

Town of Vienna
E-911 Addressing Ordinance

Section 1. Purpose

The purpose of this ordinance is to enhance the easy and rapid location of properties by law enforcement, fire rescue, and emergency medical services personnel in the Town of Vienna.

Section 2. Authority

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 20-A M.R.S.A. Section 3001.

Section 3. Administration

This ordinance shall be administered by the Addressing Officer, which is authorized to and shall assign road names and numbers to all properties, both on existing and proposed roads, in accordance with the criteria in Sections 4 and 5. The Addressing Officer shall also be responsible for maintaining the following official records of this ordinance:

- a. A Vienna map for official use showing road names and numbers.
- b. An alphabetical list of all property owners as identified by current assessment records, by last name, showing the assigned numbers.
- c. An alphabetical list of all roads with property owners listed in order of their assigned numbers.
- d. A Road Guide to be used by Lakes Region Mutual Aid, Mt. Vernon Rescue, Winthrop Ambulance, Winthrop Dispatch, and NorthStar Ambulance.

Section 4. Naming System

All roads that serve two or more properties shall be named regardless of whether the ownership is public or private. A "road" refers to any highway, road, street, avenue, lane, private way, or similar paved, gravel, or dirt thoroughfare. "Property" refers to any property on which a more or less permanent structure has been erected or could be placed. A road name assigned by the Addressing Officer shall not constitute or imply acceptance of the road as a public way.

The following criteria shall govern the naming system:

- a. No two roads shall be given the same name (e.g., no Pine Road and Pine Lane).
- b. No two roads should have similar-sounding names (e.g., Beech Street and Peach Street).
- c. Each road shall have the same name throughout its entire length.

Section 4a. Road Signs

No road name signs shall be erected without authorization from the Addressing Officer.

Section 5. Numbering System

Numbers shall be assigned every 100 (one hundred) feet along both sides of the road, with even numbers appearing on the left side of the road and odd numbers appearing on the right side of the road, determined by the number origin.

The following criteria shall govern the numbering system:

- a. All number origins will generally begin to ascend northerly from the southern border and easterly from the western border. For dead end roads, numbering shall originate at the intersection of the adjacent road and terminate at the dead end. The Road Guide will contain any exceptions to this rule.
- b. The number assigned to each structure shall be that of the numbered interval falling closest to the front door or the driveway of said structure if the front door cannot be seen from the main road.
- c. Every structure with more than one principle use or occupancy shall have a separate number for each use or occupancy (i.e., duplexes will have two separate numbers; apartments will have one road number with an apartment number, such as 235 Maple, Street, Apt. 2.)

Section 6. Compliance

All owners of structures shall, by the date stipulated in Section 8, display and maintain in a conspicuous place on said structure, the assigned numbers in the following manner:

- a. Number on the Structure or Residence. Where the residence or structure is within 50 (fifty) feet of the edge of the road right-of-way, and is clearly visible from the road, the assigned number shall be displayed on the front of the residence or structure in the vicinity of the front door or entry.
- b. Number at the Street Line. Where the residence or structure is over 50 (fifty) feet from the edge of the road right-of-way, the assigned number shall be displayed on a post, fence, wall, the mailbox, or on some structure at the property line adjacent to the walk or access drive to the residence or structure.
- c. Size and Color of Number. Numbers shall be displayed in a color and size approved for use by the Addressing Officer and shall be located as to be visible from the road. Numbers shall be a minimum of 3" in height and either be reflective or a contrasting color to the house color.
- d. Every person whose duty it is to display the assigned number shall remove any different number which might be mistaken for, or confused with, the number assigned in conformance with this ordinance.
- e. Interior location. All residents and other occupants are requested to post the assigned number and road name adjacent to their telephone for emergency reference.

Section 7. New Developments and Subdivisions

All new construction and subdivision shall be named and numbered in accordance with the provisions of this ordinance and as follows:

- a. New Construction. Whenever any residence or other structure is constructed or developed, it shall be the duty of the new owner to procure an assigned number from the Addressing Officer. This shall be done when the driveway is visible.
- b. New Subdivisions. Any prospective subdivider shall show a proposed road name and lot numbering system of the pre-application submission to the Planning Board. Approval by the Planning Board, after consultation with the Addressing Officer, shall constitute the assignment of road names and numbers to the lots in the subdivision. On the final plan showing proposed roads, the applicant shall mark on the plan, lines or dots, in the center of the streets every 100 (one hundred) feet so as to aid in assignment of numbers to structures subsequently constructed.

Section 8. Effective Date

This ordinance shall become effective as of September 16, 1996. It shall be the duty of the Addressing Officer to notify by mail each property owner and the Post Office of their new address at least 30 (thirty) days prior to the effective date of its use. It shall be the duty of each property owner to comply with this ordinance, including the posting of new property numbers, within 30 (thirty) days following notification. On new structures, numbering will be installed prior to final inspection or when the structure is first used or occupied, whichever comes first.

Section 9. Enforcement

The provisions of this Ordinance shall be enforced by the Selectmen or their designee.

Section 10. Liability

The Town of Vienna claims no liability for lack of emergency services or delay of emergency services in the event of non-compliance with this ordinance.

First Revision: 10 March 2005 at Town Meeting

**BOARD OF APPEALS
ORDINANCE
FOR THE TOWN OF VIENNA**

Approved at Special Town Meeting on

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SECTION 1: GENERAL PROVISIONS

- A. Business of the Board shall be conducted in accord with Maine Statutes, Town Ordinances, and the procedures adopted by the Board.
- B. It shall be the responsibility of the Board to become familiar with all the duly enacted ordinances of the Town which it may be expected to act upon as well as with the applicable State statutes.
- C. It shall be the responsibility of the Board to become familiar with the community goals, desires and policies as expressed in the Vienna comprehensive Plan, and grant the minimum relief which will insure that the goals and policies of the plan are preserved and substantial justice is done.
- D. The person filing the appeal has the burden of proof.
- E. Application fees shall be set by recommendation of the Board of Appeals and approval of the Vienna Board of Selectmen

SECTION II: APPOINTMENTS

- A. The Board shall consist of five (5) regular members and (2) two alternate-members, appointed by the Selectmen of the Town of Vienna for terms of three (3) years. These terms shall be staggered so as to preserve continuity on the Board and shall expire on June 30th.
- B. Neither a Selectman nor his/her spouse may be a member of the Board.
- C. Any member of the Board may be removed from the Board, for cause, by the Selectmen before expiration of his/her term, but only after notice and an opportunity for a hearing at which time the member in question has an opportunity to refute specific charges against him/her. The term, "for cause" shall include failure to attend three (3) consecutive Board meetings or hearings without prior notification, or failure to attend at least 50% of all meetings during the preceding twelve (12) month period, or voting when the member has a "conflict of interest".

SECTION III: OFFICERS AND DUTIES

- A. The officers of the Board shall consist of a Chairperson, Acting Chairperson and Secretary, who shall be elected annually by a majority of the Board, and shall serve until their successors are elected.
- B. CHAIRPERSON. The Chairperson shall perform all duties required by law and the Bylaws and preside at all meetings of the Board. The Chairperson shall rule on issues of evidence, order and procedure, and shall take such other actions as necessary for the efficient and orderly conduct of hearings, unless directed otherwise by a majority of the Board. The Chairperson shall appoint any committees found necessary to carry out the business of the Board.
- C. ACTING CHAIRPERSON. The Acting Chairperson shall serve in the absence of the Chairperson and shall have all the powers of the Chairperson during the Chairperson's absence, disability or disqualification.
- D. SECRETARY. The Secretary, subject to the direction of the Board, and the Chairperson,

shall keep minutes of all Board proceedings, showing the vote of each member upon every question, or if absent or failing to vote, indicating such a fact. The Chairperson and/or Secretary shall also arrange for proper and legal notice of hearings, attend to correspondence of the Board, and to other duties as are normally carried out by a Secretary. All records are public and may be inspected at reasonable times.

SECTION IV: CONFLICT OF INTEREST

Any question whether a particular issue involves a 'conflict of interest' sufficient to disqualify a member from voting thereon, shall be decided by a majority vote of the members, except the member whose potential conflict is under consideration.

The term 'conflict of interest' shall be construed to mean direct or indirect pecuniary interest, which shall include pecuniary benefit to any member of the person's immediate family (e.g., grandfather, father, wife, son, grandson) or to his employer or the employer of any member of the person's immediate family.

SECTION V: POWERS AND LIMITATIONS

The Board shall have the following powers to be exercised only upon receipt of a written appeal by an aggrieved party:

- A. The Board may interpret the provisions of any applicable Town Ordinance which are called into question.
- B. The Board may approve the issuance of a special exception permit or conditional use permit in strict compliance with any applicable Town Ordinance.
- C. Except as provided in sub-section D below, the Board may grant a variance only where strict application of any applicable Town ordinance, or a provision thereof, to the petitioner and his property would cause undue hardship. The words "undue hardship" as used in this subsection mean:
 - 1. That the land in question cannot yield a reasonable return unless a variance is granted;
 - 2. That the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood.
 - 3. That the granting of a variance will not alter the essential character of the Locality, and
 - 4. The hardship is not a result of action taken by the applicant or prior owner.
- D. Variance
 - 1. Disability Variance

The Board 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. For the purposes of this subsection, a disability has the same meaning as a physical or mental handicap under M.R.S.A 5 § 4553. 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.

2. **Setback Variance**

The Board may grant a setback variance to a property owner of a single family dwelling where the Board finds that strict application of the zoning ordinance would cause "undue hardship" as defined in M.R.S.A 30-A § 4353(4-B):

- a. the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;
- b. the granting of a variance will not alter the essential character of the locality;
- c. the hardship is not the result of action taken by the applicant or a prior owner.
- d. the granting of the variance will not substantially reduce or impair the use of the abutting property; and
- e. that the granting of the variance is based upon demonstrated need, not convenience, and no other feasible alternative is available.

