods for any non-residential structures will meet the floodproofing criteria of Article III.H.4.; Article VI.G.; and other applicable standards in Article VI;
  - 2. a V-Zone Certificate to verify that the construction in coastal high hazard areas, Zone VE, will meet the criteria of Article VI.P.; and other applicable standards in Article VI;
  - 3. a Hydraulic Openings Certificate to verify that engineered hydraulic openings in foundation walls will meet the standards of Article VI.L.2.a.;
  - 4. a certified statement that bridges will meet the standards of Article VI.M.;
  - 5. a certified statement that containment walls will meet the standards of Article VI.N.;
- L. A description of the extent to which any water course will be altered or relocated as a result of the proposed development; and,
- M. A statement of construction plans describing in detail how each applicable development standard in Article VI will be met.

#### **ARTICLE IV - APPLICATION FEE AND EXPERT'S FEE**

A non-refundable application fee, as referenced in the Town of Cushing Land Use and Development Fee Schedule, shall be paid to the Town for all minor development and a fee for all new construction or substantial improvements shall be paid to the Town Clerk or Code Enforcement Officer and a copy of a receipt for the same shall accompany the application.

An additional fee may be charged if the Code Enforcement Officer and/or Board of Appeals needs the assistance of a professional engineer or other expert. The expert's fee shall be paid in full by the applicant within 10 days after the town submits a bill to the applicant. Failure to pay the bill shall constitute a violation of the ordinance and be grounds for the issuance of a stop work order. An expert shall not be hired by the municipality at the expense of an applicant until the applicant has either consented to such hiring in writing or been given an opportunity to be heard on the subject. An applicant who is dissatisfied with a decision to hire expert assistance may appeal that decision to the Board of Appeals.

#### **ARTICLE V - REVIEW STANDARDS FOR FLOOD HAZARD DEVELOPMENT PERMIT APPLICATIONS**

The Code Enforcement Officer shall:

- A. Review all applications for the Flood Hazard Development Permit to assure that proposed developments are reasonably safe from flooding and to determine that all pertinent requirements of Article VI (Development Standards) have been, or will be met;
- B. Utilize, in the review of all Flood Hazard Development Permit applications:
  - 1. the base flood and floodway data contained in the "Flood Insurance Study - Knox County, Maine," as described in Article I.;
  - 2. in special flood hazard areas where base flood elevation and floodway data are not provided, the Code Enforcement Officer shall obtain, review and reasonably utilize any base flood elevation and floodway data from federal, state, or other technical sources, including information obtained pursuant to Article III.H.1.b.; Article VI.K.; and Article IX.D., in order to administer Article VI of this Ordinance; and,
  - 3. when the community establishes a base flood elevation in a Zone A by methods outlined in Article III.H.1.b., the community shall submit that data to the Maine Floodplain Management Program.
- C. Make interpretations of the location of boundaries of special flood hazard areas shown on the maps described in Article I of this Ordinance;
- D. In the review of Flood Hazard Development Permit applications, determine that all necessary permits have been obtained from those federal, state, and local government agencies from which prior approval is required by federal or state law, including but not limited to Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1344;
- E. Notify adjacent municipalities, the Department of Environmental Protection, and the Maine Floodplain Management Program prior to any alteration or relocation of a water course and submit copies of such notifications to the Federal Emergency Management Agency;
- F. If the application satisfies the requirements of this Ordinance, approve the issuance of one of the following Flood Hazard Development Permits, based on the type of development:
  - 1. A two-part Flood Hazard Development Permit for elevated structures. Part I shall authorize the applicant to build a structure to and including the first horizontal floor only above the base flood level. At that time the applicant shall provide the Code Enforcement Officer with a Elevation Certificate completed by a Professional Land Surveyor, registered professional engineer or architect based on the Part I permit construction, "as built", for verifying compliance with the elevation requirements of Article VI, paragraphs F, G, H, or P. Following review of the Elevation Certificate data, which shall take place within 72 hours of receipt of the application, the Code Enforcement Officer shall issue Part II of the Flood Hazard Development Permit. Part II shall authorize the applicant to complete the construction project; or,



2. A Flood Hazard Development Permit for Floodproofing of Non-Residential Structures that are new construction or substantially improved non-residential structures that are not being elevated but that meet the floodproofing standards of Article VI.G.1.a., b., and c. The application for this permit shall include a Floodproofing Certificate signed by a registered professional engineer or architect; or,
3. A Flood Hazard Development Permit for Minor Development for all development that is not new construction or a substantial improvement, such as repairs, maintenance, renovations, or additions, whose value is less than 50% of the market value of the structure. Minor development also includes, but is not limited to: accessory structures as provided for in Article VI.J., mining, dredging, filling, grading, paving, excavation, drilling operations, storage of equipment or materials, deposition or extraction of materials, public or private sewage disposal systems or water supply facilities that do not involve structures; and non-structural projects such as bridges, dams, towers, fencing, pipelines, wharves, and piers.

For development that requires review and approval as a Conditional Use, as provided for in this Ordinance, the Flood Hazard Development Permit Application shall be acted upon by the Planning Board as required in Article VII.

G. Maintain, as a permanent record, copies of all Flood Hazard Development Permit Applications, corresponding Permits issued, and data relevant thereto, including reports of the Board of Appeals on variances granted under the provisions of Article X of this Ordinance, and copies of Elevation Certificates, Floodproofing Certificates, Certificates of Compliance and certifications of design standards required under the provisions of Articles III, VI, and VIII of this Ordinance.

## **ARTICLE VI - DEVELOPMENT STANDARDS**

All developments in areas of special flood hazard shall meet the following applicable standards:

**A. All Development** - All development shall:

1. be designed or modified and adequately anchored to prevent flotation (excluding piers and docks), collapse or lateral movement of the development resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;
2. use construction materials that are resistant to flood damage;
3. use construction methods and practices that will minimize flood damage; and
4. use electrical, heating, ventilation, plumbing, and air conditioning equipment, and other service facilities that are designed and/or located to prevent water from entering or accumulating within the components during flooding conditions.

**B. Water Supply** - All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the systems.

- C. **Sanitary Sewage Systems** - All new and replacement sanitary sewage systems shall be designed and located to minimize or eliminate infiltration of flood waters into the system and discharges from the system into flood waters.
- D. **On Site Waste Disposal Systems** - On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during floods.
- E. **Watercourse Carrying Capacity** - All development associated with altered or relocated portions of a watercourse shall be constructed and maintained in such a manner that no reduction occurs in the flood carrying capacity of the watercourse.
- F. **Residential** - New construction or substantial improvement of any residential structure located within:
1. Zones AE and AH shall have the lowest floor (including basement) elevated to at least one foot above the base flood elevation.
  2. Zone AH shall have adequate drainage paths around structures on slopes, to guide floodwater away from the proposed structures.
  3. Zone A shall have the lowest floor (including basement) elevated to at least one foot above the base flood elevation utilizing information obtained pursuant to Article III.H.1.b.; Article V.B.; or Article IX.D.
  4. Zone VE shall meet the requirements of Article VI.P.
- G. **Non Residential** - New construction or substantial improvement of any non-residential structure located within:
1. - Zones AE and AH shall have the lowest floor (including basement) elevated to at least one foot above the base flood elevation, or together with attendant utility and sanitary facilities shall:
    - a. be floodproofed to at least one foot above the base flood elevation so that below that elevation the structure is watertight with walls substantially impermeable to the passage of water;
    - b. have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and,
    - c. be certified by a registered professional engineer or architect that the floodproofing design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this section. Such certification shall be provided with the application for a Flood Hazard Development Permit, as required by Article III.K. and shall include a record of the elevation above mean sea level to which the structure is floodproofed.

2. Zone AH shall have adequate drainage paths around structures on slopes, to guide floodwater away from the proposed structures.
3. Zone A shall have the lowest floor (including basement) elevated to at least one foot above the base flood elevation utilizing information obtained pursuant to Article III.H.1.b.; Article V.B.; or Article IX.D., or
  - a. together with attendant utility and sanitary facilities meet the floodproofing standards of Article VI.G.1.
4. Zone VE shall meet the requirements of Article VI.P.

**H. Manufactured Homes** - New or substantially improved manufactured homes located within:

1. Zones AE and AH shall:
  - a. be elevated such that the lowest floor (including basement) of the manufactured home is at least one foot above the base flood elevation;
  - b. be on a permanent foundation, which may be poured masonry slab or foundation walls, with hydraulic openings, or may be reinforced piers or block supports, any of which support the manufactured home so that no weight is supported by its wheels and axles; and,
  - c. be securely anchored to an adequately anchored foundation system to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to:
    - (1) over-the-top ties anchored to the ground at the four corners of the manufactured home, plus two additional ties per side at intermediate points (manufactured homes less than 50 feet long require one additional tie per side); or by,
    - (2) frame ties at each corner of the home, plus five additional ties along each side at intermediate points (manufactured homes less than 50 feet long require four additional ties per side).
    - (3) all components of the anchoring system described in Article VI.H.1.c.(1) & (2) shall be capable of carrying a force of 4800 pounds.
2. Zone AH shall have adequate drainage paths around structures on slopes, to guide floodwater away from the proposed structures.
3. Zone A shall:
  - a. be elevated on a permanent foundation, as described in Article VI.H.1.b., such that the lowest floor (including basement) of the manufactured home is at least one foot above the base flood elevation utilizing information obtained pursuant to Article III.H.1.b.; Article V.B.; or Article IX.D.; and

b. meet the anchoring requirements of Article VI.H.1.c.

4. Zone VE shall meet the requirements of Article VI.P.

**I. Recreational Vehicles** - Recreational Vehicles located within:

1. Zones A, AE, and AH shall either:

a. be on the site for fewer than 180 consecutive days,

b. be fully licensed and ready for highway use. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions; or,

c. be permitted in accordance with the elevation and anchoring requirements for "manufactured homes" in Article VI.H.1.

2. Zone VE shall meet the requirements of either Article VI.I.1.a. and b., or Article VI.P.

**J. Accessory Structures** - Accessory Structures, as defined in Article XIV, located within Zones A, AH, and AE, shall be exempt from the elevation criteria required in Article VI.F. & G. above, if all other requirements of Article VI and all the following requirements are met. Accessory Structures shall:

1. have unfinished interiors and not be used for human habitation;

2. have hydraulic openings, as specified in Article VI.L.2., in at least two different walls of the accessory structure;

3. be located outside the floodway;

4. when possible be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters and be placed further from the source of flooding than is the primary structure; and,

5. have only ground fault interrupt electrical outlets. The electric service disconnect shall be located above the base flood elevation and when possible outside the Special Flood Hazard Area.

**K. Floodways** -

1. In Zone AE riverine areas, encroachments, including fill, new construction, substantial improvement, and other development shall not be permitted within a regulatory floodway which is designated on the community's Flood Insurance Rate Map unless a technical evaluation certified by a registered professional engineer is provided demonstrating that such encroachments

will not result in any increase in flood levels within the community during the occurrence of the base flood discharge.

2. In Zones AE and A riverine areas, for which no regulatory floodway is designated, encroachments, including fill, new construction, substantial improvement, and other development shall not be permitted in the floodway as determined in Article VI.K.3. unless a technical evaluation certified by a registered professional engineer is provided demonstrating that the cumulative effect of the proposed development, when combined with all other existing development and anticipated development:
  - a. will not increase the water surface elevation of the base flood more than one foot at any point within the community; and,
  - b. is consistent with the technical criteria contained in FEMA's guidelines and standards for flood risk analysis and mapping.
3. In Zones AE and A riverine areas, for which no regulatory floodway is designated, the regulatory floodway is determined to be the channel of the river or other water course and the adjacent land areas to a distance of one-half the width of the floodplain as measured from the normal high water mark to the upland limit of the floodplain.

L. **Enclosed Areas Below the Lowest Floor** - New construction or substantial improvement of any structure in Zones A, AH, and AE that meets the development standards of Article VI, including the elevation requirements of Article VI, paragraphs F, G, or H and is elevated on posts, columns, piers, piles, "stilts," or crawl spaces may be enclosed below the base flood elevation requirements provided all the following criteria are met or exceeded:

1. Enclosed areas are not "basements" as defined in Article XIV;
2. Enclosed areas shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of flood water. Designs for meeting this requirement must either:
  - a. be engineered and certified by a registered professional engineer or architect; or,
  - b. meet or exceed the following minimum criteria:
    - (1) a minimum of two openings having a total net area of not less than one square inch for every square foot of the enclosed area;
    - (2) the bottom of all openings shall be below the base flood elevation and no higher than one foot above the lowest grade; and,
    - (3) openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the entry and exit of flood waters automatically without any

external influence or control such as human intervention, including the use of electrical and other non-automatic mechanical means;

3. The enclosed area shall not be used for human habitation; and,
  4. The enclosed areas are usable solely for building access, parking of vehicles, or storage.
- M. **Bridges** - New construction or substantial improvement of any bridge in Zones A, AH, AE, and VE shall be designed such that:
1. when possible, the lowest horizontal member (excluding the pilings, or columns) is elevated to at least one foot above the base flood elevation; and
  2. a registered professional engineer shall certify that:
    - a. the structural design and methods of construction shall meet the elevation requirements of this section and the floodway standards of Article VI.K.; and
    - b. the foundation and superstructure attached thereto are designed to resist flotation, collapse and lateral movement due to the effects of wind and water loads acting simultaneously on all structural components. Water loading values used shall be those associated with the base flood.
- N. **Containment Walls** - New construction or substantial improvement of any containment wall located within:
1. Zones A, AH, AE, and VE shall:
    - a. have the containment wall elevated to at least one foot above the base flood elevation;
    - b. have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and,
    - c. be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this section. Such certification shall be provided with the application for a Flood Hazard Development Permit, as required by Article III.K.
  2. Zone AH shall have adequate drainage paths around containment walls on slopes, to guide floodwater away from the proposed walls.
- O. **Wharves, Piers and Docks** - New construction or substantial improvement of wharves, piers, and docks are permitted in Zones A, AH, AE, and VE, in and over water and seaward of the mean high tide if the following requirements are met:

1. wharves, piers, and docks shall comply with all applicable local, state, and federal regulations; and
2. for commercial wharves, piers, and docks, a registered professional engineer shall develop or review the structural design, specifications, and plans for the construction.

**P. Coastal Floodplains -**

1. All new construction located within Zones AE and VE shall be located landward of the reach of mean high tide except as provided in Article VI.P.6.
2. New construction or substantial improvement of any structure located within Zone VE shall:
  - a. be elevated on posts or columns such that:
    - (1) the bottom of the lowest horizontal structural member of the lowest floor (excluding the pilings or columns) is elevated to one foot above the base flood elevation;
    - (2) the pile or column foundation and the elevated portion of the structure attached thereto is anchored to resist flotation, collapse, and lateral movement due to the effects of wind and water loads acting simultaneously on all building components; and,
    - (3) water loading values used shall be those associated with the base flood. Wind loading values used shall be those required by applicable state and local building standards.
  - b. have the space below the lowest floor:
    - (1) free of obstructions; or,
    - (2) constructed with open wood lattice-work, or insect screening intended to collapse under wind and water without causing collapse, displacement, or other structural damage to the elevated portion of the building or supporting piles or columns; or,
    - (3) constructed to enclose less than 300 square feet of area with non-supporting breakaway walls that have a design safe loading resistance of not less than 10 or more than 20 pounds per square foot.
  - c. require a registered professional engineer or architect to:
    - (1) develop or review the structural design, specifications, and plans for the construction, which must meet or exceed the technical criteria contained in the *Coastal Construction Manual*, (FEMA-55); and,
    - (2) certify that the design and methods of construction to be used are in accordance with accepted standards of practice for meeting the criteria of Article VI.P.2.

3. The use of fill for structural support in Zone VE is prohibited.
4. Human alteration of sand dunes within Zone VE is prohibited unless it can be demonstrated that such alterations will not increase potential flood damage.
5. The area below the lowest floor shall be used solely for parking vehicles, building access, and storage.
6. Conditional Use - Lobster sheds and fishing sheds may be located seaward of mean high tide and shall be exempt from the elevation requirement in Article VI.G. only if permitted as a Conditional Use following review and approval by the Planning Board, as provided in Article VII, and if all the following requirements and those of Article VI.A., VI.K., and VI.L. are met:
  - a. The conditional use shall be limited to low value structures such as metal or wood sheds 200 square feet or less and shall not exceed more than one story.
  - b. The structure shall be securely anchored to the wharf or pier to resist flotation, collapse, and lateral movement due to the effect of wind and water loads acting simultaneously on all building components.
  - c. The structure will not adversely increase wave or debris impact forces affecting nearby buildings.
  - d. The structure shall have unfinished interiors and shall not be used for human habitation.
  - e. Any mechanical, utility equipment and fuel storage tanks must be anchored and either elevated or floodproofed to one foot above the base flood elevation.
  - f. All electrical outlets shall be ground fault interrupt type. The electrical service disconnect shall be located on shore above the base flood elevation and when possible outside the Special Flood Hazard Area.

#### **ARTICLE VII - CONDITIONAL USE REVIEW**

The Planning Board shall hear and decide upon applications for conditional uses provided for in this Ordinance. The Planning Board shall hear and approve, approve with conditions, or disapprove all applications for conditional uses. An applicant informed by the Code Enforcement Officer that a Conditional Use Permit is required shall file an application for the permit with the Planning Board.

##### **A. Review Procedure for a Conditional Use Flood Hazard Development Permit**

1. The Flood Hazard Development Permit Application with additional information attached addressing how each of the conditional use criteria specified in the Ordinance will be satisfied, may serve as the permit application for the Conditional Use Permit.
2. Before deciding any application, the Planning Board shall hold a public hearing on the application within thirty days of their receipt of the application.



3. If the Planning Board finds that the application satisfies all relevant requirements of the ordinance, the Planning Board must approve the application or approve with conditions within 45 days of the date of the public hearing.
4. A Conditional Use Permit issued under the provisions of this Ordinance shall expire if the work or change involved is not commenced within 180 days of the issuance of the permit by the Planning Board.
5. The applicant shall be notified by the Planning Board in writing over the signature of the Chairman of the Planning Board that flood insurance is not available for structures located entirely over water or seaward of mean high tide.

B. Expansion of Conditional Uses

1. No existing building or use of premises may be expanded or enlarged without a permit issued under this section if that building or use was established or constructed under a previously issued Conditional Use Permit or if it is a building or use which would require a Conditional Use Permit if being newly-established or constructed under this Ordinance.

**ARTICLE VIII - CERTIFICATE OF COMPLIANCE**

No land in a special flood hazard area shall be occupied or used and no structure which is constructed or substantially improved shall be occupied until a Certificate of Compliance is issued by the Code Enforcement Officer subject to the following provisions:

- A. For New Construction or Substantial Improvement of any elevated structure the applicant shall submit to the Code Enforcement Officer:
  1. an Elevation Certificate completed by a Professional Land Surveyor, registered professional engineer, or architect, for compliance with Article VI, paragraphs F, G, H, or P and,
  2. for structures in Zone VE, certification by a registered professional engineer or architect that the design and methods of construction used are in compliance with Article VI.P.2.
- B. The applicant shall submit written notification to the Code Enforcement Officer that the development is complete and complies with the provisions of this ordinance.
- C. Within 10 working days, the Code Enforcement Officer shall:
  1. review the required certificate(s) and the applicant's written notification; and,
  2. upon determination that the development conforms to the provisions of this ordinance, shall issue a Certificate of Compliance.