- E. The Board shall have the power to hear and decide, using an appellate review standard, and not using the *de novo* review standard, all appeals by any person directly or indirectly affected by any decision, action or failure to act with respect to any license, permit variance or other required approval, or any application therefore, including, the grant, conditional grant, denial, suspension, or revocation of any such license, permit variance or other approval (hereinafter a "Decision") where it is alleged that there is an error in any order, requirement, decision, or determination made by or failure to act by any Town official. Provided, however, appeals pending at the time of adoption of this Ordinance shall be heard and decided under a *de novo* review standard consistent with the regular administration of appeals under 30-A MRS §2691.

SECTION VI: MEETINGS

1. The regular meeting of the Board shall be held each month if there is business to conduct.
2. The annual organizational meeting of the Board shall be the first regular meeting after this ordinance is adopted at a special town meeting.
3. Special meetings of the Board may be called by the Chairperson. At least forty eight (48) hours written notice of the time, place and business of the meeting shall be given each member of the Board and to the Town Manager.
4. The Chairperson shall call a special meeting within ten (10) days of receipt of a written request from any three members of the Board which request shall specify the matters to be considered at such special meeting.
5. Subject to the discretion of the Chairperson, the order of business at regular

meetings of the Board shall be as follows:

- a. Roll Call
 - b. Reading and approval of the minutes of the preceding meeting c. action on held cases
 - d. public hearing (when scheduled)
 - e. other business
 - f. adjournment
6. All meetings of the Board shall be open to the public, except executive sessions. No votes may be taken by the Board except in public meeting. Deliberations may be conducted in executive session on the following matters and not others (as defined by M.R.S.A I § 405):
- a. consultation between the Board and its legal counsel concerning litigation or other legal matters where premature general public knowledge would clearly place the Town or Board at a substantial disadvantage; and
 - b. discussion or consideration of the appointment, duties, disciplining, resignation or dismissal of a Board member.

SECTION VII: VOTING

1. A majority of the full voting membership of the Board shall constitute a Quorum for the purpose of deciding an appeal.
2. No hearing or meeting of the Board shall be held, nor any action taken, in the absence of a quorum; however, those members present shall be entitled to request the chairperson to call a special meeting for a subsequent date.
3. All matters shall be decided by a roll call vote. Decisions on any matter before the Board shall require the affirmative vote of a majority of the members present and no less than three (3) affirmative votes. In the absence of three (3) affirmative votes, the meeting shall be continued.
4. If a member has a conflict of interest, said member shall not be counted by the Board in establishing the quorum for such matter.
5. No member shall vote on the determination of any matter requiring public hearing unless he/she has attended the public hearing thereon or unless he/she has familiarized him/herself with such matter by studying the record.

SECTION VIII: APPEAL PROCEDURE

1. Any person aggrieved by an action which comes under the jurisdiction of the Board pursuant to Section V of this Ordinance must file such application for appeal in writing on forms provided, within thirty (30) days of the granting or denial of a permit. The applicant shall file this appeal at the office of the Town Clerk, setting forth the ground for his/her appeal. Upon receiving the application for appeal, the Town Clerk shall notify the Chairperson of the Board.
2. The fee to accompany applications for appeal shall be listed on the application. Checks are to be made payable to the Town of Vienna.

SECTION IX: HEARINGS

- A. The Board shall hold a hearing within a responsible time and shall schedule said Public Hearing on all completed appeal applications within forty-five (45) days of the filing of a completed appeal application. The Chairman shall determine completeness.
- B. The Board shall cause notice of the date, time and place of such hearings, the location of the building or lot, and the general nature of the question involved, to be given to the person making the application and to be published once in a newspaper of general circulation in the Town, the date of the publication to be at least ten (10) days prior to the Hearing. The Board shall also cause notice of the hearing to be given to the Town.

The Board shall cause notice of the hearing to be given to the owners of property abutting that for which the appeal is taken at least ten (10) days prior to the date of the Hearing. A copy of each variance request, including the application and all supporting information supplied by the applicant, shall be forwarded by the municipal officials to the Commissioner of the Department of Environmental Protection at least twenty (20) days prior to action by the Board of Appeals if within the standard zone. 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
- C. The Board shall provide as a matter of policy for exclusion of irrelevant, immaterial, or unduly repetitious evidence.
- D. The order of business at a public hearing shall consist of the following rules:
 - 1. The Chairperson calls the Hearing to order.
 - 2. The Chairperson determines whether there is a quorum
 - 3. The Chairperson gives a statement of the case and reads all correspondence and reports received.
 - 4. The Board determines whether it has jurisdiction over the Appeal.
 - 5. The Board decides whether the applicant has "standing" before the Board.
 - 6. The Board determines which individuals attending the Hearing are "interested parties". "Interested parties" are those persons who request to offer testimony and evidence and to participate in oral cross-examination. They would include but are not limited to abutting property owners and those who might be adversely affected by the Board's decision. Parties may be required by the Board to consolidate or join their appearance in part or in whole if their interests or contentions are substantially similar and such consolidation would expedite the Hearing. Municipal officers, the Planning Board and the Code Enforcement Officer shall automatically be made parties to the proceeding.
 - 7. Other persons attending the hearing and Federal, State, Town and other governmental agencies shall be permitted to make oral or written statements and to submit oral and written questions through the Chairperson.
 - 8. The appellant is given the opportunity to present his or her case without interruption.
 - 9. The Board, and "interested parties" may ask questions of the appellant through the Chairperson.

10. The "interested parties" are given the opportunity to present their case. The Board may call its own witnesses, such as the Code Enforcement Officer.
 11. The appellant may ask questions of the "interested parties" and Board witnesses through the Chairperson, or directly, with the permission of the Chairperson.
 12. All parties are given the opportunity to refute or rebut statements made throughout the Hearing.
 13. The chairperson shall receive comments and questions from all observers and interested citizens who wish to express their views.
 14. The hearing is closed after all parties have been heard. If additional time is needed, the Hearing may be continued to a later date. All participants shall be notified of the date, time and place of the continued Hearing.
 15. Written testimony may be accepted by the Board for seven days after the close of the Hearing.
- E. The Board may waive any of the above rules or change the order of business if good cause is shown.

SECTION X. DECISIONS

- A. The Board shall decide all administrative appeals and variance appeals within thirty (30) days from the date of the final Hearing and shall issue a written decision on all appeals.
- B. The final decision on any matter before the Board shall be made by written order signed by the Chairperson. The transcript or tape recording of testimony, if such a transcript or tape recording has been prepared by the Board, and the exhibits, together with all papers and requests filed in the proceedings, shall constitute the public record.
- C. The Board, in reaching said decision, shall be guided by standards specified in the applicable State Laws, Local Ordinances, policies specified in the Comprehensive Plan and by Findings of Fact by the Board in each case.
- D. In reviewing an application on any matter, the standards in any applicable local ordinance or statute shall take precedence over the standards of these rules whenever a conflict occurs. In all other instances, the more restrictive rule shall apply.
- E. When the Board of Appeals reviews a decision of the Code Enforcement Officer, the Board of Appeals shall hold a "de novo" hearing which allows the Board to 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 acting in an appellate capacity, the Board of Appeals may reverse the decision of the Planning Board, or other applicable administrative board, but only upon a finding that the decision was contrary to specific provisions of the Ordinance under review before the Planning Board, or other applicable administrative board, or contrary to the facts presented to the Planning Board, or other applicable administrative board. Alternatively, the Board of Appeals may remand the matter to the Planning Board, or other applicable administrative board for further consideration.
- F. The Board shall cause written notice of its decision to be mailed or hand-delivered to the applicant within seven (7) days of the Board's decision. Any decisions affecting the Shoreland Zone shall be mailed or hand-delivered to the Department of Environmental

Protection within seven (7) days. Copies of written decision of the Board of Appeals shall be given to the Planning Board, Code Enforcement Officer and the municipal officers.

- G. Decisions of the Board shall be filed in the office of the Town Clerk and shall be made public record. The date of filing of each decision shall be entered in the official records and minutes of the Board.
- H. A copy of all variances granted by the Board of Appeals shall be submitted to the Department of Environmental Protection within fourteen (14) days of the decision.
- I. Variances granted must be recorded by certificate in the Kennebec County Registry of Deeds within ninety (90) days of final approval as allowed in M.R.S.A. 30-A §4353. (Variances not recorded within this time shall be invalid.) The certificate must be prepared in recordable form and provided to the applicant. It must indicate the name of the current property owner, identify the property by reference to the last recorded owner, identify the property by reference to the last recorded deed or deeds of ownership in its chain of title, and indicate the fact that a variance including any conditions on the variance, has been granted and the date of the granting.
- J. Unless otherwise specified, any order of decision of the Board for a permitted use shall expire if building permit for the use is not obtained by the applicant within One Hundred Eighty (180) days from the date of the decision; however, the Board may extend this time an additional One Hundred Eighty (180) days upon written request from the appellant within the original One Hundred (180) day period.

SECTION XI. RECONSIDERATION

In accordance with 30-A M.R.S.A. section 2691(3) (F), the Board may reconsider any decision. The Board must decide to reconsider any decision, notify all interested parties and make any change is its original decision within forty five (45) days of the date of the vote on the original 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.

SECTION XII. APPEAL TO SUPERIOR COURT

The decision of the Board of Appeals may be taken, within forty-five (45) days of the date of the vote on the original decision, by any party to Superior Court in accordance with the Maine Rules of Civil Procedure, Rule 80B. This time period may be extended by the court upon motion for good cause shown.

SECTION XIII. SEVERABILITY

The invalidity of any Section or provision of this Ordinance shall not be held to invalidate any other section or provision within the Ordinance.