## **ARTICLE IX - REVIEW OF SUBDIVISION AND DEVELOPMENT PROPOSALS**

The Planning Board shall, when reviewing subdivisions and other proposed developments that require review under other federal law, state law, local ordinances or regulations, and all projects on 5 or more disturbed acres, or in the case of manufactured home parks divided into two or more lots, assure that:

- A. All such proposals are consistent with the need to minimize flood damage.
- B. All public utilities and facilities, such as sewer, gas, electrical and water systems are located and constructed to minimize or eliminate flood damages.
- C. Adequate drainage is provided in order to reduce exposure to flood hazards.
- D. All proposals include base flood elevations, flood boundaries, and, in a riverine floodplain, floodway data. These determinations shall be based on engineering practices recognized by the Federal Emergency Management Agency.
- E. Any proposed development plan must include a condition of plan approval requiring that structures on any lot in the development having any portion of its land within a Special Flood Hazard Area, are to be constructed in accordance with Article VI of this ordinance. Such requirement will be included in any deed, lease, purchase and sale agreement, or document transferring or expressing an intent to transfer any interest in real estate or structure, including but not limited to a time-share interest. The condition shall clearly articulate that the municipality may enforce any violation of the construction requirement and that fact shall also be included in the deed or any other document previously described. The construction requirement shall also be clearly stated on any map, plat, or plan to be signed by the Planning Board or local reviewing authority as part of the approval process.

## **ARTICLE X - APPEALS AND VARIANCES**

The Board of Appeals of the Town of Cushing may, upon written application of an aggrieved party, 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 administration or enforcement of the provisions of this Ordinance.

The Board of Appeals may grant a variance from the requirements of this Ordinance consistent with state law and the following criteria:

- A. Variances shall not be granted within any designated regulatory floodway if any increase in flood levels during the base flood discharge would result.
- B. Variances shall be granted only upon:
  - 1. a showing of good and sufficient cause; and,
  - 2. a determination that should a flood comparable to the base flood occur, the granting of a variance will not result in increased flood heights, additional threats to public safety, public expense, or

create nuisances, cause fraud or victimization of the public or conflict with existing local laws or ordinances; and,

3. a showing that the issuance of the variance will not conflict with other state, federal or local laws or ordinances; and,
  4. a determination that failure to grant the variance would result in "undue hardship," which in this sub-section means:
    - a. that the land in question cannot yield a reasonable return unless a variance is granted; and,
    - 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; and,
    - 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.
- C. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief, and the Board of Appeals may impose such conditions to a variance as is deemed necessary.
- D. Variances may be issued for new construction, substantial improvements, or other development for the conduct of a functionally dependent use provided that:
1. other criteria of Article X and Article VI.K. are met; and,
  2. the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.
- E. Variances may be issued for the repair, reconstruction, rehabilitation, or restoration of Historic Structures upon the determination that:
1. the development meets the criteria of Article X, paragraphs A. through D. above; and,
  2. the proposed repair, reconstruction, rehabilitation, or restoration will not preclude the structure's continued designation as a Historic Structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
- F. Any applicant who meets the criteria of Article X, paragraphs A. through E. shall be notified by the Board of Appeals in writing over the signature of the Chairman of the Board of Appeals that:
1. the issuance of a variance to construct a structure below the base flood level will result in greatly increased premium rates for flood insurance up to amounts as high as \$25 per \$100 of insurance coverage;

2. such construction below the base flood level increases risks to life and property; and,
3. the applicant agrees in writing that the applicant is fully aware of all the risks inherent in the use of land subject to flooding, assumes those risks and agrees to indemnify and defend the municipality against any claims filed against it that are related to the applicant's decision to use land located in a floodplain and that the applicant individually releases the municipality from any claims the applicant may have against the municipality that are related to the use of land located in a floodplain.

**G. Appeal Procedure for Administrative and Variance Appeals**

1. An administrative or variance appeal may be taken to the Board of Appeals by an aggrieved party within thirty days after receipt of a written decision of the Code Enforcement Officer or Planning Board.
2. 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.
3. The Board of Appeals shall hold a public hearing on the appeal within thirty-five days of its receipt of an appeal request.
4. The person filing the appeal shall have the burden of proof.
5. The Board of Appeals shall decide all appeals within thirty-five days after the close of the hearing, and shall issue a written decision on all appeals.
6. The Board of Appeals shall submit to the Code Enforcement Officer a report of all variance actions, including justification for the granting of the variance and an authorization for the Code Enforcement Officer to issue a Flood Hazard Development Permit, which includes any conditions to be attached to said permit.
7. 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 days from the date of any decision of the Board of Appeals.

**ARTICLE XI - ENFORCEMENT AND PENALTIES**

- A. It shall be the duty of the Code Enforcement Officer to enforce the provisions of this Ordinance pursuant to Title 30-A MRSA § 4452.
- B. The penalties contained in Title 30-A MRSA § 4452 shall apply to any violation of this Ordinance.
- C. In addition to other actions, the Code Enforcement Officer may, upon identifying a violation, submit a declaration to the Administrator of the Federal Insurance Administration requesting a flood insurance denial. The valid declaration shall consist of;

1. the name of the property owner and address or legal description of the property sufficient to confirm its identity or location;
2. a clear and unequivocal declaration that the property is in violation of a cited State or local law, regulation, or ordinance;
3. a clear statement that the public body making the declaration has authority to do so and a citation to that authority;
4. evidence that the property owner has been provided notice of the violation and the prospective denial of insurance; and,
5. a clear statement that the declaration is being submitted pursuant to Section 1316 of the National Flood Insurance Act of 1968, as amended.

#### **ARTICLE XII - VALIDITY AND SEVERABILITY**

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

#### **ARTICLE XIII - CONFLICT WITH OTHER ORDINANCES**

This Ordinance shall not in any way impair or remove the necessity of compliance with any other applicable rule, ordinance, regulation, bylaw, permit, or provision of law. Where this Ordinance imposes a greater restriction upon the use of land, buildings, or structures, the provisions of this Ordinance shall control.

#### **ARTICLE XIV - DEFINITIONS**

Unless specifically defined below, words and phrases used in this Ordinance shall have the same meaning as they have at common law, and to give this Ordinance its most reasonable application. Words used in the present tense include the future, the singular number includes the plural, and the plural number includes the singular. The word "may" is permissive; "shall" is mandatory and not discretionary.

**Accessory Structure** - a small detached structure that is incidental and subordinate to the principal structure.

**Adjacent Grade** - the natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

**Area of Shallow Flooding** - a designated AH zone on a community's Flood Insurance Rate Map (FIRM) with a one percent or greater annual chance of flooding to an average depth of one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

**Area of Special Flood Hazard** - land in the floodplain having a one percent or greater chance of flooding in any given year, as specifically identified in the Flood Insurance Study cited in Article I of this Ordinance.

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

**Basement** - area of a building that includes a floor that is subgrade (below ground level) on all sides.

**Breakaway Wall** - a wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces, without causing damage to the elevated portion of the building or supporting foundation system.

**Building** - see **Structure**.

**Certificate of Compliance** - a document signed by the Code Enforcement Officer stating that a structure is in compliance with all of the provisions of this Ordinance.

**Code Enforcement Officer** - a person certified under Title 30-A MRSA, Section 4451 (including exceptions in Section 4451, paragraph 1) and employed by a municipality to enforce all applicable comprehensive planning and land use laws.

**Conditional Use** - a use that, because of its potential impact on surrounding areas and structures, is permitted only upon review and approval by the Planning Board pursuant to Article VII.

**Containment Wall** - wall used to convey or direct storm water or sanitary water from the initial source to the final destination.

**Development** - a manmade change to improved or unimproved real estate. This includes, but is not limited to, buildings or other structures; mining, dredging, filling, grading, paving, excavation, drilling operations or storage of equipment or materials; and the storage, deposition, or extraction of materials.

**Digital Flood Insurance Rate Map (FIRM)** - see **Flood Insurance Rate Map**

**Elevated Building** - a non-basement building that is:

- a. built, in the case of a building in Zones A, AE, or AH, so that the top of the elevated floor, or in the case of a building in Zone VE, to have the bottom of the lowest horizontal structural member of the elevated floor, elevated above the ground level by means of pilings, columns, post, piers, or "stilts;" and
- b. adequately anchored to not impair the structural integrity of the building during a flood of up to one foot above the magnitude of the base flood.

In the case of Zones A, AE, or AH, **Elevated Building** also includes a building elevated by means of fill or solid foundation perimeter walls with hydraulic openings sufficient to facilitate the unimpeded movement of flood waters, as required in Article VI.L. In the case of Zone VE, **Elevated Building** also

includes a building otherwise meeting the definition of elevated building, even though the lower area is enclosed by means of breakaway walls, if the breakaway walls meet the standards of Article VI.P.2.b.(3).

**Elevation Certificate** - an official form (FEMA Form 81-31, as amended) that:

- a. is used to verify compliance with the floodplain management regulations of the National Flood Insurance Program; and,
- b. is required for purchasing flood insurance.

**Flood or Flooding**

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

**Flood Elevation Study** - an examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations.

**Flood Insurance Rate Map (FIRM)** - an official map of a community, on which the Federal Insurance Administrator has delineated both the special hazard areas and the risk premium zones applicable to the community.

**Flood Insurance Study** - see **Flood Elevation Study**.

**Floodplain or Floodprone Area** - land area susceptible to being inundated by water from any source (see flooding).

**Floodplain Management** - means the operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works, and floodplain management regulations.

**Floodplain Management Regulations** - zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as a floodplain ordinance, grading ordinance, and erosion control ordinance) and other applications of police power. The term describes such state or local regulations, in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.

**Floodproofing** - any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and contents.

**Floodway** - see **Regulatory Floodway**.

**Floodway Encroachment Lines** - the lines marking the limits of floodways on federal, state, and local floodplain maps.

**Freeboard** - a factor of safety usually expressed in feet above a flood level for purposes of floodplain management. Freeboard tends to compensate for the many unknown factors, such as wave action, bridge openings, and the hydrological effect of urbanization of the watershed, which could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions.

**Functionally Dependent Use** - a use that cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities.

**Historic Structure** - means any structure that is:

- a. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- b. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary of the Interior to qualify as a registered historic district;
- c. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or
- d. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
  1. By an approved state program as determined by the Secretary of the Interior, or
  2. Directly by the Secretary of the Interior in states without approved programs.

**Locally Established Datum** - for purposes of this ordinance, an elevation established for a specific site to which all other elevations at the site are referenced. This elevation is generally not referenced to the National Geodetic Vertical Datum (NGVD), North American Vertical Datum (NAVD) or any other established datum and is used in areas where Mean Sea Level data is too far from a specific site to be practically used.

**Lowest Floor** - the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor, provided that such enclosure is not built so as to



render the structure in violation of the applicable non-elevation design requirements described in Article VI.L. of this Ordinance.

**Manufactured Home** - a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For floodplain management purposes the term manufactured home also includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than 180 consecutive days.

**Manufactured Home Park or Subdivision** - a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

**Mean Sea Level** - when related to the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929, North American Vertical Datum (NAVD) or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.

**Minor Development** - means all development that is not new construction or a substantial improvement, such as repairs, maintenance, renovations, or additions, whose value is less than 50% of the market value of the structure. It also includes, but is not limited to: accessory structures as provided for in Article VI.J., mining, dredging, filling, grading, paving, excavation, drilling operations, storage of equipment or materials, deposition or extraction of materials, public or private sewage disposal systems or water supply facilities that do not involve structures; and non-structural projects such as bridges, dams, towers, fencing, pipelines, wharves, and piers.

**National Geodetic Vertical Datum (NGVD)** - the national vertical datum, a standard established in 1929, which is used by the National Flood Insurance Program (NFIP). NGVD is based upon mean sea level in 1929 and also has been called "1929 Mean Sea Level (MSL)".

**New Construction** - structures for which the "start of construction" commenced on or after the effective date of the initial floodplain management regulations adopted by a community and includes any subsequent improvements to such structures.

**North American Vertical Datum (NAVD)**- means the national datum whose standard was established in 1988, which is the new vertical datum used by the National Flood Insurance Program (NFIP) for all new Flood Insurance Rate Maps. NAVD is based upon vertical datum used by other North American countries such as Canada and Mexico and was established to replace NGVD because of constant movement of the earth's crust, glacial rebound, and subsidence and the increasing use of satellite technology.

**100-year flood** - see **Base Flood**.

**Recreational Vehicle** - a vehicle that is:

- a. built on a single chassis;
- b. 400 square feet or less when measured at the largest horizontal projection, not including slideouts;
- c. designed to be self-propelled or permanently towable by a motor vehicle; and
- d. designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

### **Regulatory Floodway –**

- a. the channel of a river or other water course and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot, and
- b. when not designated on the community's Flood Insurance Rate Map, it 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.

**Riverine** - relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

**Special Flood Hazard Area** - see **Area of Special Flood Hazard**.

**Start of Construction** - the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, substantial improvement or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, or modification of any construction element, whether or not that alteration affects the external dimensions of the building.

**Structure** - means, for floodplain management purposes, a walled and roofed building. A gas or liquid storage tank that is principally above ground is also a structure.

**Substantial Damage** - means, damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damage condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

**Substantial Improvement** - means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the start of construction of the improvement. This term includes structures which have incurred substantial damage, regardless of the actual repair work performed. The term does not, however, include either:

- a. Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or
- b. Any alteration of a Historic Structure, provided that the alteration will not preclude the structure's continued designation as a historic structure, and a variance is obtained from the Board of Appeals.

**Variance** - means a grant of relief by a community from the terms of a floodplain management regulation.

This certifies to the municipal clerk of Cushing that the within ordinance is a true copy of an ordinance entitled 'Floodplain Management Ordinance 2016 for the Town of Cushing, Maine' to be acted upon by the voters at a town meeting to be held on March 22, 2016.

Dated February 08, 2016

Municipal Officers of Cushing

Allen Shaver

Daniel Staples

Scott Steyn

Marta Mauduit

Heidi M. Alley

**TOWN OF CUSHING**  
**ORDINANCE FOR ACCESS TO TOWN ROADS**

**ARTICLE 1     PURPOSE**

1.1 To assure public safety, this ordinance establishes procedures and standards for access to town roads that are not state roads or state aid roads.

**ARTICLE 2     APPLICATION**

2.1 The Ordinance applies to all new driveways, entrances and connecting roads, and to any driveway serving existing residential use that is proposed to serve an additional dwelling, irrespective of whether the use served is a new subdivision.

**ARTICLE 3     AUTHORITY**

3.1 The authority form this regulation is Title 30A, Chapter 141, Section 3001, M.R.S.A.

**ARTICLE 4     DEFINITIONS**

4.1 **Access.** An access is the location at which a *driveway*, *entrance* or road connects with an existing road.

4.2 **Driveway.** A private way for on-road vehicles serving one of the following land uses: residential uses up to two dwelling units, home occupations, forest management activities, farming, low impact industrial uses such as utility substations, or other similar uses.

4.3 **Entrance.** A private way for on-road vehicles serving one of the following land uses: residential uses or developments serving three or more dwelling units, retail, office, or service business uses including convenience stores, gas stations, auto repair shops, restaurants, or similar uses.

4.4 **Road.** A right-of-way for use by on-road vehicles.

**ARTICLE 5     STANDARDS**

5.1 **Sight Distance.** A driveway, entrance, or road shall provide the safe sight distance shown in the table below.

Design speed (mph)	20	25	30	35	40	45
Sight distance (feet)	155	200	250	305	360	425

*Sight distance is measured from the driver's seat of a vehicle that is 10 feet behind the curb line (or edge of shoulder) with the height of driver's eye 3.5 feet above the pavement and height of an object (vehicle or pedestrian for example) 4.25 feet above the pavement, as seen by the driver.*

**5.2 Spacing of Accesses.** To minimize traffic accidents resulting from turning vehicles, the minimum distance between accesses on the same side of the road shall be 75 feet measured center to center at the right-of-way line. Where a lot has frontage on 2 or more roads, primary access shall be located on the road where there is less traffic.

**5.3 Design and construction.** The design and construction of access turnouts within the right of way shall conform to the requirements of the Town of Cushing Public Road Design and Construction Ordinance.

**5.4 Alternative Measures.** If an access cannot meet the standards in 5.1 through 5.3 above, and the state will not reduce the posted speed of the road, the Road Commissioners may designate measures that they find sufficient to assure public safety. In addition to moving the location itself, such measures may include but are not limited to warning signs, modification of grades, and agreements assuring maintenance of sufficient sight lines, on or off private property.

## **ARTICLE 6 APPROVAL PROCEDURES**

**6.1 Application.** An application for approval of a proposed access location shall contain the following information on a site plan:

- a. The actual sight distances and other pertinent dimensions as confirmed by the Road Commissioners, who may require that determination to be made by a civil engineer at the applicant's expense.
- b. All property lines, adjoining roads, the location of proposed and existing accesses along the road length required for sight distance, the width and radius of any turnout within the right of way, and the location of centerline and offset stakes placed onsite. The plan shall note its scale, road names, and the name and address of the property owner and of any licensed surveyor or civil engineer whose work is represented.
- c. If applicable, any request for approval with conditions that provide safety by alternative means.

**6.2 Waiver.** Submittal requirements may not be waived.

**6.3 Reviews.** Submittal of an application for a driveway, entrance or road location shall be made to the Road Commissioners, who may approve the application, deny it, or approve it with conditions as set out in 5.4 above, within 30 days of receipt of a complete submittal.

## **ARTICLE 7 IMPLEMENTATION**

**7.1** No construction shall begin before the Road Commissioners remove the centerline stake. Offset stakes shall not be removed until authorized by the Road Commissioners.

## **ARTICLE 8 APPEAL**

**8.1** Within 30 days of a final decision by the Road Commissioners, any aggrieved party having proper standing may appeal the decision to the Board of Appeals.

## **ARTICLE 9     ENFORCEMENT**

9.1    These provisions will be enforced by the Code Enforcement Officer pursuant to Title 30A § 4452, which also addresses penalties.

## **ARTICLE 10   SEVERABILITY**

10.1   If any section, subsection, clause, phrase or word of this ordinance is found to be invalid, that finding shall not invalidate any other section, subsection, clause, phrase or word of this ordinance.

## **ARTICLE 11   AMENDMENT**

11.1   These regulations may be amended by the voters of Cushing following a public hearing.

Date of adoption

**TOWN OF CUSHING**  
**PUBLIC ROAD DESIGN AND CONSTRUCTION ORDINANCE**

**ARTICLE 1    PURPOSE**

1.1 To assure public safety, this ordinance establishes standards for design, construction and re-construction of all public roads.

**ARTICLE 2    APPLICATION**

2.1 All roads to be owned and maintained by the Town shall meet all design and construction standards in this Ordinance and shall be paved.

2.2 An applicant proposing acceptance of any road for public ownership and maintenance shall provide the Town with certification by a Professional Engineer licensed in the State of Maine that the road meets all design and construction standards for public roads before a warrant for a vote of acceptance by the legislative body of the Town can be prepared.

**ARTICLE 3    AUTHORITY**

3.1 The authority for this ordinance is Title 30A, M.R.S.A., Chapter 141, Section 3001.-

**ARTICLE 4    DESIGN STANDARDS**

4.1 The following design standards apply to all roads:

DESCRIPTION	DIMENSION
Minimum Right Of Way Width serving over 5 lots	50'
Minimum Right Of Way Width serving 5 lots or fewer	40'
Minimum Travel Way Widths:	
Roads serving 20 or more lots	20'
Roads serving 6 to 19 lots	16'
Roads serving 3 to 5 lots	14'
Shoulder Width	3'
Maximum Grade	10%
Maximum Grade within 75' of Intersections	3%
Minimum Centerline Radius on Curves	100'
Minimum Tangent Between Curves of Reverse Alignment	50'
Paved Roadway Crown	1/4" /ft.
Angle of all Road Intersections	70° min.