FLOODPLAIN MANAGEMENT ORDINANCE

FOR THE

TOWN OF VIENNA, MAINE

ENACTED: March 12, 2011

EFFECTIVE: March 12, 2011

CERTIFIED BY: _____
Signature

CERTIFIED BY: _____
Print Name

Town Clerk

Affix Seal

Town of Vienna
FLOODPLAIN MANAGEMENT ORDINANCE
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ARTICLE I - PURPOSE AND ESTABLISHMENT

Certain areas of the Town of Vienna, 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 Vienna, 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 Vienna, 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 Vienna 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 Vienna 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 Vienna, Maine.

The areas of special flood hazard, Zones A and AE for the Town of Vienna, Kennebec County, Maine, identified by the Federal Emergency Management Agency in a report entitled "Flood Insurance Study – Kennebec County" dated June 16, 2011 with accompanying "Flood Insurance Rate Map" dated June 16, 2011 with panels:

85, 90, 95, 105, 110, 115, 120

derived from the county wide digital flood insurance rate map entitled "Digital Flood Insurance Rate Map, Kennebec County," 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 XIII), 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 Planning Board. This permit shall be in addition to any other permits which may be required pursuant to the codes and ordinances of the Town of Vienna, Maine.

ARTICLE III - APPLICATION FOR PERMIT

The application for a Flood Hazard Development Permit shall be submitted to the Planning Board 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.2 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, from data contained in the "Flood Insurance Study – Kennebec 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/July 1995), including information obtained pursuant to Article VI.K. and VIII.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, 03/09, 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 Hydraulic Openings Certificate to verify that engineered hydraulic openings in foundation walls will meet the standards of Article VI.L.2.a.;
 - 3. a certified statement that bridges will meet the standards of Article VI.M.;
 - 4. 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 of \$15 for all minor development and \$25 for all new construction or substantial improvements shall be paid to the Town of Vienna and a copy of a receipt for the same shall accompany the application.

An additional fee may be charged if the Planning Board 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 Planning Board 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 – Kennebec County, Maine," as described in Article I;
 2. in special flood hazard areas where base flood elevation and floodway data are not provided, the Planning Board 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 VIII.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 in the State Planning Office.
- 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 in the State Planning Office 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 an 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, or H. 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.
- 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 IX 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 VII 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 so as 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, shall have the lowest floor (including basement) elevated to at least one foot above the base flood elevation.
 2. 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 VIII.D.
- G. **Non Residential** - New construction or substantial improvement of any non-residential structure located within:
1. Zones AE, 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 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 VIII.D., or
 - a. together with attendant utility and sanitary facilities meet the floodproofing standards of Article VI.G.1.
- H. **Manufactured Homes** - New or substantially improved manufactured homes located within:
1. Zones AE, 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 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 VIII.D.; and
- b. meet the anchoring requirements of Article VI.H.1.c.

I. Recreational Vehicles - Recreational Vehicles located within:

1. Zones A and AE, 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.

J. Accessory Structures - Accessory Structures, as defined in Article XIII, located within Zones A 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. be 500 square feet or less and have a value less than \$3000;

2. have unfinished interiors and not be used for human habitation;
3. have hydraulic openings, as specified in Article VI.L.2., in at least two different walls of the accessory structure;
4. be located outside the floodway;
5. 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,
6. 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 Zones 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 Digital Flood Insurance Rate Map, Kennebec County 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 Chapter 5 entitled "Hydraulic Analyses," *Flood Insurance Study - Guidelines and Specifications for Study Contractors*, (FEMA 37/ January 1995, as amended).
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 AE and A 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 crawlspaces 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 XIII;
 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 AE and A 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 AE and A 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.

O. **Wharves, Piers and Docks** - New construction or substantial improvement of wharves, piers, and docks are permitted in Zones AE and A, 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.

ARTICLE VII - 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 Planning Board subject to the following provisions:

- A. For New Construction or Substantial Improvement of any elevated structure the applicant shall submit to the Planning Board, an Elevation Certificate completed by a Professional Land Surveyor, registered professional engineer, or architect, for compliance with Article VI, paragraphs F, G, or H.
- B. The applicant shall submit written notification to the Planning Board that the development is complete and complies with the provisions of this ordinance.
- C. Within 10 working days, the Planning Board shall:
 - 1. review the Elevation Certificate and the applicant's written notification; and,
 - 2. upon determination that the development conforms with the provisions of this ordinance, shall issue a Certificate of Compliance.

ARTICLE VIII - 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 or 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 so as 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 IX - APPEALS AND VARIANCES

The Board of Appeals of the Town of Vienna 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 it deems 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 IX 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 IX, 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 IX, 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 Planning Board a report of all variance actions, including justification for the granting of the variance and an authorization for the Planning Board 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 X - 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 any other actions, the Code Enforcement Officer, upon determination that a violation exists, may submit a declaration to the Administrator of the Federal Insurance Administration requesting a denial of flood insurance. 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 XI - 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 XII - 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 XIII - 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 - means a small detached structure that is incidental and subordinate to the principal structure.

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

Area of Special Flood Hazard - means the 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 - means the flood having a one percent chance of being equaled or exceeded in any given year, commonly called the 100-year flood.

Basement - means any area of the building having its floor subgrade (below ground level) on all sides.

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 subsection 4451, paragraph 1) and employed by a municipality to enforce all applicable comprehensive planning and land use laws and ordinances.

Development - means any man made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation, drilling operations or storage of equipment or materials.

Elevated Building - means a non-basement building

- a. built, in the case of a building in Zones AE and A, to have the top of the elevated floor elevated above the ground level by means of pilings, columns, post, piers, or "stilts;" and
- b. adequately anchored so as not to 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 AE and A, **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..

Elevation Certificate - An official form (FEMA Form 81-31, 03/09, 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 - means:

- 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 - means an examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations.

Flood Insurance Rate Map (FIRM) - means 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 Flood-prone Area - means any 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 - means 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 - means 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 - mean the lines marking the limits of floodways on federal, state, and local floodplain maps.

Freeboard - means 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, that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions.

Functionally Dependent Use - means a use which 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 - means, 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 - means 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 - means 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 - means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

Mean Sea Level - means, for purposes of 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) - means the national vertical datum, whose standard was established in 1929, which is used by the National Flood Insurance Program (NFIP). NGVD was based upon mean sea level in 1929 and also has been called "1929 Mean Sea Level (MSL)".

New Construction - means 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 - means a vehicle which 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. means 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 Digital 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 - means 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 - means 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 community's Board of Appeals.

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

Violation - means the failure of a structure or development to comply with a community's floodplain management regulations.

ARTICLE XIV - ABROGATION

This ordinance repeals and replaces any municipal ordinance previously enacted to comply with the National Flood Insurance Act of 1968 (P.L. 90-488, as amended).

HAZARDOUS WASTE ORDINANCE FOR VIENNA

Section I - Title

This Ordinance shall be known as the Hazardous Waste Ordinance of the Town of Vienna.

Section II - Storage and Disposal Prohibited

The disposal or storage of hazardous wastes as defined by 38 MRSA § 1301, 1303; 41 D.E.P. 06-096 Chapter 850, and/or the disposal or storage of radioactive waste materials as defined by '38 MRSA, Section 361-D.1.B.' within the boundaries of the Town of Vienna, Maine is prohibited.

Section III - Exceptions

Any request for an exception to this prohibition shall be submitted in writing to the Selectmen and brought to the whole Town of Vienna, acting as the body politic, to be voted on by all bona fide voters present in a Town Meeting.

Section IV - Penalty

Any person to be found in violation of this Ordinance shall be subject to a fine of not more than one thousand dollars (\$1000.00) and not less than two hundred fifty dollars (\$250.00) for each offense. Each day in which a violation occurs shall constitute a separate offense. All fines levied shall be payable to the Town of Vienna.

38 MRSA § 361-D.1.B.

" 'Radioactive waste material' means any solid, liquid or gas residue, including spent fuel assemblies prior to reprocessing, remaining after the primary usefulness of the radioactive material has been exhausted and containing nuclides that spontaneously disintegrate or exhibit ionizing radiations."

Town of Vienna
Mass Gathering Ordinance

1. TITLE

1.1. This ordinance shall be known and cited as the MASS GATHERING ORDINANCE of the Town of Vienna, Maine, and will be referred to as "this Ordinance".

2. AUTHORITY

2.1. This Ordinance is adopted pursuant to the enabling provisions of Article VIII, Part Second, Section 1 of the Maine Constitution and the provisions of Title 30-A, MRSA, Sections 3001 et seq.

3. PURPOSES

3.1. The Town of Vienna finds that unregulated Mass Gatherings present reasonable concerns for health and safety in the community. The purposes of this ordinance are:

- 3.1.1. To promote the health, safety, and general welfare of the residents of the community and attendees of the mass gathering;
- 3.1.2. To assure an adequate supply of potable water for the mass gathering;
- 3.1.3. To assure adequate sanitary facilities and solid waste disposal for the gathering;
- 3.1.4. To assure the availability sufficient trained security and law enforcement for the gathering;
- 3.1.5. To promote traffic safety and prevent obstruction and damage to public or private ways;
- 3.1.6. To prevent damage to public or private property;
- 3.1.7. To provide safety from fire and other elements;
- 3.1.8. To assure adequate emergency and medical coverage.

4. APPLICABILITY

4.1. The provisions of this ordinance shall govern all mass gatherings, as defined, within the boundaries of the Town of Vienna.

5. CONFLICTS WITH OTHER ORDINANCES

5.1. Whenever a provision of this Ordinance conflicts with or is inconsistent with another Ordinance, regulation or statute, the more restrictive provision shall control.

6. VALIDITY AND SEVERABILITY

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

7. EFFECTIVE DATE

7.1. 1. The effective date of this Ordinance shall be the date of the adoption by the legislative body on March 14, 1998.

8. AMENDMENTS

8.1. 1. This Ordinance may be amended by the majority vote of the Legislative body.