4.2 The centerline of the roadway shall be the centerline of the right-of-way.

4.3 Dead-end roads shall provide a turn-around in the shape of a T, Y or cul-de-sac.

- a. Each leg of a T or Y turn shall have a fifty (50) foot wide right-of-way, a forty (40) foot long length outside the road right-of-way, and an eighteen (18) foot wide travel way. The travel way radius into each leg shall be not less than thirty five (35) feet.
- b. A cul-de-sac shall have a sixty five (65) foot property line radius, fifty (50) foot outer edge of travel way radius, and a twenty-six (26) foot travel way. The entry and exit radius from the roadway into the cul de sac shall be not less than thirty five (35) feet.
- c. Maximum grade in the turn area shall not exceed 5%.

#### 4.4 Grades, intersections and sight distances:

- a. Grades of all roads shall conform in general to the terrain, so that cut and fill are minimized while maintaining the grade standards above.
- b. All changes in grade shall be connected by vertical curves to provide for the minimum sight distances below.
- c. Maximum speed shall be posted.

Design speed (mph)	20	25	30	35	40	45
Sight distance (feet)	155	200	250	305	360	425

- d. Where new road intersections or driveway access points are proposed, sight distances, as measured along the road onto which traffic will be turning, shall be based upon the posted speed limit and conform to the table above: Where necessary, lots shall be cleared of all growth and sight obstructions, including ground excavation, to achieve the required visibility.
- e. Cross (four-cornered) road intersections shall be avoided insofar as possible.

## ARTICLE 5 CONSTRUCTION STANDARDS

### 5.1 Minimum thickness of material after compaction:

Road materials	
Aggregate sub-base course	15"
Aggregate base course	3"
Hot bituminous pavement	
Total Thickness	3"
Surface Course	1"
Base Course	2"

### 5.2 Preparation

- a. Before any clearing has started on the right of way, the centerline and sidelines of the new road shall be staked or flagged at fifty (50) foot intervals.



b. Before subgrade construction is started, the right-of-way shall be cleared of all stumps, roots, brush, and other objectionable material. All ledge, large boulders, and tree stumps shall be removed from the right-of-way and disposed of as set forth in approved construction plans.

c. All organic materials shall be removed to a depth of two (2) feet below the subgrade of the roadway. On subsoils which have been identified as not suitable for roadways, one of the following methods shall be employed prior to placement of sub-base material:

1. the subsoil shall be removed from the roadway to a width determined by projecting the roadway shoulder crown downward and outward at a slope of 1:1, and to a depth of two feet below the subgrade, and replaced with granular borrow, or

2. a geotextile approved by Maine Department of Transportation shall be installed directly on the unsuitable material according to the manufacturer's instructions.

d. Side slopes less than or equal to a slope of three (3) feet horizontal to one (1) foot vertical shall be graded, limed, fertilized, and seeded to produce a vigorous stand of vegetation. Side Slopes greater than 3 to 1 shall be engineered using best management practices that are acceptable to the Planning Board.

e. All underground utilities shall be installed prior to paving to avoid cuts in the pavement.

f. Compaction of roadway materials

1. For materials located below subgrade, materials shall be compacted to 90% of compaction standard D-598 of the American Society of Testing Materials.

2. For materials located above subgrade, materials shall be compacted to 95% of compaction standard D-1557 of the American Society of Testing Materials.

### 5.3 Bases

a. The Aggregate Sub-base Course shall be sand or gravel of hard durable particles free from vegetative matter, lumps or balls of clay and other deleterious substances. The gradation of the part that passes a three (3) inch square mesh sieve shall meet the following grading requirements:

Sieve designation	Percentage by weight passing square mesh sieve
1/4 inch	25-70%
No. 40	0-30%
No. 200	0-7%

Aggregate for the sub-base shall contain no particles of rock which will not pass the three (3) inch square mesh sieve.

b. The Aggregate Base Course shall be screened or crushed gravel of hard durable particles free from vegetative matter, lumps or balls of clay and other deleterious substances. The gradation of the part that passes a two (2) inch square mesh sieve shall meet the following grading requirements:

Sieve designation	Percentage by weight passing square mesh sieve
1/2 inch	45-70%
1/4 inch	30-55%
No. 40	0-20%
No. 200	0-5%

Aggregate for the base shall contain no particles of rock which will not pass the two (2) inch square mesh sieve.

#### 5.4 Pavement:

- a. Minimum standards for the base layer of pavement shall be the M.D.O.T. specifications for plant mix grade B with an aggregate size no more than three quarter (3/4) inch maximum, applied in a two inch (2") minimum compacted thickness.
- b. Minimum standards for the surface layer of pavement shall meet the M.D.O.T. specifications for plant mix grade C with an aggregate size no more than one half (1/2) inch maximum, applied in a one inch (1") minimum compacted thickness.
- c. Where pavement joins an existing pavement, the existing pavement shall be cut along a smooth line and form a neat, even vertical joint.
- d. All roads abutting paved roads shall have a twenty (20) foot long paved apron at the intersection of the two roads.

### ARTICLE 6 CONSTRUCTION DRAWINGS

6.1 Drawings for new road construction bearing the signature and seal of a licensed Professional Engineer shall show all road and associated storm water management improvements at a scale of not more than 100 feet to the inch, on 24" x 36" sheets where practical. Drawings shall include:

- a. Date, scale, and magnetic or true north point.
- b. Plan, profile and typical and critical cross-sections of roads.
- c. Road right-of-way, edge of travel lanes, edge of shoulder.
- d. Road intersections, turning radii and centerline gradients.
- e. Complete road curve data.
- f. Storm water drainage and any treatment structures.
- g. All existing and proposed utility components.
- i. Erosion and sediment control plan details

### ARTICLE 7 CLEANUP

7.1 Following road construction, the developer or contractor shall conduct a thorough clean-up of stumps and other debris resulting from road construction. If on-site disposal of the stumps and debris is proposed, the site shall be indicated on the Plan, and be suitably covered with fill and topsoil, limed, fertilized, and seeded.

### ARTICLE 8 ROAD NAMES AND SIGNS

8.1 Approval by the Town of Cushing Addressing Committee of road names and name sign specifications is required. The developer shall furnish and install signs for road names, traffic safety and speed limit.

## **ARTICLE 9 DRIVEWAY CULVERTS**

9.1 The minimum size of any driveway culvert shall be fifteen (15) inches in diameter. The minimum length shall be thirty (30) feet.

## **ARTICLE 10 INSPECTION AND CERTIFICATION OF CONSTRUCTION**

10.1 A Professional Engineer retained by the applicant shall inspect the construction of all roads proposed for acceptance by the Town and certify their compliance with applicable requirements.

10.2 On completion of construction, the Engineer shall submit a signed report to the Road Commissioners certifying the extent to which the required improvements comply with design and construction requirements.

## **ARTICLE 11 WAIVER**

11.1 The Road Commissioners may waive portions of the standards to permit a more practical design or construction provided that public health, safety and welfare are protected and the waiver does not have the effect of nullifying the intent and purpose of any ordinance or regulation.

## **ARTICLE 12 ENFORCEMENT**

12.1 These provisions will be enforced by the Code Enforcement Officer pursuant to Title 30A § 4452, which also addresses penalties.

## **ARTICLE 13 SEVERABILITY**

13.1 If any section, subsection, clause, phrase or word of this ordinance is found to be invalid, that finding shall not invalidate any other section, subsection, clause, phrase or word of this ordinance.

## **ARTICLE 14 AMENDMENT**

14.1 These regulations may be amended by the voters of Cushing following a public hearing.

Date of adoption:

**TOWN OF CUSHING  
PUBLIC ROAD DESIGN AND CONSTRUCTION ORDINANCE**

**ARTICLE 1 PURPOSE**

1.1 To assure public safety, this ordinance establishes standards for design, construction and re-construction of all public roads.

**ARTICLE 2 APPLICATION**

2.1 All roads to be owned and maintained by the Town shall meet all design and construction standards of this Ordinance and shall be paved the full width of the travel way.

2.2 An applicant proposing acceptance of any road for public ownership and maintenance shall provide the Town with certification by a Professional Engineer licensed in the State of Maine that the road meets all design and construction standards for public roads before a warrant for a vote of acceptance by the legislative body of the Town can be prepared.

**ARTICLE 3 AUTHORITY**

3.1 The authority for this ordinance is Title 30A, M.R.S.A., Chapter 141, Section 3001.

**ARTICLE 4 DESIGN STANDARDS**

4.1 The following design standards apply to all roads:

DESCRIPTION	DIMENSION
Minimum Right Of Way Width serving over 5 lots	50'
Minimum Right Of Way Width serving 5 lots or fewer	40'
Minimum Travel Way Widths:	
Roads serving 20 or more lots	20'
Roads serving 6 to 19 lots	16'
Roads serving 3 to 5 lots	14'
Shoulder Width	3'
Maximum Grade	10%
Maximum Grade within 75' of Intersections	3%
Minimum Centerline Radius on Curves	100'
Minimum Tangent Between Curves of Reverse Alignment	50'
Paved Roadway Crown	1/4" /ft.
Angle of all Road Intersections	70° min.

4.2 The centerline of the roadway shall be the centerline of the right-of-way.

4.3 Dead-end roads shall provide a turn-around in the shape of a T, Y or cul-de-sac.

a. Each leg of a T or Y turn shall have a fifty (50) foot wide right-of-way, a forty (40) foot long length outside the road right-of-way, and an eighteen (18) foot wide travel way. The travel way radius into each leg shall be not less than thirty five (35) feet.

b. A cul-de-sac shall have a sixty five (65) foot property line radius, fifty (50) foot outer edge of travel way radius, and a twenty-six (26) foot travel way. The entry and exit radius from the roadway into the cul de sac shall be not less than thirty five (35) feet.

c. Maximum grade in the turn area shall not exceed 5%.

#### 4.4 Grades, intersections and sight distances

a. Grades of all roads shall conform in general to the terrain, so that cut and fill are minimized while maintaining the grade standards above.

b. All changes in grade shall be connected by vertical curves to provide for the minimum sight distances below.

c. Maximum speed shall be posted.

Design speed (mph)	20	25	30	35	40	45
Sight distance (feet)	155	200	250	305	360	425

d. Where new road intersections or driveway access points are proposed, sight distances, as measured along the road onto which traffic will be turning, shall be based upon the posted speed limit and conform to the table above: Where necessary, lots shall be cleared of all growth and sight obstructions, including ground excavation, to achieve the required visibility.

e. Cross (four-cornered) road intersections shall be avoided insofar as possible.

#### 4.5 Driveway and entrance aprons

a. New driveway aprons shall be

1. no less than ten feet wide at the edge of the right of way,
2. twenty feet wide over the culvert, and
3. no less than 30 feet wide at the edge of the travel way.

b. New entrance aprons shall be

1. No less than twenty feet wide at the edge of the right of way,
2. no less than thirty six feet wide at the edge of the travel way.

### ARTICLE 5 CONSTRUCTION STANDARDS

#### 5.1 Application

a. New construction within rights of way shall comply with the following standards.

b. The Road Commissioners may authorize reconstruction to vary from these standards.

#### 5.2 Minimum thickness of material after compaction:

Road materials	
Aggregate sub-base course	15"
Aggregate base course	3"
Hot bituminous pavement	
Total Thickness	3"
Surface Course	1"
Base Course	2"

### 5.3 Preparation

- a. Before any clearing has started on the right of way, the centerline and sidelines of the new road shall be staked or flagged at fifty (50) foot intervals.
- b. Before subgrade construction is started, the right-of-way shall be cleared of all stumps, roots, brush, and other objectionable material. All ledge, large boulders, and tree stumps shall be removed from the right-of-way and disposed of as set forth in approved construction plans.
- c. All organic materials shall be removed to a depth of two (2) feet below the subgrade of the roadway. On subsoils which have been identified as not suitable for roadways, one of the following methods shall be employed prior to placement of sub-base material:
  1. the subsoil shall be removed from the roadway to a width determined by projecting the roadway shoulder crown downward and outward at a slope of 1:1, and to a depth of two feet below the subgrade, and replaced with granular borrow, or
  2. a geotextile approved by Maine Department of Transportation shall be installed directly on the unsuitable material according to the manufacturer's instructions.
- d. All underground utilities shall be installed prior to paving to avoid cuts in the pavement.
- e. Compaction of roadway materials
  1. For materials located below subgrade, materials shall be compacted to 90% of compaction standard D-598 of the American Society of Testing Materials.
  2. For materials located above subgrade, materials shall be compacted to 95% of compaction standard D-1557 of the American Society of Testing Materials.

### 5.4 Bases

- a. The Aggregate Sub-base Course shall be sand or gravel of hard durable particles free from vegetative matter, lumps or balls of clay and other deleterious substances. The gradation of the part that passes a three (3) inch square mesh sieve shall meet the following grading requirements:

Sieve designation	Percentage by weight passing square mesh sieve
1/4 inch	25-70%
No. 40	0-30%
No. 200	0-7%

Aggregate for the sub-base shall contain no particles of rock which will not pass the three (3) inch square mesh sieve.

b. The Aggregate Base Course shall be screened or crushed gravel of hard durable particles free from vegetative matter, lumps or balls of clay and other deleterious substances. The gradation of the part that passes a two (2) inch square mesh sieve shall meet the following grading requirements:

Sieve designation	Percentage by weight passing square mesh sieve
1/2 inch	45-70%
1/4 inch	30-55%
No. 40	0-20%
No. 200	0-5%

Aggregate for the base shall contain no particles of rock which will not pass the two (2) inch square mesh sieve.

#### 5.5 Pavement:

a. Minimum standards for the base layer of pavement shall be the M.D.O.T. specifications for plant mix grade B with an aggregate size no more than three quarter (3/4) inch maximum, applied in a two inch (2") minimum compacted thickness.

b. Minimum standards for the surface layer of pavement shall meet the M.D.O.T. specifications for plant mix grade C with an aggregate size no more than one half (1/2) inch maximum, applied in a one inch (1") minimum compacted thickness.

c. Where pavement joins an existing pavement, the existing pavement shall be cut along a smooth line and form a neat, even vertical joint.

d. All roads abutting paved roads shall have a twenty (20) foot long paved apron at the intersection of the two roads.

#### 5.6 Side slopes, ditches and culverts

a. Side slopes less than or equal to a slope of three (3) feet horizontal to one (1) foot vertical shall be graded, limed, fertilized, and seeded to produce a vigorous stand of vegetation. Side Slopes greater than 3 to 1 shall be engineered using best management practices that are acceptable to the Road Commissioners.

b. Ditches and culverts shall be sized to carry anticipated runoff. Ditch depth shall be at or below the depth of the road sub-base. For new roads, ditch depth shall be not less than 24 inches below the surface of the travel way.

c. Culverts shall provide continuous drainage at intersections, driveways and entrances. Culverts shall be at least 15" in diameter. At driveways, culverts shall be 30 feet long. At intersections and entrances, culverts shall extend at least 5 feet beyond the edge of pavement.

#### 5.7 Apron areas

- a. Construction of new driveway and entrance aprons within the right of way, whether paved or not, shall comply with all road construction standards, and shall be at lot owner expense. At least ten days prior to construction, written notice of intent to construct a driveway shall be provided to the Town Clerk to inform the Code Enforcement Officer.
- b. Activities performed by Town employees with respect to drive/entrance culverts within the right-of-way of a Town road shall include
  - 1. When a culvert has become plugged by natural causes, such as the gradual accumulation of debris or ice, or has failed to the point where water can no longer be effectively conveyed, the Town is responsible for restoring adequate flow through the culvert.
  - 2. When the Town undertakes a capital or ditching project that requires the replacement or relocation of driveway/entrance culverts, the Town is responsible for culvert replacement/relocation and driveway/entrance restoration.
  - 3. When a natural event causes regional or localized flooding and washouts, causing a culvert to fail and/or a driveway/entrance to wash out, the Town will replace or reinstall the culvert, or at the Town's option, reestablish access to the property.
- c. Activities that are the responsibility of the owner/abutter shall include:
  - a. Culvert replacement not described above.
  - b. Driveway repairs of any type (excepting damage caused by natural events as described in 5.7.b.3 above). This includes such items as bumps or depressions that may develop over a culvert, erosion of the driveway/entrance side slopes, and potholes that may develop as a result of deterioration of a pipe prior to replacement.
  - c. Restoring flow when the culvert is obstructed, either directly or indirectly, by the actions of the abutter or their agents (such as intentionally depositing leaves or other debris into a ditchline).

## **ARTICLE 6 CONSTRUCTION DRAWINGS**

6.1 Drawings for new road construction bearing the signature and seal of a licensed Professional Engineer shall show all road and associated storm water management improvements at a scale of not more than 100 feet to the inch, on 24" x 36" sheets where practical. Drawings shall include:

- a. Date, scale, and magnetic or true north point.
- b. Plan, profile and typical and critical cross-sections of roads.
- c. Road right-of-way, edge of travel lanes, edge of shoulder.
- d. Road intersections, turning radii and centerline gradients.
- e. Complete road curve data.
- f. Storm water drainage and any treatment structures.
- g. All existing and proposed utility components.
- h. Erosion and sediment control plan details



## **ARTICLE 7   CLEANUP**

7.1 Following road construction, the developer or contractor shall conduct a thorough clean-up of stumps and other debris resulting from road construction. If on-site disposal of the stumps and debris is proposed, the site shall be indicated on the Plan, and be suitably covered with fill and topsoil, limed, fertilized, and seeded.

## **ARTICLE 8   ROAD NAMES AND SIGNS**

8.1 Road names and name sign specifications shall conform to the requirements of the Town of Cushing Addressing Committee. Traffic control devices shall conform to the Manual of Uniform Traffic Control Devices to the satisfaction of the Town of Cushing Road Commissioners. The applicant shall furnish and install all required signs for road names, traffic safety, and speed limits.

## **ARTICLE 9   INSPECTION AND CERTIFICATION OF CONSTRUCTION**

9.1 A Professional Engineer retained by the applicant shall inspect the construction of all roads proposed for acceptance by the Town and certify their compliance with applicable requirements.

9.2 On completion of construction, the Engineer shall submit a signed report to the Road Commissioners certifying the extent to which the required improvements comply with design and construction requirements.

## **ARTICLE 10   WAIVER**

10.1 The Road Commissioners may waive portions of the standards to permit a more practical design or construction provided that public health, safety and welfare are protected and the waiver does not have the effect of nullifying the intent and purpose of any ordinance or regulation.

## **ARTICLE 11   ENFORCEMENT**

11.1 These provisions will be enforced by the Code Enforcement Officer pursuant to Title 30A § 4452, which also addresses penalties.

## **ARTICLE 12   SEVERABILITY**

12.1 If any section, subsection, clause, phrase or word of this ordinance is found to be invalid, that finding shall not invalidate any other section, subsection, clause, phrase or word of this ordinance.

## **ARTICLE 13   AMENDMENT**

13.1 These regulations may be amended by the voters of Cushing following a public hearing.

## **ARTICLE 14   DEFINITIONS**

**Access.** An access is the location at which a driveway, entrance or road connects with an existing road.

**Driveway.** A private way for on-road vehicles serving one of the following land uses: residential uses up to two dwelling units, home occupations, forest management activities, farming, low impact industrial uses such as utility substations, or other similar uses.

**Entrance.** A private way for on-road vehicles serving one of the following land uses: residential uses or developments serving three or more dwelling units; retail, office, or service business uses including convenience stores, gas stations, auto repair shops, restaurants, or similar uses.

**Road.** A right-of-way for use by on-road vehicles.

Date of adoption: March 17, 2008.