9. DEFINITIONS

9.1. Phrases used in this Ordinance shall be given their customary dictionary meaning and be viewed in such a way as 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; "must" is mandatory and not discretionary.

9.1.1. **Administrative Authority** - Any of the following Town officials or Boards as designated to administer specific Sections of this Ordinance:

1. The Code Enforcement Officer
2. The Vienna Planning Board

3. The Municipal Officers (Board of Selectmen)
4. The Vienna Board of Appeals
5. The Licensed Local Plumbing Inspector

9.1.2. Mass Gathering Area - means any place maintained, operated, or used for a group gathering or assemblage, except an established permanent stadium, athletic field, arena, auditorium, coliseum, fair ground, or other similar permanent place of assembly that has sufficient existing sanitary facilities to handle the expected gathering.

9.1.3. Mass Gathering - means a group of one thousand (1000) or more persons assembled together, for any purpose, for seven (7) or more continuous or intermittent hours during any 72 hour time period. Gatherings held in an established and permitted permanent stadium, athletic field, arena, auditorium, coliseum, fair ground, or other similar permanent place of assembly that has sufficient existing facilities to handle the expected gathering are not considered Mass Gatherings.

9.1.4. Municipal Officers - means the Board of Selectmen of the Town of Vienna and its authorized representatives.

9.1.5. Nuisance - The following shall be defined as nuisances:

- (a) Any public nuisance known at common law or in equity jurisprudence; and,
- (b) An attractive nuisance known at common law or in equity jurisprudence; and
- (c) Any condition that violates federal, state, or local health or environmental laws or regulations.

9.1.6. Operator - means the person responsible for managing the mass gathering area. In the event that no operator exists, the owner or, in the event that the owner is unavailable, the lessee of the mass gathering area, shall be deemed to be the operator. In cases where there is more than one owner/lessee, the owners/lessees will be considered joint operators for the purposes of this ordinance.

9.1.7. Refuse - means all combustible or non-combustible putrescible or non-putrescible solid or liquid wastes.

9.1.8. Sanitary Facilities - means toilets, privies, lavatories, and urinals. Sanitary facilities also include: drinking fountains or potable water spigots; any buildings or rooms, portable or in fixed locations, provided for the installation and use of these units.

9.1.9. **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. The term includes structures temporarily or permanently located, such as decks and satellite dishes.

10. PERMITS REQUIRED

10.1. No person shall sponsor, promote, sell tickets to, permit on his property, or otherwise conduct, a mass gathering, as defined, until a permit therefore has been obtained from the municipal officers.

10.2. The municipal officers must issue a permit for a mass gathering unless it finds the standards set forth in this ordinance are not met. When considering the issuance of a permit the municipal officers must solicit comments from the Fire Chief, Code Enforcement Officer, Local Plumbing Inspector, Health Officer, and law enforcement agencies with jurisdiction. The municipal officers may also seek the advice and comment of the Maine Department of Human Services, Bureau of Health and any other officials or persons as it deems necessary.

11. APPLICATION

11.1. Procedure:

11.1.1. A complete application must be submitted to the municipal officers at least thirty (30) days prior to each mass gathering. Such application must be accompanied by a non-refundable permit fee of \$100.00. The applicant must also pay the reasonable costs of any professional review required.

11.1.2. The application must contain the information required in § 11.2 below.

11.1.3. The municipal officers must review the application and make a written finding that the application is:

a.) Complete

b.) Is incomplete. When an application is found incomplete the municipal officers must, within seven days, serve written notice to the applicant stating what is required to make the application complete.

11.1.4. Within twenty one (21) days of finding a complete application has been submitted the municipal officers must:

a.) Issue a permit to the operator. Reasonable conditions consistent with the requirements of this ordinance may be required.

b.) Deny a permit to the operator, which denial must be in writing and must set forth with specificity the reasons for such denial, together with a list of steps which, if followed by the operator, would result in a permit being issued.

11.1.5. Appeal. A party aggrieved by the decision of the municipal officers may appeal to the Superior Court under Rule 80B of the Maine Rules of Civil Procedure.

11.1.6. Bond & Insurance & Deposit:

11.1.6.1. Concurrently with the issuance of a permit, the operator must furnish the Town a bond of a surety company qualified to do business in this State in such an amount as the municipal officers shall reasonably determine, but in no case shall the amount be less than \$7,500. Cash or negotiable securities of equivalent value may be furnished in lieu of a bond. The bond or security must guarantee compliance by the operator with the provisions of this ordinance. The bond shall be written to ensure compliance with the requirements of this ordinance and to assure compensation of damage to property, whether public or private. The bond guarantees cleanup of the mass gathering area by the operator and compliance by the operator with any applicable state or local law or regulation. The bond is for the benefit of anyone who is injured or damaged as a result of the activity of the mass gathering. Anyone claiming against the bond may bring an action in the Kennebec County Superior Court within one year of the occurrence of the damage of which the complaint was made. In furnishing such a bond, the operator is deemed to have appointed the surety company as agent for the service of process upon the operator or, if cash or securities are supplied in lieu of a bond, the applicant must appoint, in writing, an agent for the service of process, irrevocably, for the term within which the action may be brought before any permit is issued.

11.1.6.2. The operator must furnish a certificate of liability insurance issued by an insurance company, currently licensed to do business in Maine, at a minimum of the following amounts: \$300,000.00 Bodily Injury (per person); \$500,000.00 Bodily Injury (per occurrence); and \$100,000 property damages. The insurance policy must provide at least 10 days notice to the Town prior to cancellation.

11.1.6.3. The operator must provide a cash deposit to the Town to cover the anticipated and reasonable costs of police, fire, medical, and/or other services provided by the Town. Such costs must be those costs incurred by the Town in connection with the contemplated mass gathering and which would not be incurred by the Town if the mass gathering was not held. These costs must be calculated based upon the anticipated attendance and estimates solicited from the service providers involved at their customary costs including, but not limited to, any overtime pay required. Within thirty (30) days after the conclusion of the mass gathering the Town must calculate its actual costs and any overpayment must be refunded to the operator. If the actual costs exceed the amount deposited, the operator, upon receipt of a itemized statement from the Town must pay the excess within ten (10) days.

11.2. Content of Application: The written application must contain the following information presented in the order in which they appear below.

11.2.1. The operator's full name, address and telephone number;

11.2.2. Proof of Standing: If the operator is not the owner he/she must furnish one of the following:

11.2.2.1. Written notarized authorization from the property owner acknowledging the owner's understanding of the scope of the proposed mass gathering; or,

11.2.2.2. An original notarized copy of a lease or contract for use of the property stating the intent to hold a mass gathering; or,

11.2.2.3. A current notarized copy of a purchase and sales agreement between the operator and the property owner stating the intent to hold a mass gathering.

11.2.3. A description of the proposed event including:

11.2.3.1. Dates and times for the mass gathering;

11.2.4. A statement of the maximum number of persons the operator will allow to attend the mass gathering and the plan the operator intends to use to limit attendance to that number. The operator must provide provisions for preventing the number of people in excess of the maximum permitted number from gaining access to the mass gathering area;

11.2.5. A statement from fire and police authorities having jurisdiction over the area of the proposed mass gathering acknowledging that adequate security, traffic control, and law enforcement, either public or private, is available for the event;

11.2.6. The specific details (include schedules for cleaning and maintenance and shifts for security personnel), including certified copies of contracts entered into, of provisions for:

11.2.6.1. Food & drink;

11.2.6.2. Sanitary facilities;

11.2.6.3. Transportation and parking facilities;

11.2.6.4. Security and protection of surrounding property;

11.2.6.5. On-site medical staff and facilities;

11.2.6.6. Janitorial services and post gathering waste removal;

11.2.6.7. The bond or evidence of cash or negotiable securities (see § 11.1.6,1);

11.2.7. A plan of the proposed site of the mass gathering area that includes:

11.2.7.1. The location of all proposed toilets, lavatories, and water supply sources (both potable and non-potable sources must be identified)

11.2.7.2. The location of food service areas, first aid facilities, refuse disposal facilities and all security and traffic control personnel;

11.2.7.3. The location and intensity of all illumination;

11.2.7.4. The location and size of all entrances and exits to public highways or roads;

11.2.7.5. The location and size of all ingress and egress roads in and around the mass gathering area;

11.2.7.6. The location and size of all camping areas; and,

11.2.7.7. The location and size of all parking areas;

11.2.8. A copy of the mass gathering area as shown on a USGS topographic map;

11.2.9. A list of all equipment or items capable of generating a noise level greater than 50 dB A at the property line;

11.2.10. Certified copies of all other required state or local permits or licenses including, but not limited to, wastewater disposal, plumbing, mass gathering and alcoholic beverage control;

11.2.11. Examples of and the method(s) of proposed advertising of the event.

11.2.12. The above required submissions must conform to the performance standards in Section 12 of this ordinance.

12. PERFORMANCE STANDARDS

12.1. Mass gathering area:

12.1.1. **Mass Gathering Area:** Each mass gathering area must be well drained and arranged to provide sufficient space for persons assembled, vehicles, sanitary facilities and appurtenant equipment. Trees, underbrush, and other natural features must be left intact and undisturbed whenever possible, and that natural vegetative cover will be retained, protected and maintained so as to facilitate drainage, and prevent erosion. There must be a minimum of 20 square feet per person at the site for daytime assemblage and at least 40 square feet per person for overnight assemblage.

12.1.2. Water Supply:

12.1.2.1. Where water is distributed under pressure for drinking, washing, flushing toilets, and/or showers, the water supply system must deliver water at a minimum of 20 lbs/square inch at a rate of 30 gallons per hour.

12.1.2.2. Where water is not available under pressure, and non-water carriage toilets are used, at least 3 gallons of water per person per day must be provided for drinking and washing purposes.

12.1.2.3. Evidence of potability of the water source(s) must be presented.

12.1.3. Sanitary Facilities:

12.1.3.1. Toilets and/or portable toilets must be provided at a rate of one (1) for every 150 persons;

12.1.3.2. Sanitary facilities must be conveniently located and well defined;

12.1.3.3. Each toilet must be supplied with a continuous supply of toilet paper;

12.1.3.4. Service structures or rooms housing plumbing fixtures must be constructed of easily cleanable, nonabsorbent materials;

12.1.3.5. Each toilet room must be provided with a self closing door to provide privacy;

- 12.1.3.6. Portable toilets must be pumped and cleaned, on a regular schedule, before reaching capacity;
- 12.1.3.7. Wastewater must be discharged in a manner consistent with requirements of the Maine Department of Human Services, Division of Health Engineering;
- 12.1.3.8. That disposal and/or treatment of any excretion or liquid waste must be discharged in a manner consistent with requirements of the Maine Department of Human Services, Division of Health Engineering or The Maine Department of Environmental Protection;
- 12.1.3.1. Insects, rodents and other vermin must be controlled by proper sanitary practices, extermination, or other safe and effective control methods, and where necessary, animal parasites and other disease-transmitting nuisances must be controlled.

12.1.4. Refuse Disposal:

- 12.1.4.1. Refuse will be collected, stored, and transported in such a manner as to protect against odor, infestation of insects and/or rodents and any other nuisance condition, or conditions which are inconsistent with health, safety, and welfare of the patrons/attendees of the mass gathering or the public;
- 12.1.4.2. Refuse containers must be readily accessible and that one(1) fifty (50) gallon refuse container or its equivalent must be provided for each one hundred (100) persons anticipated to attend;
- 12.1.4.3. Motor vehicle parking areas must have at least one(1) fifty gallon refuse container for every twenty five (25) parking spaces.
- 12.1.4.4. All refuse must be collected from the mass gathering site at least once each twelve hour (12) period.
- 12.1.4.5. The mass gathering area and immediate surrounding property must be cleared of refuse within twenty four (24) hours following the mass gathering.

12.1.5. Roads and Parking:

- 12.1.5.1. Width of service roads must be at least twelve (12) feet for one traffic lane, 24 feet for two traffic lanes, and 7 feet for parallel parking lanes.
- 12.1.5.2. There must be at least one parking space for every four persons anticipated and the density must not exceed one hundred passenger cars or thirty buses per usable acre.
- 12.1.5.3. The proposed mass gathering area must provide for safe access to and from public and private roads. Safe access must be assured by providing an adequate number and location of access points, with respect to sight-distances and intersections. All entrance and exit driveways must be designed according to the following

standards of safe sight-distance:

<u>Speed Limit</u>	<u>Sight Distances</u>	
	<u>Recommended</u>	<u>Minimum</u>
25 mph	250'	175'
30 mph	300'	210'
35 mph	350'	245'
40 mph	400'	280'
45 mph	450'	315'
50 mph	500'	350'
55 mph	550'	385'

12.1.6. Security:

12.1.6.1. Only certified law enforcement personnel or contract security companies licensed in accordance with Title 32 MRSA § 9401 et seq. must provide security services.

12.1.6.2. A minimum of one security person, exclusive of traffic control, must be available for each five hundred anticipated persons attending the mass gathering.

12.1.7. Medical Staff and Facilities:

12.1.7.1. A first aid building or tent, with adequate medical supplies must be available;

12.1.7.2. Emergency medical services must be provided by licensed staff (RN's, EMT's, PA's or other license deemed acceptable by the municipal officers) under the overall supervision of a licensed physician. The licensed physician need not be present but must have a reliable method of communication established;

12.1.7.3. Arrangements for adequate ambulance service by a designated provider must be established for the mass gathering with a provider currently licensed by the State of Maine;

12.1.7.4. Telephone and radio communications must be provided and kept available for emergency purposes;

12.1.7.5. The mass gathering operator must notify area hospitals of the mass gathering and the anticipated attendance;

12.1.7.6. The number of E.M.T. personnel and adequacy of ambulance availability must be determined by the director of the Rescue/First Responder organization currently serving the Town.

12.1.8. Sound

12.1.8.1. The noise levels at the perimeter of the mass gathering area must not exceed 70 dB-A during the hours from 9 a.m until 10 p.m.;

12.1.8.2. The noise levels at the perimeter of the mass gathering area must not exceed 30 dB-A during the hours from 10 p.m. until 9 a.m..

12.1.9. Alcoholic Beverages

12.1.9.1. The sale, consumption or possession of liquor must be governed by the provisions of Title 28-A M.R.S.A..

12.1.10. Illegality

12.1.10.1. The occurrence of, or failure to prevent any illegality may be grounds for rejecting or revoking the mass gathering permit.

13. ADMINISTRATION

13.1. This Ordinance shall be administered by the municipal officers with the advice and consent of the:

Code Enforcement Officer
Licensed Plumbing Inspector
Planning Board
Fire Chief
Health Officer
Law Enforcement Agencies with Jurisdiction

14. ENFORCEMENT

14.1. This ordinance may be enforced by the municipal officers or their designee, the code enforcement officer, and/or any cooperating law enforcement agency.

14.2. Violation of any section of this Ordinance shall be deemed to be a nuisance and shall be grounds for rejecting or revoking a permit.

14.3. Legal Action

14.3.1. When notification of a violation does not result in the prompt correction or abatement of the violation or nuisance condition, the Municipal Officers 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. Violation of any condition, restriction or limitation inserted in a permit by the municipal officers is cause for revocation of that permit by the municipal officers. The revocation process shall require reasonable notice of the violation to the

owner/operator of a hearing.

- 14.3.2. 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 must not allow any illegality or violation of this Ordinance to continue unless there is clear and convincing evidence that the illegality was conducted as a direct result of erroneous advice given by an authorized municipal official and there is no evidence that the owner or mass gathering operator acted in bad faith.

15. PENALTIES

- 15.1. Any person, including but not limited to the owner and/or operator who is found guilty of ordering or conducting any activity in violation of this Ordinance shall be penalized by a fine of not less than \$500 nor more than \$2500 to be recovered, on complaint, to the use of the Town of Vienna. Each days violation shall constitute a separate offense. In addition the Town may seek an injunction, when necessary, to prevent the applicant from promoting, publicizing or conducting the event if a permit has not been issued.
- 15.2. If the Town is the prevailing party in any action brought to enforce this Ordinance, the Town must be awarded it's reasonable costs, including attorneys fees, of bringing such action.

Town of Vienna

No Parking Ordinance

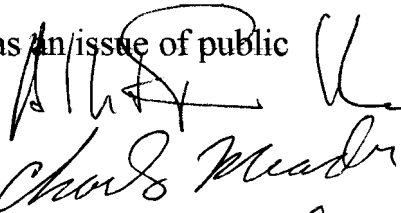
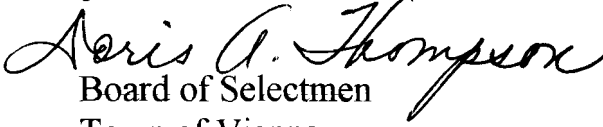
Parking will not be permitted on the sides of town roads during snowstorms.

Parkers interfere with the work of snowplows and delay the clearing of Town roads for commutation and emergency vehicles.

A snowstorm, for the purpose of this ordinance, is defined as a storm on which a Town of Vienna snowplow is dispatched to clear roads.

Cars found in violation of this ordinance may be towed at the expense of the vehicle's owner.

Roads must be kept clear during snowstorms as an issue of public safety.


Chris Meador

Aeris A. Thompson
Board of Selectmen
Town of Vienna

Amended: The prohibition of parking during snow storms on the sides of town roads is amended to include a prohibition of parking in snow plow turn-arounds and school bus turn-arounds during snow storms.

Adopted January 15, 2002

Town of Vienna Parking Ordinance

Authority: This Parking Ordinance is adopted pursuant to 30-A M.R.S.A. 3009.

Purpose: This ordinance is designed to protect public health, safety, and welfare by regulating the parking of motor vehicles at certain times on certain public ways. Unrestricted parking on public ways can create traffic hazards, may be dangerous to pedestrians and motorists, or prevent access for emergency vehicles; it is the purpose of this ordinance to reduce these dangers.

Definitions:

“Public Way” means any town way or public easement as defined in 23 M.R.S.A. 3021, and any portion of any State or State-Aid Highway located within the town. This term includes ways commonly designated as streets, lanes, roads, and avenues, and it includes the paved or unpaved shoulders of such ways.

“Motor Vehicle” is any vehicle as defined in 29 M.R.S.A. 1.

Any other term used in this ordinance shall have its common, ordinary meaning, unless otherwise indicated.

Regulated Areas:

When signs are erected or posted giving notice, no person shall park any motor vehicle on the following public ways or specified portions thereof.

Regulated Times:

When signs are erected or posted giving notice, no person shall park any motor vehicle in the above designated public ways, or portions thereof between the dates and/or times of:

Exceptions: This ordinance does not apply to motor vehicles parked in prohibited areas for the following reasons:

- Mechanical problems or breakdown
- Emergencies
- Maintenance, construction, repair or installation of utilities
- State or Municipal agencies in the performance of their duties

Town of Vienna

Penalties: Any person found in violation of this ordinance by a Court of competent jurisdiction shall be subject to a fine of not more than \$100.00, nor less than \$25.00. All fines accrue to the Town of Vienna.

Persons charged with violating this ordinance may waive court action by the payment of a fee of \$15.00 within 7 days after receiving notice of this violation. All such waivers and payments of fees shall be made through the clerk of the Town of Vienna.