Amended November 2, 2010, November 8, 2011

**Certificate of adoption**

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

---

Town Clerk

Date

# **Town of Cushing**

## **Sex Offender Ordinance**

### **Section 1. Authority.**

This ordinance is enacted pursuant to Title 30-A M.R.S.A., Section 3001.

### **Section 2. Purpose.**

The Town of Cushing has a compelling interest to protect the health, safety, and welfare of its children from sex offenders by restricting their access to areas where the primary users are children, to the extent permitted by Title 30-A M.R.S.A., Section 3014.

### **Section 3. Definitions.**

**Sex Offender** – A person convicted of a Class A, B, or C sex offense committed against a person under the age of 14, in Maine or elsewhere.

**School**– Any public or private elementary, middle, or secondary school.

**Restricted Municipal Property** - Any municipally-owned property where children are the primary users, including athletic fields, parks, playgrounds, or recreational facilities.

**Residence** – A place and property used as a primary dwelling or lodging.

### **Section 4. Restrictions.**

A sex offender shall not establish a residence within 750 feet of the property line of a School or a Restricted Municipal Property.

### **Section 5. Exceptions.**

A sex offender maintaining a residence within 750 feet of a school or a Restricted Municipal Property is not in violation if the residence was established prior to the date of passage of this ordinance and the residence has been consistently maintained. A sex offender is not in violation of this ordinance if a school or a Restricted Municipal Property is created or moved to within 750 feet of a sex offender's residence as long as the residence was established and has been consistently maintained at this location prior to the decision to relocate the school or Restricted Municipal Property.

### **Section 6. Violation.**

A person who is in violation of the provisions of this ordinance shall be subject to action by the Town in the District Court or Superior Court to enforce the requirements of this ordinance. The Town may seek injunctive relief to require compliance with the provisions of the ordinance. The Town may also seek a penalty in the minimum amount of \$500, which may be imposed on a daily basis for each day that a violation continues after notice from the Town. In the event that the Town is the prevailing party in an action under this ordinance, it shall be entitled to an award of its reasonable attorney's fees, expert witness fees, and other associated costs.

### **Section 7. Enforcement.**

This ordinance shall be enforced by the Knox County Sherriff's Office, Knox County, Maine.

**Section 8. Severability.**

The provisions of this ordinance are hereby declared to be severable. In the event that any section or any portion of this ordinance shall be declared by any court of competent jurisdiction to be invalid for any reason, such decision shall not invalidate any other section or portion of this ordinance.

**Section 9. Effective Date.**

This ordinance shall take effect as of the date of its approval by vote of the legislative body of the Town.

Adopted March 18, 2013

Lisa M. Young  
Town Clerk

GEORGES RIVER REGIONAL  
SHELLFISH  
MANAGEMENT ORDINANCE

Adopted 1996  
Amended March 11, 2002  
Amended February 10, 2005  
Amended January 26, 2006  
Amended January 11, 2007  
Amended September 13, 2007  
Amended January 15, 2009  
Amended February 10, 2011  
Amended February 14, 2013  
Amended September 11, 2014

# Georges River Regional Shellfish Management Ordinance

**Section 1. TITLE** This Ordinance shall be known, and may be cited as, "The Georges River Regional Shellfish Management Ordinance." The jurisdiction of the Ordinance shall include the participating towns of the Georges River Regional Interlocal Clam Management Agreement of 2002, namely, St. George, South Thomaston, Thomaston, Warren and Cushing, Maine, and will be referred to herein as "this Ordinance." The Ordinance will be voted on by the voters of each participating town, and will apply only to those towns that elect to adopt it.

## Section 2. DEFINITIONS

- A. **Administrative Municipality:** The town that administers this Ordinance and the directives of the Joint Board of Selectmen. The Administrative Municipality shall be a three (3) year rotation of the member municipalities, starting July 1, 2011 with South Thomaston, then Cushing, then Thomaston, then St. George, and then Warren. The Joint Board will have the authority to deviate from this rotation with just cause.
- B. **Annual License Allocation Procedure Plan:** A plan written by the Shellfish Management Committee and submitted to the Joint Board of Selectmen for approval. This plan will outline in detail how licenses are to be allocated on an annual basis and will establish priority status for the allocation of licenses as referred to in Section 11 (B).
- C. **Annual Shellfish Management Plan:** A detailed clam resource management plan written on an annual basis by the Shellfish Management Committee and submitted to, and approved by, the Joint Board of Selectmen for submission to, and approval by, the Maine Department of Marine Resources. Said plan will define actions to be taken regarding the number of licenses to be issued, re-seeding activities, conservation closures, limits on allowable harvest and harvesting days and times, and other measures taken to ensure a sustainable harvest of the resource.
- D. **Conservation time:** Those measures and activities approved by the Shellfish Management Committee for the purposes of resource enhancement and the support of the Georges River Regional Shellfish Management Program. Said activities shall be outlined in the Annual Shellfish Management Plan.
- E. **Georges River Regional Shellfish Management Committee:** A committee comprised of representatives of the participating towns with responsibilities described in Section 8 of this Ordinance.
- F. **Joint Board of Selectmen:** A Board consisting of one municipal officer from each of the participating towns. Refer to Part 3 of the Georges River Regional Interlocal Clam Management Agreement and Section 9 of this Ordinance for further information.
- G. **Lot:** The total number of soft-shell clams in any bulk, whether in a box, barrel or any other container.
- H. **Municipalities:** The towns of St. George, South Thomaston, Thomaston, Warren and Cushing, referred to herein as the participating towns.
- I. **Nonresident:** Anyone not qualified as a resident under this ordinance.

- J. **Possess:** To dig, take, harvest, ship, transport, hold, buy and sell retail and wholesale soft shell clam shell stock.
- K. **Regional:** All the inter-tidal zones of the participating towns, including, but not limited to, the St. George River, Medicos River and Weskeag River watersheds.
- L. **Resident:** A person who has proof of being physically domiciled at a fixed, permanent and principal home in at least one or more of the participating towns continuously for at least two (2) years prior to application for a clam license. Proof of residency may include any of the following requested by the Joint Board:
- Copy of deed/record of most recent mortgage payment;
  - Copy of lease, legal affidavit from landlord affirming tenancy, and record of most recent rental payment;
  - Utility bill within the past 60 days (gas, oil, electric, telephone, cable/satellite TV) ;
  - W-2 Wage and Tax Form Statement and/or W-9 Independent Contractor SSN/Business Tax ID number;
  - Excise tax receipts dated within the past 60 days;
  - Valid driver's license, Maine photo ID, vehicle registration, passport, or state shellfish displaying physical address; and/or
  - Other verifiable documentation deemed appropriate by the Joint Board of Selectmen.

Once a Resident Commercial/Resident Student license is obtained, the license holder may keep the license as long as he fulfills all other license requirements and maintains his permanent residence in one of the five towns participating in this Regional Shellfish Ordinance. Should the license holder become a resident of a town other than the five listed in the ordinance and moves there, he is required to surrender his resident license to the Administrative Town as soon as the move is made.

**M. Shellfish:** Clams and inter-tidal shellfish resources shall mean soft-shell clams (*mya arenaria*), shellstock, and clams commonly referred to as razor clams. This definition also includes all species of quahogs (other than mahogany quahogs) and oysters.

**Section 3. AUTHORITY** This ordinance has been prepared in accordance with the provisions of Title 12 MRSA Section 6671, et seq, as revised, and Section 6681, as revised.

**Section 4. PURPOSE** The purpose of this ordinance is to establish a regional management program for the participating towns of the Georges River Regional Interlocal Clam Management Agreement, which will ensure sustainable harvest practices and optimum utilization of soft-shell clam resources within the limits of these municipalities. These goals will be achieved by means which include, but are not necessarily limited to:

- A. Establishing licensing procedures and limiting the number of shellfish harvesters;
- B. Restricting the time and area where digging is permitted;
- C. Limiting the minimum size of soft-shell clams taken;
- D. Limiting the amount of soft-shell clams taken; and
- E. Providing effective enforcement of the ordinance.

**Section 5. REPEAL** Any ordinance regulating the harvesting or management of shellfish on these municipalities and/or any provisions of any municipal ordinance which is inconsistent with this ordinance is hereby repealed as of the effective date of this Ordinance pursuant to Section 7 herein.

**Section 6. VALIDITY AND SEVERABILITY** If any section, subsection, sentence or part of this Ordinance is for any reason held to be invalid or unconstitutional, such decisions shall not affect the validity of the remaining portions of this Ordinance.

**Section 7. EFFECTIVE DATE** This Ordinance, upon approval of the Commissioner of Marine Resources, shall become effective after its adoption by the participating towns, provided a certified copy is filed with the Commissioner within twenty (20) days of its adoption.

**Section 8. THE SHELLFISH MANAGEMENT COMMITTEE** The Regional Shellfish Management Program for the participating towns will be administered jointly by the Joint Board of Selectmen and the Georges River Shellfish Management Committee. The Committee shall consist of three members of each participating town, at least two of whom shall be commercial diggers licensed under this Ordinance if they are available and willing to serve, and shall be appointed by the municipal officers of the participating towns in accordance with the procedures outlined in Section 8 (A) for terms of three (3) years.

A. **Selection of Shellfish Management Committee Members:** Selectmen of each of the participating towns shall appoint Shellfish Management Committee members according to their own policies and procedures.

B. **Shellfish Management Committee's Responsibilities shall include:**

- i. Submitting to the Joint Board of Selectmen by the 1<sup>st</sup> day of the last month of the fiscal year proposals for the expenditure of funds for the purpose of shellfish management.
- ii. Keeping this Ordinance under review and making recommendations for its amendments.
- iii. Recommending management actions to the Joint Board of Selectmen in conjunction with the Area Biologist of the Department of Marine Resources. Such actions may include, but are not limited to, re-seeding of defined clam flats, establishing conservation closures, shoreline cleanup, and limiting and/or expanding harvesting activities.
- iv. Recommending to the Joint Board of Selectmen enforcement actions for the protection of the resource.
- v. Submitting an annual report to the participating towns and the Department of Marine Resources covering the aforementioned topics and other Committee activities.



- vi. Assist in identifying possible sources of pollution harmful to the inter-tidal habitat and the clam resource.
  - vii. By February 1<sup>st</sup> of each year submit an **Annual Shellfish Management Plan** to the Joint Board of Selectmen for their approval and the approval of the Department of Marine Resources. The plan will outline in detail the number of licenses to be issued annually, license fees, the amount of clams allowed to be harvested per tide, restrictions on the times and days harvesting will be allowed, and other relevant resource management tools. The plan will be submitted to the Commissioner of Marine Resources for approval prior to May 1<sup>st</sup> of each year.
  - viii. By March 1<sup>st</sup> of each year submit an **Annual License Allocation Procedure Plan** for approval by the Joint Board of Selectmen. This plan will outline in detail how licenses are to be allocated on an annual basis and shall be consistent with 12 M.R.S.A Section 6671 (3-A)(C). After receiving approval for license allocations from the Commissioner of Marine Resources, and prior to May 10<sup>th</sup>, the Shellfish Management Committee shall notify the Town Clerk, in writing, the number of shellfish licenses to be issued.
- C. Attendance: Shellfish Management Committee members shall make every effort to regularly attend Committee meetings.

**Section 9. JOINT BOARD OF SELECTMEN** Each of the participating towns shall appoint one municipal officer as a member of a Joint Board to act as the town's representative for all issues concerning this agreement. The person so appointed shall serve at the pleasure of the body that made the appointment.

- A. **Meetings:** The Chairman of the Joint Board shall be elected at the first meeting of each calendar year by the members of the Joint Board. A quorum shall consist of at least three members of the Board. Notice of all meetings of the Joint Board shall be given to each member of the Board and the Chairman of the Shellfish Management Committee, shall be published in accordance with each town's policies, and shall be open to the public. Minutes shall be recorded and made available for public review.
- B. **Powers:** The Joint Board is authorized to approve the number of shellfish licenses to be issued, approve license fees, open and close the flats, set times when digging is allowed, set permitted quantities that may be harvested, and to take such actions as authorized by each of the participating town's Board of Selectmen, and subject to the Department of Marine Resources approval as noted in Section 14, based upon the recommendations of the Shellfish Management Committee. These actions will be described in an Annual Shellfish Management Plan submitted by the Shellfish Management Committee. Unanimous recommendations of the Shellfish Management Committee regarding the management of the clam resource (i.e., those issues related to the sustainable harvest of

the resource and not related to personnel, fiscal expenditures or legal matters) shall be approved by the Joint Board unless a unanimous vote of the Joint Board decides otherwise.

## **Section 10. AMENDMENTS**

- A. Initiation:** A proposal for an amendment to this Ordinance may be initiated by the following:
- i. A written petition submitted with the number of voters equal to at least ten percent of the voters in the last gubernatorial election;
  - ii. A recommendation of the Shellfish Management Committee; or
  - iii. A recommendation of the Joint Board of Selectmen.
- B. Procedure:**
- i. Any proposal for an amendment shall be made to the Joint Board of Selectmen, in writing, stating the specific changes requested. All such proposals shall be transmitted to the Shellfish Management Committee for their review and recommendation.
  - ii. Within thirty (30) days of receiving a properly initiated amendment, the Joint Board of Selectmen shall hold a public hearing on the proposal. Notice of the hearing shall be posted and advertised in a newspaper of general circulation within the participating towns at least seven (7) days prior to the hearing. The notice shall contain the time, date and place of the hearing and sufficient detail about the proposed changes as to give adequate notice of their content. If the proposed changes are extensive, a brief summary of the changes, together with an indication that a full text is available at the Town Clerk's office shall be adequate notice.
- C. Adoption:** Any amendment to this Ordinance shall be adopted by a majority vote of the town meetings. All participating towns must agree to the amendments proposed in order for a proposed change to take effect. Amendments to this Ordinance do not take effect until approved by the Commissioner of the Dept. of Marine Resources.
- D. Period of Ordinance:** This Ordinance shall remain in effect for a period of three (3) years from the date of the written approval of the Commissioner of the Department of Marine Resources, but will remain in effect until a new Ordinance has been adopted or rejected by participating towns in accordance to State law.

**Section 11. LICENSING** A Georges River Regional Shellfish License is required to harvest soft-shell clams in the jurisdiction of this Ordinance. It is unlawful for any person to dig or take clams from the shores and flats of the participating towns for the purpose of selling the clams without having a current commercial license issued by a participating town as provided by this Ordinance. Additionally, a commercial digger must have a valid State of Maine Commercial Shellfish License issued by the Department of Marine Resources prior

to harvesting clams for commercial purposes. It shall be unlawful for any individual whose state license or right to harvest has been suspended by the state to harvest or possess shellfish. Also, if such individual currently holds a municipal license such license shall be suspended for the same period of time. Restrictions on licenses regarding the harvest of soft-shell clams shall be outlined in the Annual Shellfish Management Plan proposed by the Shellfish Management Committee.

**A. Classification of Licenses** Licenses shall be issued according to the following classifications. Fees and additional restrictions will be established in the Annual Shellfish Management Plan.

**i. Commercial**

- a. **Resident Commercial Shellfish License:** This license is available only to residents of the participating towns, who are 18 years or older as of June 1<sup>st</sup> or a member of the current graduating class.
- b. **Nonresident Commercial Shellfish License:** This license is available only to nonresidents of the participating towns, who are 18 years or older as of June 1<sup>st</sup> or a member of the current graduating class.
- c. **Resident Student Commercial Shellfish License:** This license is available to resident students enrolled in an accredited school Kindergarten through 12<sup>th</sup> grade as outlined in the management plan. The student must remain enrolled, or had graduated, for the period of the license. A resident student license will be half the cost of a regular commercial resident license.
- d. **Nonresident Student Commercial Shellfish License:** This license is available to nonresident students enrolled in an accredited school Kindergarten through 12<sup>th</sup> grade as outlined in the management plan. The student must remain enrolled, or had graduated, for the period of the license. A nonresident student license will be half the cost of a regular commercial nonresident license.

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**ii. Recreational**

- a. **Annual Resident Recreational Shellfish License:** This license is available upon request to residents and property taxpayers of participating towns who do not hold a valid Maine State Commercial Shellfish License. One license issued per person, per year.
- b. **Annual Nonresident Recreational Shellfish License:** This license is available to nonresidents who do not hold a valid Maine State Commercial Shellfish License. This license will be issued on a 10:1 ratio. (Ten resident licenses to one non resident.) One license issued per person, per year.

- c. **Daily Recreational Shellfish License.** This license is available on a daily basis upon request to residents or nonresidents who do not hold a valid Maine State Commercial Shellfish License. One license issued per person, per day.

**B. Application Procedure** Any person may apply to the Town Clerk for the licenses required by this Ordinance on forms provided by the Administrative Town. Notice of available commercial licenses shall be published in a newspaper, or newspapers, in general circulation in the participating towns not less than ten (10) days prior to the period of issuance and shall be posted in the municipal offices of the participating towns until said period expires. Applications for commercial licenses must be received at the town office of the Administrative Municipality as required by the Allocation Plan.

- i. **Contents of the application:** The application must be in the form of an affidavit and must contain the applicant's name, current address, birth date, height, weight, signature and any additional information the participating towns may require.
- ii. **Misrepresentation:** Any person who intentionally provides false information on a license application will cause the application to be removed from consideration. If a license is issued as a result of the false information, the license shall become invalid and void.
- iii. **Address change:** A person applying for or holding a commercial shellfish license under this ordinance shall notify the town clerk of the Administrative Town within ten (10) days of address change, whether or not the address change is also a change of residence.

**C. License Allocation Procedures** License sales procedures shall be determined by the Shellfish Management Committee, approved by the Joint Board of Selectmen, and submitted to the Department of Marine Resources for their approval at least thirty (30) days prior to the licenses going on sale. Notice of the number of licenses to be issued, the procedure for application, drawing priorities and related issues shall be defined by an Annual License Allocation Plan and published in a newspaper at least ten (10) days prior to the licenses going on sale.

- i. The Town Clerk of the Administrative Town shall issue licenses to those residents and nonresidents who have met the requirement of obtaining a commercial license. The Town Clerk shall issue licenses to residents allocated from June 1<sup>st</sup> to September 1<sup>st</sup>. A lottery for the nonresident licenses will be held several days after resident licenses have sold. If there are any licenses left after September 1<sup>st</sup>, they shall be made available to residents and nonresidents in the form of a lottery.
- ii. Conservation time must be completed prior to the issuance of a municipal commercial shellfish license in accordance with the Annual License Allocation Plan and Conservation Regulations.

- iii. Applicants who have held a commercial license for a longer period of time will have a greater opportunity of obtaining a license compared to those who have held a commercial license for a lesser period of time. In addition, those who have accomplished the required conservation time for a given year will have a greater opportunity of obtaining a license compared to those who have not completed their time. Details explaining how licenses will be issued will be described in the Annual License Allocation Procedure Plan.

- D. **Transfer of Licenses:** Licenses are not transferable.
- E. **Limitation of Licenses:** The number of commercial licenses will be limited and issued according to the Annual Shellfish Management Plan.
- F. **Open License Sales:** The number of recreational licenses will not be limited. For annual recreational licenses, the Town Clerk of the Administrative Town shall issue one license to a resident and one to a non-resident; thereafter, one non-resident license will be issued for every ten additional licenses issued by the participating towns. Daily recreational licenses shall be issued to residents or non-residents without restriction. Participating towns will forward resident license sales information to the Administrative Town within three (3) working days.
- G. **License Expiration Date:** Each Annual Recreational Shellfish License issued under the authority of this ordinance shall expire one (1) year from the date of issue. Daily Recreational Shellfish Licenses are good only for the date of issue. All Commercial Shellfish Licenses expire May 31<sup>st</sup> of each year.