Towing of Vehicles:

Any motor vehicle parked upon a public way of the Town of Vienna in a place, manner, or for a length of time prohibited by this Ordinance, or during any Parking Ban declared by the Town Officers/ Road Commissioner/ Town Constables (provided that such notice has been given by a posting 24 hours prior to the Parking Ban, or 4 hours prior to the Ban by the notification to a radio station serving the area) is hereby declared to be an obstruction in the public way and a hazard to the traveling public.

Any motor vehicle parked which constitutes an obstruction in the public way as defined above may be towed to a suitable garage or storage space under the direction of the Town Officers/ Road Commissioner/ Town Constables, and impounded thereon until all towing and storage fees are paid.

When any motor vehicle is towed pursuant to this Ordinance, the following procedure shall be followed:

Notice shall be sent to the registered owner of the vehicle by regular 1st class mail, postage prepaid, within 48 hours following the tow.

The notice shall contain the following information: registration number and brief description of the vehicle, name and address of person or company who performed the tow, location where the vehicle is stored, provision of the Ordinance which was violated, and towing fee and storage fees.

Enforcement: This Ordinance shall be enforced by the Officers of the Town of Vienna, or their duly appointed designees. Violations of this Ordinance shall be traffic infractions and shall be prosecuted, if necessary, in the appropriate District Court.

Severability: In the event that any portion of this ordinance is found by a court to be invalid, the remaining portions shall remain in full force and effect.

Effective Date:

This Ordinance shall become effective as adopted by a majority of the Vienna Town Officers on September 2, 1997.

Town of Vienna

Parking Restrictions

Parking will be permanently banned, so cars parked in violation of this ban may be towed, on the following areas of Roads in the Town of Vienna:

Kimball Pond Road on the South side from the first Fire Hydrant off Route 41 to the Kelley Camp on the shore of the Grist Mill Pond.

Tower Road on the West side between signs at the Parker Pond Boat Launch and Fire Hydrant.

Vienna Mountain Road between signs in front of the Union Hall.

This permanent parking ban will be in effect from 6:30 PM on Tuesday, August 17, 1999.

Board of Selectmen

Alfred L. Hall
Charles M. Mader
Korin A. Thompson

VIENNA ROAD ORDINANCE

Proposed August 30, 1990

VIENNA ROAD ORDINANCE

The Municipal Officers shall be prohibited from laying out a road for Town Meeting acceptance, pursuant to Chapter 303 of Title 23 MRSA, unless the road meets the following specifications:

1. A right-of-way four (4) rods in width [67'] shall be deeded to the inhabitants of the town of Vienna; except that a three (3) rod [50'] right-of-way shall be sufficient when, in the opinion of the Board of Selectmen, it is unlikely that a 4 rod right-of-way will ever be needed.
2. The road shall have at least an 18 foot wide travelled way with 3 foot shoulders on both sides.
3. The area under the travelled way shall be stripped of all loam and top soil prior to placing a minimum of sixteen inches (16") of base gravel and six inches (6") of finished gravel which shall conform to State of Maine specifications. Where the substrate is poorly drained the Board of Selectmen may require a layer of appropriate engineering fabric be installed to separate the substrate from the road gravel.
4. Ditches and culverts adequate to handle normal peak runoff shall be installed in accordance with the attached diagram. All culverts shall be approved in accordance with the Town of Vienna's Culvert ordinance.
5. Trees and brush must be cut to ground level to a distance of twenty-five feet (25') from road center on both sides. Stumps, protruding rocks and other obstructions shall be removed.
6. Easements in addition to that described in item No. 1 shall be granted to the Town by property owners adjoining the right-of-way as are required by the Board of Selectmen for proper drainage and slope.
7. Before construction of a new road, or the reconstruction of an existing road an engineer's plan showing the specifications to which the road will be built, shall be submitted to the Board of Selectmen for approval. This requirement may be waived by the municipal officers, for an existing road, when the required construction can be adequately described without such an engineer's plan.
8. The Board of Selectmen shall be notified of, and given opportunity to inspect, each stage of construction or reconstruction. The stages for inspection shall be: 1. Rough grade, 2. Base gravel and 3. Finish gravel & ditch stabilization.

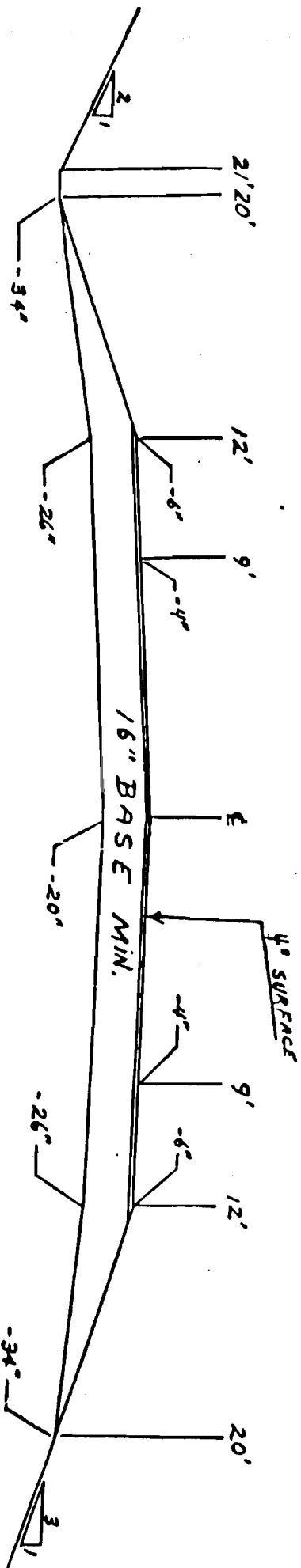
9. An adequate radius, as determined by the municipal officers, shall be provided at the junction of the new road and any existing public road.

10. The banks and ditches shall be seeded & stabilized (to prevent erosion) in accordance with the S.C.S. Environmental Quality Control Handbook.

11. Street name signs and traffic signs that conform to other such signs in Town shall be purchased and installed if such signs are deemed necessary by the Town officials

12. The street or road shall be paved with a material, and in accordance with such specifications prescribed by the Selectmen, except that the Board of Selectmen may, upon recommendation of the Road Commissioner, and/or Road Committee, allow a new street or road to be left as a gravel surface, when it appears to be in the best interest of the Town. If the proposed street or road is to be considered for a gravel surface, then factors such as the potential volume, type of traffic, design speed, grades and the anticipated cost of maintenance shall be considered.

13. The design specifications in the attached diagram must be met. These specifications are to be considered minimum requirements and as such may be increased by the municipal officers when the particular conditions of the street or road so warrant.



18' TAR

SHORELAND ZONING ORDINANCE FOR THE TOWN OF VIENNA, MAINE

Revised March 9, 2019

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Certified by:

Town Clerk

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SHORELAND ZONING ORDINANCE FOR THE TOWN OF VIENNA, MAINE
Revised March 9, 2019

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 freshwater wetlands; to control building sites, placement of structures and land uses; to conserve shore cover, and visual as well as actual points of access to inland 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,
 - upland edge of a freshwater wetland, or
 - McGurdy Stream

and all land areas within 75 feet, horizontal distance, of the normal high-water line of other streams.

4. Effective Date

A. Effective Date of Ordinance and Ordinance Amendments. This ordinance revision, which was adopted by the municipal legislative body on March 9, 2019, amends the ordinance last amended on March 10, 2018. All unrevised portions of that previously amended ordinance remain in full force and effect. This ordinance amendment shall not be effective unless approved by the Commissioner of the Department of Environmental Protection. A certified copy of this Ordinance Amendment, attested and signed by the Municipal Clerk, shall be forwarded to the Commissioner for approval. If the Commissioner fails to act on this Ordinance Amendment, within forty-five (45) days of his/her receipt of this Ordinance Amendment, it shall be automatically approved.

Any application for a permit submitted to the municipality within the forty-five (45) day period shall be governed by the terms of this Ordinance Amendment, if this Ordinance Amendment is approved by the Commissioner.

B. Repeal of Municipal Timber Harvesting Regulation. The municipal regulation of timber harvesting activities is repealed on the statutory date established under 38 M.R.S.A. section 438-B(5), at which time the State of Maine Department of Conservation's Bureau of Forestry shall administer timber harvesting standards in the shoreland zone. On the date established under 38 M.R.S.A section 438-B(5), the following provisions of this Ordinance are repealed:

- Section 14. Table of Land Uses, Column 3 (Forest management activities except for timber harvesting) and Column 4 (Timber harvesting);
- Section 15(O) in its entirety; and
- Section 17. Definitions, the definitions of "forest management activities", "slash" and "residual basal area".

5. **Availability.** A certified copy of this Ordinance shall be filed with the Municipal Clerk and shall be accessible to any member of the public. Copies shall be made available to the public at reasonable cost at the expense of the person making the request. Notice of availability of this Ordinance shall be posted.
6. **Severability.** Should any section or provision of this Ordinance be declared by the courts to be invalid, such decision shall not invalidate any other section or provision of the Ordinance.
7. **Conflicts with Other Ordinances.** Whenever a provision of this Ordinance conflicts with or is inconsistent with another provision of this Ordinance or of any other ordinance, regulation or statute administered by the municipality, the more restrictive provision shall control.
8. **Amendments.** This Ordinance may be amended by majority vote of the legislative body. Copies of amendments, attested and signed by the Municipal Clerk, shall be submitted to the Commissioner of the Department of Environmental Protection following adoption by the municipal legislative body and shall not be effective unless approved by the Commissioner. If the Commissioner fails to act on any amendment within forty-five (45) days of his/her receipt of the amendment, the amendment is automatically approved. Any application for a permit submitted to the municipality within the forty-five (45) day period shall be governed by the terms of the amendment, if such amendment is approved by the Commissioner.
9. **Districts and Zoning Map**
 - A. **Official Shoreland Zoning Map.** The areas to which this Ordinance is applicable are hereby divided into the following districts as shown on the Official Shoreland Zoning Map(s) which is (are) made a part of this Ordinance:
 - (1) Resource Protection
 - (2) Limited Residential
 - (3) Stream Protection
 - B. **Scale of Map.** The Official Shoreland Zoning Map shall be drawn at a scale of not less than: 1 inch = 2000 feet. District boundaries shall be clearly delineated and a legend indicating the symbols for each district shall be placed on the map.
 - C. **Certification of Official Shoreland Zoning Map.** The Official Shoreland Zoning Map shall be certified by the attested signature of the Municipal Clerk and shall be located in the municipal office. In the event the municipality does not have a municipal office, the Municipal Clerk shall be the custodian of the map.
 - D. **Changes to the Official Shoreland Zoning Map.** If amendments, in accordance with Section 8, are made in the district boundaries or other matter portrayed on the Official Shoreland Zoning Map, such changes shall be made on the Official Shoreland Zoning Map within thirty (30) days after the amendment has been approved by the Commissioner of the Department of Environmental Protection.