**Section 12. USE OF FEES AND FINES, FUNDING** Fees for shellfish licenses will be set forth in the Annual Shellfish Management plan and will accompany the application for the respective license. The municipal town clerk shall pay all fees and fines collected from violators to the Administrative Municipality. Fees and fines received shall be used for costs incurred in the enforcement and management of this ordinance.

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- A. **Non-lapse Provision:** Monies in the Clam Management Account shall not lapse at the end of the year but shall be carried over to the next year in that account.
  - B. **Funding:** The Clam Management Program will be self-supporting as much as possible. Funds for operating the Program may be generated by license fees, fines, and financial support from the participating towns.

**Section 13. RECIPROCAL HARVESTING PRIVILEGES** Resident commercial, non-resident commercial and recreational license holders may harvest shellfish within any municipality governed by this ordinance.

**Section 14. OPENING AND CLOSING FLATS** The Joint Board of Selectmen, based on recommendations made by the Shellfish Management Committee and conditioned on the approval of the

Commissioner of Marine Resources, may open and/or close areas for shellfish harvesting. The decision of the Joint Board shall be in the form of a request letter to the Department of Marine Resources.

**Section 15. MINIMUM LEGAL SIZE OF SOFT-SHELL CLAMS**

- A. It is unlawful for any person to possess soft-shell clams within a participating town which are less than two (2) inches in the longest diameter, except as provided by subsection B of this section.
- B. Any person may possess soft-shell clams less than two (2) inches if those clams less than two (2) inches are ten percent (10%) or less of a lot. The tolerance shall be determined by numerical count of not less than one peck nor more than four pecks taken at random and by a count of the entire lot.

**Section 16. DEPURATION DIGGING** While depuration digging is controlled by the State, it is the intent of this Ordinance that if and when depuration digging occurs within any of the participating towns it shall be done with an equal number of residents and nonresidents whenever possible. A surcharge will be levied for each bushel of clams dug under a depuration certificate in accordance with state law. Any monies received from depuration harvesting within the jurisdiction of this Ordinance shall be paid directly to the Administrative Municipality as described in the Georges River Interlocal Clam Management Agreement for use in the Clam Management Account.

**Section 17. VIOLATIONS, SUSPENSION OF LICENSES, AND FINES** Any person who violates this Ordinance or the policies adopted in the Annual Shellfish Management Plan shall be punished as provided by 12 M.R.S.A. Section 6671 and/or Section 6681.

A licensee whose shellfish license has been suspended pursuant to this Ordinance may request return of their license only after the suspension period has expired. A suspended license is not to be returned until the fine is paid in accordance to the court's decree.

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The suspension of a commercial license shall begin following conviction. Any violation of this Ordinance and/or the Management Plan may result in a license suspension. All suspensions of licenses shall be authorized by the Joint Board.

Any licensee whose license has been suspended pursuant to this Ordinance shall be entitled to a hearing before the Joint Board of Selectmen upon the filing of a written request for a hearing with the Town Clerk of the Administrative Town within thirty (30) days of the effective date of the suspension.

Classifications of, and penalties for, violations are categorized as follows:

**A. Stopping for inspection:** A person shall produce their license on demand of any Certified Municipal Shellfish Conservation Warden in uniform and having "probable cause" to take such action. It is unlawful for the operator of a motor vehicle, boat, vessel, or conveyance or any kind, or any person:

- i. To deliberately fail or refuse to stop immediately upon request or signal of any Certified Municipal Shellfish Conservation Warden.
- ii. After the person has stopped, to fail to remain stopped until the said Warden has reached his immediate vicinity and makes known to the operator the reason for his request or signal.
- iii. To fail or refuse to stand by immediately for inspection on request of said Warden.
- iv. To throw or dump into any coastal waters or flats after having been requested or signaled to stop by a Certified Municipal Shellfish Conservation Warden any shellfish, or any pail, bag, hod or container before said Warden has inspected the same.
- v. To attempt to elude, disobey, or assault any Certified Municipal Shellfish Conservation Warden.

**Penalties:** The first violation of Section 17 (A) of this Ordinance shall result in a one (1) month suspension of the license and a three hundred dollar (\$300) fine. The second and subsequent violations of Section 17 (A) of this Ordinance shall result in a twelve (12) month suspension of the license and a one thousand dollar (\$1,000.00) fine.

**B. Management Plan:** It is unlawful for any person to violate the Annual Shellfish Management Plan.

**Penalties:** The first violation of the Annual Shellfish Management Plan shall result in a fine of not less than three hundred dollars (\$300.00) and not more than fifteen hundred dollars (\$1,500.00). The second and subsequent violations of the Annual Shellfish Management Plan shall result in a fine of not less than five hundred dollars (\$500.00) and not more than fifteen hundred dollars (\$1,500.00).

**C. Harvesting Clams in a Closed Area:** It is unlawful for any person to harvest clams in a closed area.

**Penalties:** Any person found guilty of harvesting clams in a closed area shall be subject to a fine of not less than three hundred dollars (\$300.00) and not more than fifteen hundred dollars (\$1,500.00). The second and subsequent violations of harvesting clams in a closed area shall result in a fine of not less than five hundred dollars (\$500.00) and not more than fifteen hundred dollars (\$1,500.00). The second violation of this section of this Ordinance shall result in a thirty (30) day license suspension and the third and subsequent violations shall result in a one hundred and twenty (120) day suspension of the person's license.

- D. Minimum Legal Size of Soft-Shell Clams:** It is unlawful for any person to violate Section 15 of this Ordinance:

**Penalties:** The first violation of Section 15 of this Ordinance shall result in a fine of not less than three hundred dollars (\$300.00) and not more than fifteen hundred dollars (\$1,500.00). The second and subsequent violations of Section 15 of this Ordinance shall result in a fine of not less than five hundred dollars (\$500.00) and not more than fifteen hundred dollars (\$1,500.00). If a person exceeds a fifty percent (50%) threshold of undersized clams as described in Section 15 (B) at any time, their license shall be suspended for twelve (12) months and they shall receive a one thousand dollar (\$1,000.00) fine

- E. Per Tide Harvest Limit:** It is unlawful for any person to violate the harvesting limits placed on licenses as described in the Annual Shellfish Management Plan.

**Penalties:** The first violation of Section 17 (E) of this Ordinance shall result in a fine of not less than three hundred dollars (\$300.00) and not more than fifteen hundred dollars (\$1,500.00). The second and subsequent violations of Section 17 (E) of this Ordinance shall result in a fine of not less than five hundred dollars (\$500.00) and not more than fifteen hundred dollars (\$1,500.00). If a license holder exceeds the per harvest limit as described in the Annual Shellfish Management Plan by one bushel or more at any time, they shall receive a one thousand dollar (\$1,000.00) fine for the first offense upon conviction. If a person exceeds the per harvest limit as described in the Annual Shellfish Management Plan by one bushel or more after their first offense, their license shall be suspended for twelve (12) months and they shall receive a one thousand dollar (\$1,000. 00) fine upon conviction.

- F. Aiding and Abetting:** It is unlawful to deliberately aid and abet another to violate the laws of this Ordinance.

**Penalties:** If a person holding a commercial license uses it to aid and abet the illegal harvest of clams their license shall be suspended for three (3) months and they shall receive a one thousand dollar (\$1,000) fine upon conviction. Any second and subsequent convictions under this section of the Ordinance shall result in a twelve (12) months suspension and a one thousand dollar (\$1,000) fine. If a person holding a recreational license uses it to harvest clams commercially, their license shall be suspended for twelve (12) months and they shall receive a one thousand dollar (\$1,000) fine upon conviction.

- G. Harvesting On Conservation Closure Day:** It is unlawful for any person to harvest clams during their conservation closure day.



**Penalties:** If a person is found harvesting clams on their closure day their license shall be suspended for thirty (30) days and they shall receive a fine of not less than three hundred dollar (\$300) for their first offense upon conviction. The second and subsequent violations of this section of this ordinance shall result in their license being suspended for sixty (60) days and they shall receive a fine of not less than five hundred dollars (\$500) and no more than one thousand five hundred dollars (\$1,500) upon conviction.

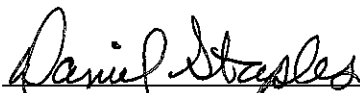
**H. Harvesting Without a License:** It is unlawful to harvest clams without a license.

**Penalties:** Any person convicted of harvesting clams without any shellfish licenses shall be ineligible to apply for any municipal shellfish license for a period of three (3) years from the date of conviction.

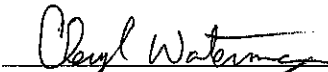
- I. Littering:** A person may not throw, drop, deposit, discard, dump or otherwise dispose of litter in any manner or amount. Any person doing so shall be in violation of the municipal ordinance.
- J. Trespass:** A person may not access or cross private property or lands without permission. A person having been warned by property owner, their agent, shellfish warden, or any other law enforcement officer shall be in violation of the municipal ordinance.
- K. Tagging:** The holder of a commercial shellfishing license shall identify shellstock the license holder has taken by means of a harvesters tag. This tag shall be in accordance with the department of Marine Resources rules.

**Section 18. ENFORCEMENT** This Ordinance shall be enforced by the Certified Municipal Shellfish Conservation Warden, or by any Municipal Shellfish Conservation Warden appointed by the Joint Board of Selectmen, who within one year of appointment must be certified by the Commissioner of Marine Resources.

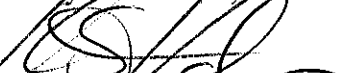
September 11, 2014



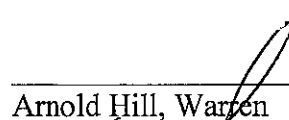
Daniel Staples, Cushing, Chairman



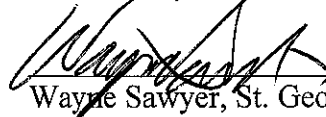
Cheryl Waterman, South Thomaston



Bill Hahn, Thomaston



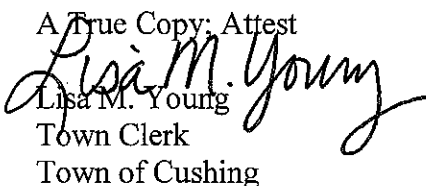
Arnold Hill, Warren



Wayne Sawyer, St. George

**Georges River Regional Joint Board**

A True Copy: Attest



Lisa M. Young  
Town Clerk  
Town of Cushing

**TOWN OF CUSHING**

**SHORELAND ZONING ORDINANCE**

**November 8, 2011**



## OVERVIEW

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

**Our Shoreland Zone** is basically all land within 250 feet of a water body or 75 feet of a stream. Its precise definition is in the Definitions section of this document.

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

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

**Each district is defined** in Section 13 of the SZO. Districts and lots are shown on the Official Shoreland Zoning Map, which is maintained and updated by the Planning Board.

**Table 14.1 provides an overview** of mainly state-imposed land use restrictions. It enables lot owners to compare what is allowed and what requires a permit in each district.

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## **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 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, the upland edge of a coastal wetland, including all areas affected by tidal action, or the upland edge of a freshwater wetland, and to 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 beyond or located below the normal high-water line of a water body or within a wetland.

## **4. Effective Date of Ordinance and Ordinance Amendments**

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

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

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.

When Section 15.O-1 becomes effective, current Table 14.1 references to standards and permitting for items 2, 3 and 25 shall be automatically superseded.

## **5. Availability**

A certified copy of this Ordinance shall be filed with the Town Clerk and shall be accessible to any member of the public. Copies shall be made available to the public at reasonable cost at the expense of the person making the request. Notice of availability of this Ordinance shall be posted.

## **6. Severability.**

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

## **7. Conflicts with Other Ordinances.**

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

## **8. Amendments.**

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

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

## **9. Districts and Zoning Map**

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

1. Resource Protection
2. Limited Residential
3. Limited Commercial
4. Commercial Fisheries/Maritime Activities
5. Stream Protection
6. Fishing Home Business

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

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



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

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

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

If amendments, in accordance with Section 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**

**[see Section 13 for description of Districts]**

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

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

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

Boundaries of the Shoreland Zone around waters and wetlands protected by Sections 3 and 13.A.4 shall be delineated and related to property lines in submittals as follows:

1. If the Planning Board finds that the Shoreland Zone boundary has no effect on an application, the boundary shall be depicted on its site plan as located on the Official Shoreland Zoning Map.
2. Upland edges of coastal wetlands, stream banks and wetland edges shall be located on-site by a professional trained in wetland delineation, using a recognized wetland classification system and utilizing soil profiles, composition of plant populations, and site hydrology to determine wetland boundaries.
3. These features, and any 75-foot or 100-foot restriction area, together with the site contours shall be plotted by a Professional Engineer or Surveyor licensed in the State of Maine on the site plan of any application to the Planning Board.

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

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

elevation contour on topography measured on the ground at contour intervals of two feet or less.

**D.** Approximate boundaries of areas defined in Sections 13.A.3 (slopes) are depicted on the Official Shoreland Zoning Map and are definitive unless more accurate data meeting the requirements of Section 10.D is submitted.

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

1. Topography shall be surveyed and shown at contour intervals of two feet or less. Topography measured on the ground shall be used where evergreen vegetation predominates.
2. Steepness of slopes shall be expressed as grades as defined in Section 17. In determining the extent of contiguous slopes having grades of 20% or greater, grades shall be measured at right angles to contour lines.
3. Slope measurements and calculations of contiguous areas of sustained slopes having grades of 20% or greater shall be developed by a Professional Engineer or Surveyor licensed in the State of Maine. These areas shall be outlined on the site plan.

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

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

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

## **11. Land Use Requirements.**

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

## **12. Non-conformance.**

**A. Purpose.** It is the intent of this Ordinance to promote land use conformities, except that non-conforming conditions that existed before the effective date of this Ordinance or amendments thereto shall be allowed to continue, subject to the requirements set forth in this Section. 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.

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

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### **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 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 may be expanded in floor area by only up to 30% and in volume by only up to 30% 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 location meets the setback to the greatest practical extent, the Planning Board or its designee shall consider the size of the lot, the slope of the land, the potential for soil erosion, the location of other structures on the property and on adjacent properties, the location of the septic system and other on-site soils suitable for septic systems, and the type and amount of vegetation to be removed to accomplish the relocation. When it is necessary to remove vegetation within the water or wetland setback area in order to relocate a structure, the Planning Board shall require replanting of native vegetation to compensate for the destroyed vegetation. In addition, the area from which the relocated structure was removed must be replanted with vegetation. Replanting shall be required as follows:

- a. Trees removed in order to relocate a structure must be replanted with at least one 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 the normal high-water line of a water body, tributary stream, or upland edge of a wet-land and which is removed, or damaged or destroyed, regardless of 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 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 non-conformity. If the reconstructed or replacement structure is less than the required setback it shall not be any larger than the original structure, except as allowed pursuant to Section 12(C)(1) above, as determined by the non-conforming 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 water 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 wetlands or on the subject or adjacent properties and resources than the existing use.

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

#### **D. Non-conforming Uses**

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

The determination of no greater adverse impact shall be made according to criteria listed in Section 12.C.4 above.

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

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

A non-conforming lot of record as of the date of adoption of this Ordinance or amendment thereto may be built upon, without the need for a variance, provided that such lot is in separate ownership and not contiguous with any other lot in the same ownership, and that all provisions of this Ordinance except lot area lot width and shore frontage can be met. Variances relating to setback or other requirements not involving lot area, lot width or shore frontage shall be obtained by action of the Board of Appeals.

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

If two or more contiguous lots or parcels are in a single or joint ownership of record as of the date of adoption of this Ordinance or amendment thereto, and if all or part of the lots do not meet the dimensional requirements of this Ordinance, and if a principal use or structure exists on each lot, the non-conforming lots may be conveyed separately or together, provided that the State Minimum Lot Size Law (12 M.R.S.A. Sections 4807-A through 4807-D) and the State of Maine Subsurface Wastewater Disposal Rules are complied with.

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

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

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

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

### **13. Description of Districts**

**[See Section 10 for interpretation of District boundaries]**

#### **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, except that areas which are currently developed, and areas which meet the criteria for the Commercial Fisheries/Maritime Activities Districts are not included within the Resource Protection District.

1. 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 December 31, 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 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. Flood-plains defined by the 100-year flood-plain as designated on the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Maps or Flood Hazard Boundary Maps, or defined by the flood of record, or in the absence of these, by soil types identified as recent flood-plain soils. This district includes 100-year flood plains 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 having a grade of 20% or greater relative to the National Geodetic Vertical Datum of 1929 (NGVD 29).

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.

## **B. Limited Residential District**

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

Protection District or Stream Protection District. Except for home occupations, commercial uses are not permitted.

#### **C. Limited Commercial District**

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

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

The Commercial Fisheries/Maritime Activities District includes areas where the existing predominant pattern of development is consistent with the allowed uses for this district as indicated in the Table of Land Uses, Section 14, and other areas which are suitable for functionally water-dependent uses, taking into consideration such factors as:

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

#### **E. Fishing Home Business District**

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

#### **F. Stream Protection District**

The Stream Protection District includes all land areas within seventy-five (75) feet, horizontal distance, of the normal high-water line of a stream, exclusive of those areas within two-hundred and fifty (250) feet, horizontal distance, of the normal high-water line of a great pond, or river, or within two hundred and fifty (250) feet, horizontal distance, of the upland edge of a freshwater or coastal wetland. Where a stream and its associated shoreland area are located within two-hundred 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**

The Table shows, for each district, what is allowed, prohibited, and permitted subject to the Land Use Standards of Section 15.

The Table also shows whether the Code Enforcement Officer (CEO), Planning Board (PB) or Local Plumbing Inspector (LPI) issues a required permit.