10. Interpretation of District Boundaries. Unless otherwise set forth on the Official Shoreland Zoning Map, district boundary lines are property lines, the centerlines of streets, roads and rights of way, and the boundaries of the shoreland area as defined herein. Where uncertainty exists as to the exact location of district boundary lines, the Board of Appeals shall be the final authority as to location.

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

12. Non-conformance.

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

B. General

- (1) **Transfer of Ownership.** Non-conforming structures, lots, and uses may be transferred, and the new owner may continue the non-conforming use or continue to use the non-conforming structure or lot, subject to the provisions of this Ordinance.
- (2) **Repair and Maintenance.** This Ordinance allows, without a permit, the normal upkeep and maintenance of non-conforming uses and structures including repairs or renovations that do not involve expansion of the non-conforming use or structure, and such other changes in a non-conforming use or structure as federal, state, or local building and safety codes may require.

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

C. Non-conforming Structures

- (1) **Expansions.** All new principal and accessory structures, excluding functionally water-dependent uses, must meet the water body, tributary stream, or wetland setback requirements contained in Section 15(B)(1). A non-conforming structure may be added to or expanded after obtaining a permit from the same permitting authority as that for a new structure, if such addition or expansion does not increase the non-conformity of the structure and is in accordance with subparagraphs (a) and (b) below.
 - (a) Expansion of any portion of a structure within 25 feet of the normal high-water line of a water body, tributary stream, or upland edge of a wetland is prohibited, even if the expansion will not increase nonconformity with the water body,

tributary stream or wetland setback requirement. Expansion of an accessory structure that is located closer to the normal high-water line of a water body, tributary stream, or upland edge of a wetland than the principal structure is prohibited, even if the expansion will not increase nonconformity with the water body, tributary stream, or wetland setback requirement.

(b) Notwithstanding paragraph (a), above, if a legally existing nonconforming principal structure is entirely located less than 25 feet from the normal high-water line of a water body, tributary stream, or upland edge of a wetland, that structure may be expanded as follows, as long as all other applicable municipal land use standards are met and the expansion is not prohibited by Section 12(C)(1).

(i) The maximum total footprint for the principal structure may not be expanded to a size greater than 800 square feet or 30% larger than the footprint that existed on January 1, 1989, whichever is greater. The maximum height of the principal structure may not be made greater than 15 feet or the height of the existing structure, whichever is greater.

(c) All other legally existing nonconforming principal and accessory structures that do not meet the water body, tributary stream, or wetland setback requirements may be expanded or altered as follows, as long as other applicable municipal land use standards are met and the expansion is not prohibited by Section 12(C)(1) or Section 12(C)(1)(a), above.

(i) For structures located less than 75 feet from the normal high-water line of a water body, tributary stream, or upland edge of a wetland, the maximum combined total footprint for all structures may not be expanded to a size greater than 1,000 square feet or 30% larger than the footprint that existed on January 1, 1989, whichever is greater. The maximum height of any structure may not be made greater than 20 feet or the height of the existing structure, whichever is greater.

(ii) For structures located less than 100 feet from the normal high-water line of a great pond classified as GPA or a river flowing to a great pond classified as GPA, the maximum combined total footprint for all structures may not be expanded to a size greater than 1,500 square feet or 30% larger than the footprint that existed on January 1, 1989, whichever is greater. The maximum height of any structure may not be made greater than 25 feet or the height of the existing structure, whichever is greater. Any portion of those structures located less than 75 feet from the normal high-water line of a water body, tributary stream, or upland edge of a wetland must meet the footprint and height limits in Section 12(C)(1)(b)(i) and Section 12(C)(1)(c)(i), above.

(iii) In addition to the limitations in subparagraphs (i) and (ii), for structures that are legally nonconforming due to their location within the Resource Protection

District when located at less than 250 feet from the normal high-water line of a water body or the upland edge of a wetland, the maximum combined total footprint for all structures may not be expanded to a size greater than 1,500 square feet or 30% larger than the footprint that existed at the time the Resource Protection District was established on the lot, whichever is greater. The maximum height of any structure may not be made greater than 25 feet or the height of the existing structure, whichever is greater, except that any portion of those structures located less than 75 feet from the normal high-water line of a water body, tributary stream, or upland edge of a wetland must meet the footprint and height limits in Section 12(C)(1)(b)(i) and Section 12(C)(1)(c)(i), above.

- (d) An approved plan for expansion of a nonconforming structure must be recorded by the applicant with the registry of deeds, within 90 days of approval. The recorded plan must show the existing and proposed footprint of the non-conforming structure, the existing and proposed structure height, the footprint of any other structures on the parcel, the shoreland zone boundary and evidence of approval by the municipal review authority.
- (2) **Foundations.** Whenever a new, enlarged, or replacement foundation is constructed under a non-conforming structure, the structure and new foundation must be placed such that the setback requirement is met to the greatest practical extent as determined by the Planning Board or its designee, basing its decision on the criteria specified in Section 12(C)(3) Relocation, below.
- (3) **Relocation.** A non-conforming structure may be relocated within the boundaries of the parcel on which the structure is located provided that the site of relocation conforms to all setback requirements to the greatest practical extent as determined by the Planning Board or its designee, and provided that the applicant demonstrates that the present subsurface sewage disposal system meets the requirements of State law and the State of Maine Subsurface Wastewater Disposal Rules (Rules), or that a new system can be installed in compliance with the law and said Rules. In no case shall a structure be relocated in a manner that causes the structure to be more non-conforming.

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

When it is necessary to remove vegetation within the water or wetland setback area in order to relocate a structure, the Planning Board shall require replanting of native vegetation to compensate for the destroyed vegetation in accordance with Section 15(S). 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.

- (4) **Reconstruction or Replacement.** Any non-conforming structure which is located less than the required setback from a water body, tributary stream, or wetland and which is removed, or damaged or destroyed, regardless of the cause, by more than 50% of the market value of the structure before such damage, destruction or removal, may be reconstructed or replaced provided that a permit is obtained within eighteen (18) months of the date of said damage, destruction, or removal, and provided that such reconstruction or replacement is in compliance with the water body, tributary stream or wetland setback requirement to the greatest practical extent as determined by the Planning Board or its designee in accordance with the purposes of this Ordinance. In no case shall a structure be reconstructed or replaced so as to increase its non-conformity. If the reconstructed or replacement structure is less than the required setback it shall not be any larger than the original structure, except as allowed pursuant to Section 12(C)(1) above, as determined by the non-conforming footprint of the reconstructed or replaced structure at its new location. If the total footprint of the original structure can be relocated or reconstructed beyond the required setback area, no portion of the relocated or reconstructed structure shall be replaced or constructed at less than the setback requirement for a new structure. When it is necessary to remove vegetation in order to replace or reconstruct a structure, vegetation shall be replanted in accordance with Section 12(C)(3) above.

Any non-conforming structure which is located less than the required setback from a water body, tributary stream, or wetland and which is removed by 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 Planning Board within one year of such damage, destruction, or removal.

In determining whether the building reconstruction or replacement meets the setback to the greatest practical extent the Planning Board or its designee shall consider, in addition to the criteria in Section 12(C)(3) above, the physical condition and type of foundation present, if any.

- (5) **Change of Use of a Non-conforming Structure.** The use of a non-conforming structure may not be changed to another use unless the Planning Board, after receiving a written application, determines that the new use will have no greater adverse impact on the water body, tributary stream, or wetland, or on the subject or adjacent properties and resources than the existing use.

In determining that no greater adverse impact will occur, the Planning Board shall require written documentation from the applicant, regarding the probable effects on public health and safety, erosion and sedimentation, water quality, fish and wildlife habitat, vegetative cover, visual and actual points of public access to waters, natural beauty, floodplain management, archaeological and historic resources, and 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 than the former use, as determined by the Planning Board. The determination of no greater adverse impact shall be made according to criteria listed in Section 12(C)(4) above.

E. Non-conforming Lots

- (1) **Non-conforming Lots:** A non-conforming lot of record as of the effective date of this Ordinance or amendment thereto may be built upon, without the need for a variance, provided that such lot is in separate ownership and not contiguous with any other lot in the same ownership, and that all provisions of this Ordinance except lot area, lot width and shore frontage can be met. Variances relating to setback or other requirements not involving lot area, lot width or shore frontage shall be obtained by action of the Board of Appeals.
- (2) **Contiguous Built Lots:** If two or more contiguous lots or parcels are in a single or joint ownership of record at the time of adoption of this Ordinance, if all or part of the lots do not meet the dimensional requirements of this Ordinance, and if a principal use or structure exists on each lot, the non-conforming lots may be conveyed separately or together, provided that

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.

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

- (3) **Contiguous Lots - Vacant or Partially Built:** If two or more contiguous lots or parcels are in single or joint ownership of record at the time of or since adoption or amendment of this Ordinance, if any of these lots do not individually meet the dimensional requirements of this Ordinance or subsequent amendments, and if one or more of the lots are vacant or contain no principal structure the lots shall be combined to the extent necessary to meet the dimensional requirements.