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



**Table 14.1**

Land Uses	Principal Standards	Zoning Districts					
		SP	RP	LR	FHB	LC	CFMA
1. Non-intensive recreational uses not requiring structures, such as hunting, fishing & hiking; no structures	State	A	A	A	A	A	A
2. Forest management activities, defined in Sec. 17 except timber harvesting & land management roads		A	A	A	A	A	A
3. Timber harvesting, defined in Sec. 17	Sec. 15.O	CEO	CEO1	A 10	A 10	A 10	A 10
4. Clearing or removal of vegetation for activities other than timber harvesting	Sec. 15.P	CEO	CEO	CEO	CEO	CEO	CEO
5. Fire prevention activities		A	A	A	A	A	A
6. Wildlife management practices		A	A	A	A	A	A
7. Soil & water conservation practices		A	A	A	A	A	A
8. Mineral exploration	Sec. 15.M	N	N	A2	A2	A2	A2
9. Mineral extraction, including sand & gravel extraction	Sec. 15.M	N	N	PB	PB	PB	PB
10. Surveying & Resource Analysis		A	A	A	A	A	A
11. Emergency operations, defined in Section 17		A	A	A	A	A	A
12. Agriculture, defined in Section 17	Sec.15.N	A	PB	A	A	A	A
13. Principal Structures and uses	Sec.15.A, B						
a...One & Two-Family Residential, including driveways	Sec.15.A, B	PB5	PB9	CEO	CEO	CEO	N8
b. Multi-unit residential buildings, including driveways	Sec.15.A, B	N	N	PB	N	PB	N
c. Multi-unit rental apartments, including driveways	Sec.15.A, B	N	N	N	N	PB	N
d. Mobile home park		N	N	N	N	N	N
e. Fishing home business, including accessory structures used for lobstering, fishing & aquaculture	Sec.15.A, B	PB5	N8	PB	PB	PB	PB
f. Boatyards & shops for construction, sale, repair, storage or maintenance of boats up to 50 feet in length	Sec.15.A, B	N	N8	N8	N	PB	PB
g. Other commercial, defined in Section 17	Sec.15.A, B	N	N	N	N	PB	N
h. Industrial, defined in Section 17	Sec.15.A, B	N	N	N	N	N	N
i. Bed & breakfast, defined in Section 17	Sec.15.A, B	N	N	PB	PB	PB	N
j. Hotel & motel	Sec.15.A, B	N	N	N	N	N	N
k. Governmental & Institutional, defined in Sec.17	Sec.15.A, B	N	N	N	N	PB	N
l. Facilities 800 square feet or less for educational, scientific or nature interpretation purposes	Sec.15.A, B	PB5	PB	CEO	N	CEO	N
m. Expansions	Sec. 12	PB	PB	PB	PB	PB	PB
14. Structures Accessory to Allowed Uses	Sec. 15.B	PB5	PB	CEO	CEO	CEO	CEO
15. Portions of piers, docks, wharves, and bridges							
a. Structures thereon, as defined in Section 3	Sec. 15.C	PB	PB	PB	PB	PB	PB
b. Permanent structures, as defined in Section 17	Sec. 15.C	CEO	CEO	CEO	CEO	CEO	CEO-4
c. Temporary structures, as defined in Section 17	Sec. 15.C	CEO	CEO	CEO	CEO	CEO	CEO
16. Marine commercial, defined in Section 17	Sec.15.A, B	N	N	N	N	PB	PB
17..Conversions of seasonal residences to year-round residences	Sec. 12	LPI	LPI	LPI	LPI	LPI	N

Land Uses	Principal Standards	Zoning Districts					
		SP	RP	LR	FHB	LC	CFMA
18. Home occupations-as defined in Section 17		A	A	A	A	A	A
19...Private sewage disposal systems for allowed uses	Sec. 15.K	LPI	LPI	LPI	LPI	LPI	LPI
20. Essential Services	Sec. 15.L						
a. Roadside distribution lines (34.5kV and lower)	Sec. 15.L	CEO	CEO	A 10	A 10	A 10	A 10
b. Non-roadside or cross-country distribution lines involving ten poles or fewer in the Shoreland Zone	Sec. 15.L	PB	PB	PB	CEO	CEO	CEO
c. Non-roadside or cross-country distribution lines involving eleven poles or more in the Shoreland Zone	Sec. 15.L	PB	PB	PB	PB	PB	PB
d. Other essential services	Sec. 15.L	PB	PB	PB	PB	PB	PB
21. Service drops, defined in Sec.17, to allowed uses		CEO	CEO	CEO	CEO	CEO	CEO
22. Public & private recreational facilities involving minimal structural development	Sec. 15.A	PB	PB	PB	N	CEO	N
23. Individual private campsites	Sec. 15.E	CEO	CEO	CEO	CEO	CEO	CEO
24. Campgrounds	Sec. 15.D	N6	N6	PB	N	PB	N
25. Road construction	Sec. 15.H	PB	N7	PB	PB	PB	PB
26. Land management roads, defined in Section 17		PB	PB	A	A	A	A
27. Parking areas	Sec. 15.G	N	N6	PB	PB	PB	PB4
28. Filling & earthmoving of less than 10 cubic yards.		CEO	CEO	A	A	A	A
29. Filling & earthmoving of more than 10 cubic yards.		PB	PB	CEO	CEO	CEO	CEO
30. Signs	Sec. 15.I	A	A	A	A	A	A
31. Uses similar to allowed uses		CEO	CEO	CEO	CEO	CEO	CEO
32. Uses similar to uses requiring CEO permit		CEO	CEO	CEO	CEO	CEO	CEO
33. Uses similar to uses requiring PB permit		PB	PB	PB	PB	PB	PB

#### Land use table abbreviations

CFMA = Commercial Fisheries/Maritime Activities

FHB = Fishing Home Business

LR = Limited Residential

LC = Limited Commercial

RP = Resource Protection

SP = Stream Protection

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

N = Prohibited

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

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

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

#### Land Use Table notes

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

2. Requires permit from CEO if more than 100 square feet of surface area, in total, is disturbed

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

4. Functionally-dependent water uses and uses accessory to such water-dependent uses only.

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

6. Except when an area is zoned RP based on flood plain, in which case a PB permit is required.
7. Except as provided in Section 15.H.4.
8. Except that all uses existing on the effective date of this Ordinance are conforming.
9. Single family residential structures may be allowed by special exception only according to the provisions of Section 16.G. Two-family residential structures are prohibited.
10. Permit not required but must file a written "Notice of Intent" with CEO 30 days prior to commencing the on-site activity.
11. The Code Enforcement Officer may refer any item to the Planning Board.

#### General notes

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

- a. Dredging, bulldozing, removing or displacing soil, sand, vegetation or other materials;
- b. Draining or otherwise de-watering;
- c. Filling, including adding sand or other material to a sand dune; or,
- d. Any construction or alteration of any permanent structure.

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

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

## 15. Land Use Standards

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

### A. Minimum Lot Standards\*

	Minimum Lot Area (sq. ft.)	Minimum Shore Frontage (ft.)
1. Residential and Fishing Home Business, per dwelling unit:		
a. Within the Shoreland Zone		
Adjacent to Tidal Areas	40,000	150
b. Within the Shoreland Zone Adjacent to Non-Tidal Areas	40,000	200
Governmental, Institutional, or Commercial per principal structure:		
a. Within the Shoreland Zone Adjacent to Tidal Areas Exclusive Of those Areas Zoned for Commercial Fisheries and Maritime Activities	40,000	200
b. Within the Shoreland Zone Adjacent to Tidal Areas zoned for Commercial Fisheries and Maritime Activities	NONE	NONE
c. Within the Shoreland Zone Adjacent to Non-tidal Areas	60,000	300
Public and Private Recreational Facilities		
Within the Shoreland Zone Adjacent to Tidal and Non-Tidal Areas	40,000	200

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

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

3. Lots located on opposite sides of a public or private road shall be considered each a separate tract or parcel of land unless such road was established by the owner of land on both sides thereof after September 22, 1971.

4. The minimum width (dimension parallel to the waterline) of any portion of any lot within one hundred (100) feet horizontal distance, of the normal high-water line of a water body or upland edge of a wetland shall be equal to or greater than the shore frontage requirement for a lot with the proposed use.

5. If more than one residential dwelling unit, principal governmental, institutional, or commercial structure or use or combination thereof is constructed or established on a single parcel, all dimensional requirements shall be met for each additional dwelling unit or principal structure or use, except in the Fishing Home Business district.

## **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. Additionally, the setback distance shall be sufficient to preclude the location of any new structure within the 100-year flood hazard areas described in Section 13.A.2. In the Commercial Fisheries/Maritime Activities District there shall be no minimum setback for water-dependent structures and uses. In the Fishing Home Business district, the setback shall not apply to fishing-related accessory structures. In the Resource Protection district the setback shall be 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. The Planning Board may increase the required setback of a proposed structure, as a condition of approval, if necessary to accomplish the purposes of this ordinance. Instances where greater setbacks may be appropriate include, but are not limited to areas of steep slopes, shallow or erodible soils, or where an adequate vegetative buffer does not exist.

c. For principal structures, water and wetland setback measurements shall be taken from the top of a coastal bluff that has been identified on Coastal Bluff maps as being "highly unstable" or "unstable" by the Maine Geological Survey pursuant to its "Classification of Coastal Bluffs" and published on the most recent Coastal Bluff map. If the applicant and the permitting official(s) are in disagreement as to the specific location of a "highly unstable" or "unstable" bluff, or where the top of the bluff is located, the applicant may at his or her expense, employ a Maine Registered Professional Engineer, a Maine Certified Soil Scientist, a Maine State Geologist, or other qualified individual to make a determination. If agreement is still not reached, the applicant may appeal the matter to the Board of Appeals.

d. On a non-conforming lot of record on which only a residential structure exists, and it is not possible to place an accessory structure meeting the required water body, tributary stream or wetland setbacks, the Code Enforcement Officer may issue a permit to place a single accessory structure, with no utilities, for the storage of yard tools and similar equipment. Such accessory structure shall not exceed eighty (80) square feet in area nor eight (8) feet in height, and shall be

located as far from the shoreline or tributary stream as practical and shall meet all other applicable standards, including lot coverage and vegetation clearing limitations. In no case shall the structure be located closer to the shoreline or tributary stream than the principal structure.

e. Where a tributary stream, either perennial or intermittent, 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; however, other Town regulations may apply.

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

3. The lowest floor elevation or openings of all buildings and structures including basements shall be elevated at least one (1) foot above the elevation of the 100-year flood, the flood of record, or in the absence of these, the flood as defined by soil types identified as recent flood-plain soils. In those municipalities that participate in the National Flood Insurance Program and have adopted the April 2005 or later version of the Floodplain Management Ordinance, accessory structures may be placed in accordance with its standards, and need not meet the elevation requirements of this paragraph.

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

NOTE: If a retaining 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.

5. 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 Beyond the Normal high-water line of a 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 Town. 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 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, wharf, dock or other structure extending beyond the normal high-water line of a water body or within a wetland shall be converted to residential dwelling units in any district.
8. Except in the Commercial Fisheries/Maritime Activities district, structures built on, over or abutting a pier, wharf, dock or other structure extending beyond the normal high-water line of a water body or within a wetland shall not exceed twenty (20) feet in height above the pier, wharf, dock or other structure.

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

#### **D. Campgrounds**

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

1. Campgrounds shall contain a minimum of five thousand (5000) 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 river flowing to a great pond classified GPA, and seventy-five (75) feet horizontal

distance from the normal high-water line of other water bodies, tributary streams, or the upland edge of a wetland.

### **E. Individual-Private Campsites**

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

1. One campsite per lot 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 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 vehicles shall not be located on any type of permanent foundation except for gravel pad, and no structure except a canopy shall be attached to the recreational vehicle.
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 (1,000) square feet.
5. A written sewage disposal plan describing the proposed method and location of sewage disposal shall be required for each campsite and shall be approved by the Local Plumbing Inspector. Where disposal is off-site, written authorization from the receiving facility or land owner is required.
6. When a recreational vehicle, tent or similar shelter is placed on-site 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 Uses**

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

1. Auto washing facilities
2. Auto or other vehicle service and/or repair operations, including body shops
3. Chemical and bacteriological laboratories
4. Storage of chemicals, including herbicides, pesticides or fertilizers, other than amounts normally associated with individual households or farms
5. Commercial painting, wood preserving, and furniture stripping
6. Dry cleaning establishments
7. Electronic circuit assembly
8. Laundromats, unless connected to a sanitary sewer



9. Metal plating, finishing, or polishing
10. Petroleum or petroleum product storage and/or sale except storage on same property as use occurs and except for storage and sales associated with marinas
11. Photographic processing
12. Printing

#### **G. Parking Areas**

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 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 location satisfying the district setback exists.
2. Parking areas shall be adequately sized for the proposed use and shall be designed to prevent storm water runoff from flowing directly into a water body, 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: Nine (9) feet wide and eighteen (18) feet long, except that parking spaces for a vehicle and boat trailer shall be ten (10) feet wide and forty (40) feet long.
  - b. Internal travel aisles: Twenty three (23) 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 located, constructed and maintained in such manner that minimal erosion hazard results. Adequate provisions shall be made to prevent soil erosion and sedimentation of surface waters.
2. Roads and driveways shall be set back at least one-hundred (100) feet horizontal distance from the normal high-water line of a great pond classified GPA or a river that flows to a great pond classified GPA, and seventy-five (75) feet horizontal distance from the normal high-water line of other water bodies, tributary streams, or the upland edge of a wetland unless no reasonable location satisfying the setback exists as determined by the Planning Board. If no such location exists, the road and/or driveway setback requirement shall be no less than fifty (50) feet horizontal distance upon clear showing by the applicant that appropriate techniques will be used to prevent sedimentation of the water body, tributary stream or wetland. Such techniques may include, but are not limited to, the installation of settling basins, and/or the effective use of additional ditch relief culverts and turnouts be placed so as to avoid sedimentation of the water body, tributary stream, or wetland.

On slopes of greater than twenty (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.2 does not apply to approaches to water crossings or to roads or driveways that provide access to permitted structures, and facilities located nearer to the shoreline or tributary stream due to an operational necessity, excluding temporary docks for recreational uses. Roads and driveways providing temporary access to permitted structures within the setback area shall comply fully with the requirements of 15.H.2 except for that portion of the road or driveway necessary for direct access to the structure.

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

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

5. 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 of 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 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 strip 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
11-16	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 down slope from a line perpendicular to the center line of the road or driveway.

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

9. 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 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 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 eight (8) feet above the ground.

7. Signs may be illuminated only by shielded, non-flashing lights.

## **J. Storm Water Management**

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

2. The storm drainage system shall not adversely affect neighboring properties, downstream water quality, or cause unreasonable soil erosion. Whenever possible, run-off waters shall be absorbed on-site to minimize discharges from the site.

3. Management of storm water shall meet the applicable standards and practices set forth in the latest editions of *Chapter 500 Stormwater Management Rules* and *Stormwater Management for Maine* as amended, Maine Department of Environmental Protection publications, and the standards of professional engineering practice. Storm water run-off shall be treated by the use of best management practices equivalent to those set forth in *Stormwater Management for Maine*.

4. The minimum pipe size for any storm drainage pipe shall be fifteen (15) inches. Pipe shall be installed in compliance with the pipe manufacturer's written specifications.

5. Inlets and outlets shall be stabilized against soil erosion by stone riprap or other suitable materials to reduce storm water velocity and to absorb energy from flowing waters.

6. Storm water runoff control systems shall be located in easements of sufficient size for maintenance and shall be maintained as necessary to ensure proper functioning.

NOTE: The Stormwater Management Law (38 M.R.S.A. Section 420-D) requires a full permit to be obtained from the DEP prior to construction of a project consisting of 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**

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 roadside distribution lines is not allowed in a Resource 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.3 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. Within twelve (12) months following the completion of extraction operations at any extraction site, which operations shall be deemed complete when less than one hundred (100) cubic yards of materials are removed in any consecutive twelve (12) month period, ground levels and grades shall be established in accordance with the following:
  - a. All debris, stumps, and similar material shall be removed for disposal in an approved location, or shall be buried on-site. Only materials generated on-site may be buried or covered on-site.

NOTE: The State of Maine Solid Waste Laws, Title 38, Maine Revised Statutes Annotated, Section 1310 and Chapter 404 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 re-seeded and stabilized with vegetation native to the area. Additional topsoil or loam shall be obtained from off-site sources if necessary to complete the stabilization project.

4. 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 twenty thousand (20,000) square feet in surface area, within the Shoreland Zone shall require a Conservation Plan to be filed with the Planning board. Non-conformance with the provisions of said plan shall be considered to be a violation of this ordinance.

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

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

5. 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 in a shoreland area zoned for resource protection abutting a great pond there shall be no timber harvesting except to remove safety hazards.
- 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 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 computed as basal area.

b. Timber harvesting operations exceeding the 40% limitation in Section 15.O.2.a above, may be allowed by the Planning Board upon a clear showing, including a forest management plan signed by a Maine licensed professional forester, that such an exception is necessary for good forest management and will be carried out in accordance with the purposes of this Ordinance. The Planning Board shall notify the Commissioner of the Department of Environmental Protection of each exception allowed, within fourteen (14) days of the Planning Board's decision.

c. 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 re-vegetated.

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 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 width of 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**

[See effective date 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;
    - 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 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 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 waterbodies. 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 waterbodies 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 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, and as shown on the site plan, noted as Limits of Disturbance.

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
>4-12 in.	2
>12 in.	4

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 x50-foot plot contains) four (4) trees between 2 and 4 inches in diameter, five (5) trees between 4 and 12 inches in diameter, and four trees over 12 inches in diameter, the rating score is:*

$$(4 \times 1) + (5 \times 2) + (4 \times 4) = 30 \text{ points}$$

*Thus, the 25-foot by-50 foot plot contains trees worth 30 points. Trees totaling 6 points (30-24=6) 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 this 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 (4-1/2) feet above ground level for each 25-foot by 50-foot rectangular area. If five saplings do not exist, no woody stems less than two (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 4-1/2 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.2.a above.

d. Pruning of tree branches, on the bottom 1/3 (one-third) 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 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 permitted 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 4-1/2 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, except that in the Fishing Home Business district, a total of fourteen thousand (14,000) s.f. of aggregated cleared openings is allowed on lots up to 56,000 s.f. This provision shall not apply to the Commercial Fisheries/Maritime Activities district.

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. Submittals for approval of all activities which involve filling, grading, excavation or other similar activities which result in unstabilized soil conditions and which require a permit shall include a soil erosion and sedimentation control plan conforming to *Maine Erosion & Sediment Control Best Management Practices*, consisting of:

a. a written plan, and site locations and details of provisions for mulching and re-vegetation of disturbed soils, temporary runoff control features, and permanent stabilization structures; or

b. at the discretion of the Board, a statement that the activities will conform to Maine Erosion & Sediment Control BMPs and site locations of provisions for mulching and re-vegetation of disturbed soil, temporary runoff control features such as hay bales, silt fencing or diversion ditches, and permanent stabilization structures such as retaining walls or riprap.

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

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

- five (5) feet, undisturbed by runoff controls or construction equipment, where the resource protection area supports trees over 4" diameter at breast height, and the following width shall be added to accommodate construction activity:
- ten (10) feet where the intervening grade change is less than one (1) foot;
- fifteen (15) feet where the intervening grade change is two (2) feet or less;
- twenty (20) feet where the intervening grade change is three (3) feet or less; and
- five (5) feet more for each additional foot of increase in the intervening grade change.

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

4. 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.

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

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

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

c. Additional measures shall be taken where necessary in order to avoid siltation into the water. Such measures may include the use of staked hay bales an/or silt fences.

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

## **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 on soils listed in Appendix A and uses requiring subsurface waste disposal, and commercial or industrial development or other similar intensive land uses, shall require a soils report

based on on-site investigation, prepared by professionals certified to provide services in Maine. Certified preparers may include Maine Certified Soil Scientists, Maine Registered Professional Engineers, Maine State Certified Geologists and others who have training and experience in the recognition and evaluation of soil properties. The report shall be based on analysis of the characteristics of the soil, and surrounding land and water areas, maximum ground water elevation, presence of ledge, drainage conditions, and other data the evaluator deems appropriate. The report should include recommendations that would enable the proposed use to cope with any soil limitations.

#### **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 Sites**

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

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

### **16. Administration**

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

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

**B. Permits Required.** After the date of adoption of this ordinance no person shall, without first obtaining a permit, (a) initiate or commence any activity or use of land or structure identified in Table 14.1 as requiring a permit in the district in which such activity or use would occur, or (b) expand, change or replace an existing use or structure; or renew a discontinued non-conforming use; nor shall any principal or accessory structure be built, constructed, set, installed, established, expanded, substantially altered or relocated without a permit. Repairs and interior renovations and alterations which do not involve expanding floor area do not require a permit. A person who is issued a permit pursuant to this Ordinance shall have a copy of the permit on site while the work authorized by the permit is performed.

1. 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. Zoning district changes**

1. A change in the zoning district designation of a property requires amendment of the Official Shoreland Zoning Map.

2. The Planning Board may recommend an amendment to the Selectmen, and shall schedule a public hearing on the amendment prior to any voting date set by the Selectmen.

3. On receipt of a complete application at a regularly scheduled meeting to change a property's District designation, the Planning Board shall

a. require the applicant to notify abutting property owners by registered return-receipt-requested mail on a form provided by the Board that an application for a zoning district change has been submitted, specifying the district designation sought, and to provide the Board with the receipts; and

b. within thirty-five (35) days, or within any other time limit which may be mutually agreed upon by the Board and applicant, make a finding that the property does or does not conform to the requirements of the proposed District, and shall within ten (10) days thereafter inform the applicant of the finding.

4. On finding that the property and its use conform to the District requirements of Sections 13 and 15, the Planning Board shall within ten (10) days recommend the proposed amendment to the Selectmen, and shall subsequently schedule a public hearing on it prior to any voting date set by the Selectmen.

5. On receipt of a finding that the property does not conform to the requirements of Sections 13 and 15, the applicant may petition the Selectmen for the proposed amendment.

6. An application for a permit that requires a zoning district change shall not be accepted until an amendment of the Official Shoreland Zoning Map has been approved.

#### **D. Applications**

1. Every applicant shall submit to the Town Clerk a written application on a form provided by the municipality, together with eight (8) copies of a scaled site plan, and any scheduled fee or escrow deposit. Both the form and the plan shall be dated.

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

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

4. The Code Enforcement Officer shall determine whether an application form is complete before issuing a dated receipt for a complete application.

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

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

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

7. No application shall be accepted from an applicant in violation of a plan previously approved under this ordinance.

8. When the Planning Board receives, at a regularly scheduled meeting, a complete application for any of the following land uses (see Table 14.1) in or adjoining the Limited Residential District, the Planning Board shall require the applicant to notify abutting property owners by registered return-receipt-requested mail on a form provided by the Board that an application for the proposed use has been submitted, and to provide the Board with the receipts:

- a. Multi-unit residential buildings, including driveways
- b. Multi-unit rental apartments, including driveways
- c. Boatyards and shops for construction, sale, repair, storage or maintenance of

- boats up to 50 feet in length
- d. Marine commercial
- e. Other commercial
- f. Bed and breakfast
- g. Governmental & Institutional
- h. Expansions of any of the above uses
- i. Non-roadside or cross-country distribution lines in the Shoreland Zone
- j. Commercial recreational facilities
- k. Campgrounds

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

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

If a required fee or escrow deposit is not received prior to a meeting at which the application is listed on the agenda, the application shall be tabled. If that required fee or deposit is not received within fourteen (14) days after that meeting, the application shall be considered to have been withdrawn.

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

a. Funds held in escrow shall be used to defray the cost of independent consulting services required by the Board for review of technical or legal aspects of an application; and for costs of notice, mailing, and copying of documents or maps.

b. The original deposit shall be restored whenever the balance of the account goes below 25% of the original deposit. Whenever the balance in an escrow account is drawn down by 75%, the Board shall notify the applicant of the amount of funds to be deposited to restore the scheduled deposit.

c. The Board shall furnish the applicant a record of the nature and amount of any expenditure made from the account. Unused funds shall be returned to the applicant within thirty (30) days after the later of final Board action on the application, or satisfaction of escrow obligations.

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

1. Permits shall be issued by the reviewing authority noted in Table 14.1 or designee.

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

b. Unless an extension of time has been agreed with the applicant, or is required for independent professional review, the reviewing authority shall act within 35

days of receiving a complete application to approve, approve with conditions, or deny the application, and shall communicate its decision to the applicant in writing. However, if the Planning Board has a list of waiting applications, a decision on the application shall occur within 35 days after the first available date on the Planning Board's agenda following receipt of the completed application, or within 35 days of the public hearing, if one is held, provided the proposed use or structure is found to be in conformance with the purposes and provisions of this Ordinance.

c. All materials which require Planning Board review shall be submitted to the Town Clerk at least fourteen days in advance of a regular or special meeting, to allow sufficient time for consideration by the Planning Board. The Town Clerk shall note the date and time of their receipt on all such submittals.

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

- Location of property on the Official Shoreland Zoning Map
- Boundary survey at 1"=30' to 1"=50', with topo at 2' or 5' interval as determined by the Board; roads; driveways; easements and utility corridors; delineation of wetlands, resource protection areas, and flood plains; 75', 100' and 250' setbacks associated with protected waters; existing and proposed buildings; and septic system improvements
- Acreage of site, wetlands, and disturbed areas
- Lot coverage as a percent
- Sewage permit or approved Evaluation & plan
- Soil suitability report
- MHPC report on archaeological/historical features
- MDIFW report on significant wildlife habitat
- MDEP report on protected natural areas
- Stormwater management plan
- Erosion control plan
- Fire protection plan
- Required State/Federal permit needs
- Additional information for commercial, cluster and multifamily applications
- A statement on the plan that the lowest floor elevation or openings of all buildings and structures including basements shall be elevated at least one (1) foot above the elevation of the 100-year flood, the flood of record, or in the absence of these, the flood as defined by soil types identified as recent flood-plain soils.
- In review of applications for cluster, multi-unit or commercial use, the Town of Cushing Subdivision Regulations standards and submittal requirements for these uses will also apply, and the Board may require a groundwater extraction impact assessment.
- Such other items as the Board may require.

3. After the submittal 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:



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

4. If a permit is denied, or approved with conditions, the reasons for the denial as well as the conditions shall be stated in writing. No approval shall be granted for an application involving a structure if the structure would be located in an unapproved subdivision or would violate any other local ordinance or regulation or statute administered by the municipality.

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

## **G. Special Exceptions**

In addition to the criteria specified in Section 16.F above, excepting structure setback requirements, the Planning Board may approve a permit for a single family residential structure in a Resource Protection District provided that the applicant demonstrates that all of the following conditions are met:

- 1. 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.

**H. Expiration of Permit.** Permits shall expire one year from the date of issuance if a substantial start is not made in construction or in the use of the property during that period. If a substantial start is made within one year of the issuance of the permit, the applicant shall have one additional year to complete the project, at which time the permit shall expire.

**I. Installation of Public Utility Service.** A public utility, water district, sanitary district or any utility company of any kind may not install services to any new structure located in the Shoreland Zone unless written authorization attesting to the validity and currency of all local permits required under this or any previous Ordinance has been issued by the appropriate municipal officials, or other written arrangements have been made between the municipal officials and the utility.

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

## **J. Appeals**

**1. Powers and Duties of the Board of Appeals.** The Board of Appeals shall have the following powers:

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, written decision, or determination made by, or failure to act by the Planning Board in the administration of this Ordinance, and to hear and decide administrative appeals on a de novo basis where it is alleged by an aggrieved party that there is an error in any order, requirement, written decision or determination made by, or failure to act by, the Code Enforcement Officer in his or her review of and action on a permit application under this Ordinance, or in the enforcement of this Ordinance.

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:

1. The proposed structure or use would meet the provisions of Section 15 except for the specific provision which has created the non-conformity and from which relief is sought; and

2. The strict application of the terms of this Ordinance would result in undue hardship. The term "undue hardship" shall mean:

i. That the land in question cannot yield a reasonable return unless a variance is granted;

ii. That the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;

iii. That the granting of a variance will not alter the essential character of the locality; and

iv. That the hardship is not the result of action taken by the applicant or a prior owner.

d. Notwithstanding Section J.2.c above, the Board of Appeals 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 Board of Appeals to the Commissioner of the Department of Environmental Protection at least twenty (20) days prior to action by the Board of Appeals. Any comments received from the Commissioner prior to the action by the Board of Appeals shall be made part of the record and shall be taken into consideration by the Board of Appeals.

### **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 of Appeals shall not receive or consider any evidence which was not presented to the Planning Board, but the Board of Appeals may receive and consider written or oral arguments. If the Board of Appeals determines that the records of the Planning Board proceedings are inadequate, the Board of Appeals may remand the matter to the Planning Board for additional fact finding.

### **4. Appeal Procedure**

#### **a. Making an Appeal**

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

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

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

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

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

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

b. Decision by Board of Appeals

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

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

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

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

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

**5. Appeal to Superior Court.** Any aggrieved party who participated as a party during the proceedings before the Board of Appeals may take an appeal to Superior Court in accordance with State laws within 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.

## **K. Enforcement**

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

### **2. Code Enforcement Officer**

a. It shall be the duty of the Code Enforcement Officer to enforce the provisions of this Ordinance. If the Code Enforcement Officer shall find that any provision of this Ordinance is being violated, he or she shall notify in writing the person responsible for such violation, indicating the nature of the violation and ordering the action necessary to correct it, including discontinuance of illegal use of land, buildings or structures, or work being done, removal of illegal buildings or structures, and abatement of nuisance conditions. A copy of such notices shall be submitted to the municipal officers and be maintained as a permanent record.

b. The Code Enforcement Officer shall conduct on-site inspections to 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 orders or conducts an activity in violation of any provision or requirement of this Ordinance shall be penalized in accordance with 30-A, M.R.S.A. Section 4452.

NOTE: Current penalties include fines of not less than \$100 or 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 (e.g. garages, woodsheds, and fish houses). Accessory uses, when aggregated shall not subordinate the principal use of the lot. A deck or similar extension of the principal structure or a garage attached to the principal structure by a roof or a common wall is considered part of the principal structure. Accessory structures, except those that require direct access to the water, must also meet all setback requirements. A guest house without kitchen facilities for preparing, cooking and storing food is an accessory structure. With such facilities, it is a dwelling unit.

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

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

**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 4.5 feet above ground level and inclusive of bark.

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

**Boat launching facility:** A facility designed primarily for the launching and landing of watercraft, and which may include an access ramp, docking area, and parking spaces for vehicles and trailers.

**Bureau:** 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 sub-tidal lands; all lands with vegetation present that is tolerant of salt water and occurs primarily in a salt water or estuarine habitat; and any swamp, marsh, bog, beach, flat or other contiguous low land that is subject to tidal action during the highest tide level for the year in which the activity is proposed as identified in tide tables published by the National Oceanic and Aeronautic Administration (NOAA). Coastal wetlands may include portions of coastal sand dunes.

Note: All areas below the highest tide level are coastal wetlands. These areas may consist of rocky ledges, sand and cobble beaches, mud flats, etc., in addition to salt marshes and salt meadows.

**Commercial use:** The use of lands, buildings, or structures, other than a "home occupation" or "fishing home business", defined below, the intent and result of which activity is the production of income from the buying and selling of goods and/or services, including multifamily rental apartments and commercial recreational facilities. This use does not include the sale or rental of dwelling units in multi-unit residential buildings or in one- and two-family 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.

**Day:** A calendar day.

**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; also including the physical or mental condition of a person which constitutes a substantial handicap as determined by a physician or in the case of mental handicap, by a psychiatrist or psychologist, as well as any other health or sensory impairment which requires special education, vocational rehabilitation or related services.

**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.



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

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

**Emergency operations:** Operations conducted for the public health, safety or general welfare, such as protection of resources from immediate destruction or loss, law enforcement, and operations to rescue human beings, property and livestock from the threat of destruction or injury.

**Essential services:** Gas, electrical or communication facilities; stream, fuel, electric power or water transmission or distribution lines, towers and related equipment; telephone cables or lines, poles and related equipment; gas, oil, water, slurry or other tanks. Such systems may include towers, poles, wires, mains, drains, pipes, conduits, cables, fire alarms and police call boxes, traffic signals, hydrants and similar accessories, but shall not include service drops or buildings which are necessary for the furnishing of such services.

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

**Expansion of use:** An increase 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.

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

**Floodway:** The channel of a river or other watercourse and adjacent land areas that must be reserved in order to discharge the 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. Floor area includes areas with both a ceiling height of six feet or more, and more than 50% of its volume above original ground level.

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

**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.

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

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

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

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

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

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

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

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

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

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

**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 grade at the downhill side of the structure and the highest point of the structure, excluding chimneys, steeples, antennas, and similar appurtenances which have no floor area.

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

**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 are not limited to a gravel pad, parking area, fire place, or tent platform.

**Industrial:** The assembling, fabrication, finishing, manufacturing, packaging or processing of goods 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.

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

**Market value:** The estimated price a property will bring in the open market and under prevailing market conditions in a sale between a willing seller and a willing buyer, both conversant with the property and with prevailing general price levels.

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

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

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

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

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

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

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

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

**Non-conforming structure:** A structure which does not meet any one or more of the following dimensional requirements; setback, height, or lot coverage, 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 predominately terrestrial land. Areas contiguous with rivers and great ponds that support non-forested wetland vegetation and hydric soils and that are at the same or lower elevation as the water level of the river or great pond during the period of normal high-water are considered part of the river or great pond

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

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

**Piers, docks, wharfs, breakwaters, bridges and other structures and uses extending over or beyond the normal high-water line or within a wetland:**

**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 flood plain soils:** The following soil series as described and identified by the National Cooperative Soil Survey:

Alluvial	Cornish	Charles	Fryeburg	Hadley	Limerick	Lovewell
Medomak	Ondawa	Podunk	Rumney	Saco	Suncook	Sunday
						Winooski

**Recreational facility:** A place designed and equipped for the conduct of sports, leisure time activities, and other customary and usual recreational activities, excluding boat launching facilities.

**Recreational vehicle:** A vehicle or an attachment to a vehicle designed to be towed, and designed for temporary sleeping or living quarters for one or more persons, and which may include a pickup camper, travel trailer, tent trailer, camp trailer, and motor home. In order to be considered as a vehicle and not as a structure, the unit must remain with its tires on the ground, and must be registered with the State Division of Motor Vehicles.

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

**Residual basal area:** The sum of the basal areas of trees remaining in a given area of tree harvesting. See the definition of basal area above.

**Residual stand:** a stand of trees remaining in the forest following timber harvesting and related activities.

**Residential dwelling unit:** A room or group of rooms designed and equipped exclusively for use as permanent, seasonal, or temporary living quarters for only one family at a time, and containing cooking, sleeping and toilet facilities. The term shall include mobile homes and rental units that contain cooking, sleeping and toilet facilities regardless of the time period rented. Recreational vehicles are not residential dwelling units..

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

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

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

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

**Road:** A route or track consisting of a bed of exposed mineral soil, gravel, asphalt, or other surfacing material constructed for or created by the repeated passage of motorized vehicles, excluding a driveway as defined.

**Salt marsh:** Areas of coastal wetland (most often along coastal bays) that support salt tolerant species, and where at average high tide during the growing season, the soil is irregularly inundated by tidal waters. The predominant species is salt marsh cord grass (*Spartina alterniflora*). More open areas often support widgeon grass, eel grass, and Sago pond weed.

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

**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.

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

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

**Substantial alteration:** Any change in shape, size or design of a structure at a cost of one thousand (\$1,000) or more.

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

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

**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 and removal of trees shall be regulated pursuant to Section 15.P, *Clearing and 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:** A channel between defined banks created by the action of surface water, characterized by the lack of terrestrial vegetation or by the presence of a bed, devoid of topsoil, containing waterborne deposits on exposed soil, parent material or bedrock; and connected hydrologically to other water bodies. "Tributary stream" does not include rills or gullies forming because of accelerated erosion in disturbed soils where the natural vegetation cover has been removed by human activity.

This definition does not include the term "stream" as defined elsewhere in this Ordinance, and only applies to that portion of the tributary stream located within the Shoreland Zone of the receiving water body or wetland.

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

**Upland edge of a wetland:** The boundary between upland and wetland. For purposes of a coastal wetland, this boundary is the line formed by the landward limits of the salt tolerant vegetation and/or the tide level for the year in which the activity is proposed as identified by tide tables published by NOAA, including all areas affected by tidal action. For purposes of a freshwater wetland, the upland edge is formed where the soils are not saturated for a duration sufficient to support wetland vegetation; or where the soils support the growth of wetland vegetation, but such vegetation is dominated by woody stems that are six (6) meters (approximately twenty (20) foot) tall or taller.

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

**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 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. Volume includes areas with both a ceiling height of six feet or more, and more than 50% of its volume above original ground level.

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

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

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

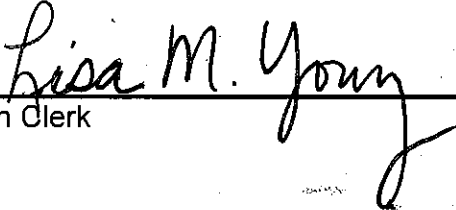
**Windfirm:** the ability of a forest stand to withstand strong winds and resist windthrow, wind rocking and major breakage.

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

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

### **Certificate of Adoption**

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

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

11-8-11  
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date

# Site Plan Review Ordinance, Town of Cushing, Maine

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

## **2. AUTHORITY**

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

B. The Cushing Planning Board shall administer this Ordinance.

## **3. APPLICATION & EXEMPTIONS**

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

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

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

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

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

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

#### **4. WAIVERS AND CONDITIONS**

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

#### **5. GENERAL PERFORMANCE STANDARDS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**D. Waste disposal.**

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

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

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

G. **Access.**

- A. No development shall cause the level of service of any public road to fall below category C, or to lower the level of service if it is already below level C.
- B. Access to the site shall comply with the Town of Cushing Road Access Ordinance and provide safe access for fire, emergency, maintenance, delivery, employee and visitor vehicles.
- C. Access drives shall be set back at least 50 feet from an abutting non-commercial property line, and shall be not less than 18 feet wide.

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

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

- 1. Abutting non-commercial uses, setbacks from property lines shall be as follows:
  - a. Exterior building wall height less than 20 feet above grade.....50 feet
  - b. Exterior building wall height more than 20 feet above grade.....75 feet
  - c. Parking area.....50 feet
  - d. Storage area, mechanical equipment or campsite.....50 feet

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

- 2. Where the Planning Board makes a finding that existing trees in setback areas abutting non-commercial uses will not provide an adequate visual buffer, the Board’s approval may be conditional on additional plantings or setback dimensions.
- 3. Buildings, parking, storage areas, mechanical equipment and campsites shall be set back 75 feet from public rights of way.
- 4. Building height shall not exceed 35 feet.
- 5. Motorized rooftop mechanical equipment shall not be visible to a person standing at a property line.

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

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

#### **J. Signs**

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

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

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

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

### **6. PERFORMANCE STANDARDS FOR SPECIFIC USES**

#### **A. Medical Marijuana Dispensary and Cultivation Facility**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **B. Methadone Clinic**

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



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

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

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

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

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

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

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

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

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

### **C. Blasting**

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

## **7. ENFORCEMENT**

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

B. The Code Enforcement Officer shall conduct on-site inspections to insure compliance with all applicable laws, regulations, ordinances and approvals. The Code Enforcement Officer shall also investigate all complaints of alleged violations of this Ordinance. If the Code Enforcement Officer shall find that any provision of this Ordinance is being violated, he or she shall notify in writing the person responsible for such violation, indicating the nature of the violation and ordering the action necessary to correct it, including discontinuance of illegal use of land, buildings or structures, or work being done, removal of illegal buildings or structures, and abatement of nuisance conditions. A copy of such notices shall be submitted to the municipal officers and be maintained as a permanent record. The Code Enforcement Officer shall keep a complete record of all essential transactions of the office.

C. When the above action does not result in the correction or abatement of the violation or nuisance condition, the Municipal Officers, upon notice from the Code Enforcement Officer, are hereby directed to institute any and all actions and proceedings, either legal or equitable, including seeking injunctions of violations and the imposition of fines, that may be appropriate or necessary to enforce the provisions of this Ordinance in the name of the municipality. The municipal officers, or their authorized agent, are hereby authorized to enter into administrative consent agreements for the purpose of eliminating violations of this Ordinance and recovering fines without Court action. Such agreements shall not allow an illegal structure or use to continue unless there is clear and convincing evidence that the illegal structure or use was constructed or conducted as a direct result of erroneous advice given by an authorized municipal official and there is no evidence that the owner acted in bad faith, or unless the removal of the structure or use will result in a threat or hazard to public health and safety or will result in substantial environmental damage.

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

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

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

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

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

### **Certificate of adoption**

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

---

Town Clerk

Date

## **DIVISION I. ADMINISTRATION**

### **A. Permits.**

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

### **B. Pre-application.**

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

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

### **D. Performance guarantee.**

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

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

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

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

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

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

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

#### **F. Application processing**

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

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

3. Within thirty five (35) days of receipt of an application, the Planning Board shall determine whether the application is complete. If the application is incomplete, the Planning Board shall notify the applicant, in writing, of the specific deficiencies. Until a complete application has been received, the Planning Board shall not begin its review of the application.
4. The Planning Board Chairman may schedule a site visit, which shall be a formal meeting with notice and minutes.
5. The Code Enforcement Officer shall inspect the site and maintain a digital photographic record of site conditions before Board review, during approved work, and after its completion.
6. Upon finding an application complete, the Planning Board:
  - a. shall schedule a public hearing within thirty five (35) days, unless an extension of time has been agreed with the applicant or is required for independent professional review. The Planning Board shall give notice of its date, time and place, to be published twice in a local newspaper with the date of the first publication at least seven (7) days prior to the hearing. If any part of the subject property is located within the Shoreland Zone, the hearing shall include review of the application's compliance with the requirements of the Shoreland Zoning Ordinance; and
  - b. shall notify the Code Enforcement Officer, Road Commissioner, Addressing Officer, Fire Chief and Rescue Squad Director of the proposed development including the proposed square footage and proposed fire protection plans, requesting written comment on the application before the next regular Board meeting. Failure to respond to the Board's request shall be deemed to constitute review and approval.
  - c. may require independent review of submittals.
7. Unless an extension of time has been agreed between the applicant and the Planning Board, the Board shall, within thirty-five (35) days after the public hearing, either approve, approve with conditions, or disapprove the application.
  - a. Approval shall be based on compliance of the application with the standards of this ordinance, and with any conditions imposed by the Board to assure compliance. The Board shall specify its reasons for approval or denial of the application, for approval or denial of any request for a waiver of any standard, and for any condition imposed.
  - b. In issuing its decision the Planning Board shall state in writing any conditions of approval, specifically:
    1. Any requirements associated with approval of waivers.
    2. The kind of performance guarantee that the Planning Board will require.
  - c. The Planning Board shall sign the final plat. One signed paper copy and one reproducible copy shall be filed at the Town Office. Any plat not recorded in the Knox County Registry of Deeds by the applicant within ninety (90) days of the date upon which the plan is approved and signed by the Planning Board shall be considered null and void.
  - d. No application shall be accepted by the Planning Board from an applicant in violation of a plan previously approved under this ordinance.

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

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

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

## **G. Appeals**

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

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

## **2. Appeal Procedure**

### **a. Making an Appeal**

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

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

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

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

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

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

b. Decision by Board of Appeals

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

## **DIVISION II: DEFINITIONS**

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

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

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

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

**Boat launching facility:** A facility designed primarily for the launching and landing of watercraft, and which may include an access ramp, docking area, and parking spaces for vehicles and trailers.

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

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

**Coastal wetland:** All tidal and sub-tidal lands; all lands with vegetation present that is tolerant of salt water and occurs primarily in a salt water or estuarine habitat; and any swamp, marsh, bog, beach, flat or other contiguous low land that is subject to tidal action during the highest tide level for the year in which the activity is proposed as identified in tide tables published by the National Oceanic and Aeronautic Administration (NOAA). Coastal wetlands may include portions of coastal sand dunes.

**Note:** All areas below the highest tide level are coastal wetlands. These areas may consist of rocky ledges, sand and cobble beaches, mud flats, etc., in addition to salt marshes and salt meadows.

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

**Day:** A calendar day.

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

**District:** A sub-area of the Shoreland Zone.

**Essential services:** Gas, electrical or communication facilities; steam, fuel, electric power or water transmission or distribution lines, towers and related equipment; telephone cables or lines, poles and related equipment; gas, oil, water, slurry or other tanks. Such systems may include towers, poles, wires, mains, drains, pipes, conduits, cables, fire alarms and police call boxes, traffic signals, hydrants and similar accessories, but shall not include service drops or buildings which are necessary for the furnishing of such services.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Recreational facility:** A place designed and equipped for the conduct of sports, leisure time activities, and other customary and usual recreational activities, excluding boat launching facilities.

**Recreational vehicle:** A vehicle or an attachment to a vehicle designed to be towed, and designed for temporary sleeping or living quarters for one or more persons, and which may include a pickup camper, travel trailer, tent trailer, camp trailer, and motor home. In order to be considered as a vehicle and not as a structure, the unit must remain with its tires on the ground, and must be registered with the State Division of Motor Vehicles.

**Residential dwelling unit:** A room or group of rooms designed and equipped exclusively for use as permanent, seasonal, or temporary living quarters for only one family at a time, and containing cooking, sleeping and toilet facilities. The term shall include mobile homes and rental units that contain cooking, sleeping and toilet facilities regardless of the time period rented. Recreational vehicles are not residential dwelling units.

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

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

**Road:** A route or track consisting of a bed of exposed mineral soil, gravel, asphalt, or other surfacing material constructed for or created by the repeated passage of motorized vehicles.

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

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

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

**Shoreland Zone:** The land area located within two hundred and fifty (250) feet, horizontal distance, of the normal high-water line of any great pond or river; within 250 feet, horizontal distance of the upland edge of a coastal wetland, including all areas affected by tidal action; within 250 feet of the upland edge of a freshwater wetland; or within 75 feet, horizontal distance, of the normal high-water line of a stream.

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

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

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

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

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

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

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

**Tributary stream:** A channel between defined banks created by the action of surface water, characterized by the lack of terrestrial vegetation or by the presence of a bed, devoid of topsoil, containing waterborne deposits on exposed soil, parent material or bedrock; and connected hydrologically to other water bodies. "Tributary stream" does not include rills or gullies forming because of accelerated erosion in disturbed soils where the natural vegetation cover has been removed by human activity.

This definition does not include the term "stream" as defined elsewhere in this Ordinance, and only applies to that portion of the tributary stream located within the Shoreland Zone of the receiving water body or wetland.

**Upland edge of a wetland:** The boundary between upland and wetland. For purposes of a coastal wetland, this boundary is the line formed by the landward limits of the salt tolerant vegetation and/or the tide level for the year in which the activity is proposed as identified by tide tables published by

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

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

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

### **DIVISION III: SOILS OF CONCERN**

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

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

**TOWN OF CUSHING, MAINE  
WIND TURBINE ORDINANCE**

**CONTENTS:**

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**1.0 Purpose.** The purpose of this Ordinance is to protect the health, safety, and welfare of the residents and property owners of Cushing by establishing regulations for Wind Energy Facilities (WEFs) and Meteorological Towers (MTs).

**2.0 Authority.**

A. The authority for this Ordinance was conferred upon the states by the Tenth Amendment to the U.S. Constitution, which our state delegates to its political subdivisions to enact measures to preserve and protect the safety, health, welfare and morals of the community; specifically, as the Home Rule Power of Article VIII, Part 2 of the Maine Constitution, and 30-A MRSA Section 3001.

B. The Cushing Planning Board shall administer this Ordinance.

**3.0 Effective Date.** This Ordinance shall become effective on the date of its passage.

**4.0 Application** This ordinance applies to Wind Energy Facilities and Meteorological Towers proposed to be constructed or operated after the effective date of this Ordinance.

**5.0 Standards**

**A. Construction**

1. The design and manufacture of Meteorological Towers, wind turbines, monopoles, and other components of a WEF shall conform to applicable standards, such as the American National Standards Institute (ANSI), Underwriters Laboratories, and to local, state, and national codes.

2. Meteorological towers shall not exceed 80 feet above grade in overall height including moving parts. Guy wires shall limit hazard to birds and bats.

3. Except for turbines designed for roof mounting, turbines with a capacity exceeding 1 kW shall be mounted on a monopole towers. The overall height of an installation including blades shall not exceed 80 feet.

4. WEFs shall be designed and sited to prevent the disruption or loss of emergency signals and radio, telephone, television, or similar signals. Interference with such



communications shall be grounds for the CEO to require shut down of a WEF until the interference has been remedied.

5. The minimum distance between the blades of a WEF and the ground or objects permanently fixed to the ground shall be 25 feet as measured at the lowest point in the arc of the blades.

6. The color of WEF and MT components shall be off-white, grey or another neutral color approved by the Planning Board.

7. WEFs shall not display signs or advertising except to identify the turbine manufacturer, the WEF owner's emergency contact information, and warnings required by law.

8. Underground power and transmission lines shall be buried at a depth consistent with state public utility engineering standards to prevent transient ground currents and stray voltage.

9. No clearing, grading or other disturbance of a site may begin until a plan has been approved by the Planning Board and recorded in the Registry of Deeds.

## **B. Setbacks**

1. The location of an MT or WEF shall satisfy two criteria with respect to property lines:

a. To minimize the potential for damage, MTs and WEFs shall be set back from all property lines at least 1.5 times the maximum height of the installation above grade.

b. To avoid annoyance and hazard to health and property values, sound levels at the property lines of abutters, including those across rights-of-way, due to the operation of the turbine shall not exceed 35 dBA.

1. This maximum sound level is set for Cushing's low, rural background noise level. It is an adjustment between MDEP and World Health Organization standards for acceptable noise levels at abutters' property lines.

The DEP standard, 45 dBA, was set for heavy duty equipment impacting urban areas, and is entirely too noisy for Cushing's low rural background noise level.

The World Health Organization standard, 30 dBA, was set for large wind farms, and would require properties larger than most lots in Cushing to have enough distance from property lines to achieve adequate sound reduction. (For reference see Division IV.)

2. As most manufacturers are not providing the maximum sound power level of their turbines, it is not possible to predict how far turbine sound must travel to fall to the maximum allowable level. As a consequence, the burden is on an applicant to secure and provide this distance for the proposed turbine.

2. An applicant may request a waiver of a required setback based on a covenant with an abutter that specifies terms satisfactory to the Planning Board. Any waiver of the standard shall be the least reasonable waiver, and shall not contravene the intent of the ordinance as applied to the specific site.

**C. Measurement** Sound level measurements at property lines shall use Method #1 of ANSI Standard S12.18-1994. Meter calibration shall comply with ANSI Standard S1.4.

## **6.0 Enforcement**

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

B. The Code Enforcement Officer shall conduct on-site inspections to insure compliance with all applicable laws, regulations, ordinances and approvals. The Code Enforcement Officer shall also investigate all complaints of alleged violations of this ordinance. If the Code Enforcement Officer shall find that any provision of this ordinance is being violated, he or she shall notify in writing the person responsible for such violation, indicating the nature of the violation and ordering action necessary to correct it, including discontinuance of illegal use of land, work being done, removal of illegal structures, or abatement of nuisance conditions. A copy of such notices shall be submitted to the municipal officers and be maintained as a permanent record. The Code Enforcement Officer shall keep a complete record of all essential transactions of the office.

C. When the above action does not result in the correction or abatement of the violation or nuisance condition, the Municipal Officers, upon notice from the Code Enforcement Officer, may 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, may enter into a consent agreement for the purpose of eliminating violations and recovering fines without Court action. Such agreements shall not allow an illegal structure or use to continue.

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

**7.0 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 of the Town or State, the more restrictive provision shall control.

**8.0 Validity and Severability** Should any section, subsection, clause, phrase or word of this Ordinance be declared by the courts to be invalid, such a decision shall not invalidate any other section or provision of the Ordinance.

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

## **Certificate of adoption**

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

---

Town Clerk

Date

## **Division I: Administration**

### **A. Permits.**

1. The applicant has the burden of proving that the proposed land use activity is in conformity with the requirements of this ordinance.
2. A Planning Board permit shall be required:
  - a. to construct, operate or modify a Wind Energy Facility; and
  - b. to erect a Meteorological Tower, and
  - c. if the structure is within the Shoreland Zone, to satisfy applicable Shoreland Zoning Ordinance provisions.
3. A permit shall expire
  - a. one year from the date of issuance if construction has not begun; or
  - b. with a change of ownership of the Facility; or
  - c. in the event of a failure of the structure.
4. No permit shall be accepted from an applicant in violation of another Cushing permit.

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

### **C. Application processing**

1. The applicant shall consult the Code Enforcement Officer to discuss general requirements and procedures for permitting.
2. Applications shall be submitted to the Town Clerk fourteen (14) calendar days before a regularly scheduled Planning Board meeting on a dated Town form with eight (8) copies of required submittals, and the scheduled fee. Applications shall be signed by an owner or by an authorized agent who can provide evidence of right title and interest in the property.
3. Upon receiving an application for a permit at a regularly scheduled Planning Board meeting, the Planning Board shall issue the applicant a dated receipt; and require the applicant to notify property owners abutting or within 500 feet of the subject property by registered return-receipt-requested mail that an application for a permit has been submitted specifying its location and a general description of the project on a form provided by the Town, and to provide the Board with the receipts; and to notify the review authority of a neighboring municipality if the proposed development abuts or crosses a municipal boundary.
4. Within thirty five (35) days of receipt of an application, the Planning Board shall determine whether the application is complete. If the application is incomplete, the Planning Board shall notify the applicant, in writing, of the specific deficiencies. Until a complete application has been received, the Planning Board shall not begin its review of the application.
5. The Planning Board Chairman may schedule a site visit, which shall be a formal meeting with notice and minutes.
6. The Code Enforcement Officer shall inspect the site and maintain a digital photographic record of site conditions before Board review, during approved work, and after its completion.

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

8. Unless an extension of time has been agreed between the applicant and the Planning Board, the Board shall, within thirty (30) days after the public hearing, either approve, approve with conditions, or deny the application.

a. The Planning Board shall make findings of fact and conclusions relative to the standards contained in this ordinance. If the Planning Board finds that all standards of this ordinance have been met, they shall approve the application. If the Planning Board finds that any of the standards of this ordinance or the ordinances of the Town have not been met, the Planning Board shall either deny the application or approve it with conditions to ensure the standards will be met. The reasons for any conditions shall be stated in the findings of facts and conclusions.

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

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

#### **D. Appeals**

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

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

When the Board of Appeals hears a decision of the Planning Board, it shall hold an appellate hearing, and may reverse the decision of the Planning Board only upon finding

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

## **2. Appeal Procedure**

### **a. Making an Appeal**

1. An administrative appeal may be taken to the Board of Appeals by an aggrieved party from any decision of the Code Enforcement Officer or the Planning Board. Such an appeal shall be taken within thirty (30) days of the date of the official, written decision appealed from, except that if the Planning Board has voted to reconsider its decision, such an appeal shall be taken within thirty (30) days of the date of the subsequent official, written decision appealed from; excepting further that the Board of Appeals, upon a showing of good cause, may extend either time requirement by an additional thirty (30) days.
2. Applications for appeals shall be made by filing a written notice of appeal with the Board of Appeals which includes:
  - i. A concise written statement indicating what relief is requested and why the appeal should be granted.
  - ii. A sketch drawn to scale showing lot lines, location of existing buildings and structures and other physical features of the lot pertinent to the relief sought.
3. Upon receiving an application for an administrative appeal, the Chair of the Board of Appeals shall cause the Code Enforcement Officer or Planning Board, as appropriate, to transmit to the Board of Appeals all of the papers constituting the record of the decision appealed from.
4. The Board of Appeals shall hold a public hearing on an administrative appeal within thirty-five (35) days of its receipt of a complete written application, unless this time period is extended by the parties, and shall issue a written decision on all appeals.

### **b. Decision by Board of Appeals**

1. A majority of the full voting membership of the Board shall constitute a quorum for the purpose of deciding an appeal.
2. The concurring vote of a majority of the members of the Board of Appeals present and voting shall be necessary to reverse an order, requirement, decision or determination of the Code Enforcement Officer or Planning Board, or to decide in favor of the applicant on any matter in which it is required to decide under this Ordinance, or to effect any variation in the application of this Ordinance from its stated terms. The Board may reverse the decision, or failure to act, of the Code Enforcement Officer or Planning Board only upon a finding

that the decision, or failure to act, was clearly contrary to specific provisions of this Ordinance.

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

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

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

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

4. **Reconsideration.** In accordance with 30-A M.R.S.A. Section 2691(3)(F), the Board of Appeals may reconsider any decision within forty-five (45) days of its prior decision. A request to the Board to reconsider a decision must be filed within ten (10) days of the decision that is being reconsidered. A vote to reconsider and the action taken on that reconsideration must occur and be completed within forty-five (45) days of the date of the vote on the original decision. Reconsideration of a decision shall require a positive vote of the majority of the Board members originally voting on the decision, and proper notification to the landowner, petitioner, Planning Board, Code Enforcement Officer, and other parties of interest, including abutters and those who testified at the original hearing(s). The Board may conduct additional hearings and receive additional evidence and testimony.

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

#### **E. Submittal requirements.**

1. Drawings and reports shall be submitted in eight (8) copies.

2. Submittals shall provide required information such as the following:

a. Name, address and contact information of the applicant and owner, and a copy of the property deed and any deed covenants.

b. Tax map showing the location of the property.

c. A plat of the property at a scale of not more than 60 feet to the inch, on 24" x 36" sheets where practical, two (2) on reproducible, stable-based transparent originals, and eight (8) copies, by a Surveyor or Professional Engineer licensed in the State of Maine, showing property lines; location of proposed improvements and required setback distances from road rights-of-way, utility lines and property lines; delineation of any wetlands, resource protection areas, 100-year flood plain or Shoreland Zone lines, and 75', 100' and 250' setbacks associated with any protected waters.

d. A report citing the turbine manufacturer, model, maximum power output and maximum sound power level; and concluding that maximum sound levels at property lines will not exceed required limits.

- e. Construction drawings of a monopole support, and a report identifying the site soils and any soil noted in Division III, signed by a Professional Engineer licensed in the State of Maine.
- f. MHPC report on archaeological/historical features if applicable.
- g. MDIFW report on significant wildlife habitat if applicable.
- h. MDEP report on protected natural areas if applicable.
- i. Removal date of any Meteorological Tower; and provisions to protect birds & bats from any guy wires.
- j. Applicable requirements of any other Town of Cushing Ordinance.
- k. Other items as the Board may require, such as a lighting plan, proposed blasting provisions, or a covenant with an abutter.

## **Division II: Definitions**

**ANSI.** American National Standards Institute.

**CEO.** Code Enforcement Officer.

**Covenant.** A contract between two parties.

**Decibel (dB).** The practical unit of measurement for sound pressure level; abbreviated "dB."

**dB(A).** The abbreviation designating both the unit of measure sound level, the decibel and the mode of measurement that uses the A-weighting of a sound level meter.

**kW.** Kilowatt: 1000 watts.

**MDEP.** Maine Department of Environmental Protection.

**MDIFW.** Maine Department of Inland Fisheries and Wildlife.

**MHPC.** Maine Historical Preservation Commission.

**Maximum sound level.** The maximum sound pressure level measured in decibels with a sound level meter set for A-weighting, "Fast" meter response over a measurement period; expressed in dBA.

**Meteorological Tower (MT).** Tower constructed to collect wind or other meteorological data.

**Property line.** The legal boundary of a parcel of land.

**Sound level meter.** Instrument measuring sound levels that conforms to ANSI type I or type II standards.

**Sound pressure level.** The level of a sound measured in dB units with a sound level meter which has a uniform (flat) response over the band of frequencies measured.

**Wind Energy Facility (WEF).** All equipment, structures, and power lines that together form a system for the production of electrical power using wind as a source of power.

### **Division III: Soils of concern**

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

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

### **Division IV: Reference**

World Health Organization document "Night Noise Guidelines for Europe, 2009", ISBN 9789289041737.