This provision shall not apply to 2 or more contiguous lots, at least one of which is non-conforming, owned by the same person or persons on March 7, 1992 and recorded in the registry of deeds if the lot is served by a public sewer or can accommodate a subsurface sewage disposal system in conformance with the State of Maine Subsurface Wastewater Disposal Rules; and

- (a) Each lot contains at least 100 feet of shore frontage and at least 20,000 square feet of lot area; or
- (b) Any lots that do not meet the frontage and lot size requirements of Section 12(E)(3)(a) are reconfigured or combined so that each new lot contains at least 100 feet of shore frontage and 20,000 square feet of lot area.

13. Establishment of Districts

- A. Resource Protection District.** The Resource Protection District includes areas in which development would adversely affect water quality, productive habitat, biological ecosystems, or scenic and natural values. This district shall include the following areas when they occur within the limits of the shoreland zone, exclusive of the Stream Protection District, except that areas which are currently developed need not be included within the Resource Protection District.

- (1) Areas within 250 feet, horizontal distance, of the upland edge of freshwater wetlands, and wetlands associated with great ponds, 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, 2008. For the purposes of this paragraph "wetlands associated with great ponds" shall mean areas characterized by non-forested wetland vegetation and hydric soils that are contiguous with a great pond, and have a surface elevation at or below the water level of the great pond during the period of normal high water. "Wetlands associated with great ponds" are considered to be part of that great pond. A lot that received municipal approval for

residential purposes in accordance with the Town's Subdivision Ordinance prior to March 14, 2009, but that would otherwise be classified as within the Resource Protection District and does not include an alternative suitable building site within what would normally be classified Limited Residential District, shall be allowed to have one residential unit constructed within the Resource Protection District

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

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

B. Limited Residential District. The Limited Residential District includes those areas suitable for residential and recreational development. It includes areas other than those in the Resource Protection District, or Stream Protection District.

C. 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 within two hundred and fifty (250) feet, horizontal distance, of the upland edge of a freshwater wetland. Where a stream and its associated shoreland area are located within two-hundred and fifty (250) feet, horizontal distance, of the above water bodies or wetlands, that land area shall be regulated under the terms of the shoreland district associated with that water body or wetland.

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

Key to Table 1:

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

No - Prohibited

PB - Allowed with permit issued by the Planning Board.

CEO - Allowed with permit issued by the Code Enforcement Officer

LPI - Allowed with permit issued by the Local Plumbing Inspector

Abbreviations:

RP - Resource Protection

LR - Limited Residential

SP - Stream Protection

TABLE 1. LAND USES IN THE SHORELAND ZONE
LAND USES

DISTRICT

	<u>SP</u>	<u>RP</u>	<u>LR</u>
1. Non-intensive recreational uses not requiring structures such as hunting, fishing and hiking	yes	yes	yes
2. Motorized vehicular traffic on existing roads and trails	yes	yes	yes
3. Forest management activities except for timber harvesting	yes	yes	yes
4. Timber harvesting	yes	PB	yes
5. Clearing or removal of vegetation for activities other than timber harvesting	PB	PB1	yes
6. Fire prevention activities	yes	yes	yes
7. Wildlife management practices	yes	yes	yes
8. Soil and water conservation practices	yes	yes	yes
9. Mineral exploration	no	yes ²	yes ²
10. Mineral extraction including sand and gravel extraction	no	PB3	PB
11. Surveying and resource analysis	yes	yes	yes
12. Emergency operations	yes	yes	yes
13. Agriculture	yes	PB	yes
14. Aquaculture	PB	PB	PB
15. Principal structures and uses			
A. One and two family residential, including driveways	PB4	PB8	PB
B. Multi-unit residential	no	no	PB
C. Small non-residential facilities for educational, scientific, or nature interpretation purposes	PB4	PB	PB
16. Structures accessory to allowed uses	PB4	PB	PB
17. Piers, docks, wharfs, bridges and other structures and uses extending over or below the normal high-water line or within a wetland			
a. Temporary	PB9	PB9	PB9
b. Permanent	PB	PB	PB
18. Conversions of seasonal residences to year-round residences	LPI	LPI	LPI
19. Home occupations	PB	PB	PB
20. Private sewage disposal systems for allowed uses	LPI	LPI	LPI
21. Essential services	PB5	PB5	PB
A. Roadside distribution lines (34.5kV and lower)	PB ⁵	PB ⁵	yes ¹⁰
B. Non-roadside or cross-country distribution lines involving ten poles or less in the shoreland zone	PB ⁵	PB ⁵	PB
C. Non-roadside or cross-country distribution lines involving eleven or more poles in the shoreland zone	PB ⁵	PB ⁵	PB
D. Other essential services	PB ⁵	PB ⁵	PB
22. Service drops, as defined, to allowed uses	yes	yes	yes
23. Public and private recreational areas involving minimal structural development	PB	PB	PB
24. Individual, private campsites	PB	PB	PB
25. Campgrounds	no	No6	PB
26. Road construction	PB	No7	PB
27. Parking facilities	no	No6	PB
28. Marinas	no	no	no
29. Filling and earth moving of <10 cubic yards	PB	PB	yes
30. Filling and earth moving of >10 cubic yards	PB	PB	PB
31. Signs	yes	yes	yes
32. Uses similar to allowed uses	PB	PB	PB
33. Uses similar to uses requiring a PB permit	PB	PB	PB

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

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

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

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

5See further restrictions in Section 15(L)(2).

6Except when area is zoned for resource protection due to floodplain criteria in which case a permit is required from the PB.

7Except as provided in Section 15(H)(3).

8Single family residential structures may be allowed by special exception only according to the provisions of Section 16(E), Special Exceptions. Two-family residential structures are prohibited.

⁹Excluding bridges and other crossings not involving earthwork, in which case no permit is required.

¹⁰Permit not required but must file a written "notice of intent to construct" with PB.

NOTE: A person performing any of the following activities shall require a permit from the Department of Environmental Protection, pursuant to 38 M.R.S.A. section 480-C, if the activity occurs in, on, over or adjacent to any freshwater 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 dewatering;
- C. Filling, including adding sand or other material to a sand dune; or

D. Any construction or alteration of any permanent structure.

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.) Frontage (ft.) (1)	Minimum Shore
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(a) Residential per dwelling unit 200	40,000
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(a) Governmental, Institutional, Commercial or Industrial per principal structure 300	60,000
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(c) Public and Private Recreational Facilities 200	40,000
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(2) Land below the normal high-water line of a water body or upland edge of a wetland and land beneath roads serving more than two (2) lots shall not be included toward calculating minimum lot area.

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

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

(4) If more than one residential dwelling unit, principal governmental, institutional, commercial or industrial structure or use, or combination thereof, is constructed or established on a single parcel, all dimensional requirements shall be met for each additional dwelling unit, principal structure, or use.

(5) All new principle and accessory structures shall be setback at least fifteen (15) feet from contiguous boundaries of abutting lots and either fifteen (15) feet from road right-of-way limits or forty (40) feet from the centerline of existing traveled ways.

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, 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. In the Resource Protection District the setback requirement shall be 250 feet, horizontal distance, except for structures, roads, parking spaces or other regulated objects specifically allowed in that district in which case the setback requirements specified above shall apply.

In addition 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.

- (2) Principal or accessory structures and expansions of existing structures which are permitted in the Resource Protection, Limited Residential, and Stream Protection Districts, shall not exceed thirty-five (35) feet in height. This provision shall not apply to structures such as transmission towers, windmills, antennas, and similar structures having no floor area.
- (3) The lowest floor elevation or openings of all buildings and structures, including basements, shall be elevated at least one foot above the elevation of the 100 year flood, the flood of record, or in the absence of these, the flood as defined by soil types identified as recent flood-plain soils. In those municipalities that participate in the National Flood Insurance Program and have adopted the April 2005 version, or later version, of the Floodplain Management Ordinance, accessory structures may be placed in accordance with the standards of that ordinance and need not meet the elevation requirements of this paragraph.
- (4) The total footprint area of all structures, parking lots and other non-vegetated surfaces, within the shoreland zone shall not exceed twenty (20) percent of the lot or a portion thereof, located within the shoreland zone, including land area previously developed.
- (5) Retaining walls that are not necessary for erosion control shall meet the structure setback requirement, except for low retaining walls and associated fill provided all of the following conditions are met:
 - (a) The site has been previously altered and an effective vegetated buffer does not exist;
 - (b) The wall(s) is(are) at least 25 feet, horizontal distance, from the normal high-water line of a water body, tributary stream, or upland edge of a wetland;
 - (b) The site where the retaining wall will be constructed is legally existing lawn or is a site eroding from lack of naturally occurring vegetation, and which cannot be stabilized with vegetative plantings;
 - (c) The total height of the wall(s), in the aggregate, are no more than 24 inches;
 - (e) Retaining walls are located outside of the 100-year floodplain on streams, and tributary streams, as designated on the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps or Flood Hazard Boundary Maps, or the flood of record, or in the absence of these, by soil types identified as recent flood plain soils.

- (f) The area behind the wall is revegetated with grass, shrubs, trees, or a combination thereof, and no further structural development will occur within the setback area, including patios and decks; and
- (g) A vegetated buffer area is established within 25 feet, horizontal distance, of the normal high-water line of a water body, tributary stream, or upland edge of a wetland when a natural buffer area does not exist. The buffer area must meet the following characteristics:
 - (i) The buffer must include shrubs and other woody and herbaceous vegetation. Where natural ground cover is lacking the area must be supplemented with leaf or bark mulch;
 - (ii) Vegetation plantings must be in quantities sufficient to retard erosion and provide for effective infiltration of stormwater runoff;
 - (iii) Only native species may be used to establish the buffer area;
 - (iv) A minimum buffer width of 15 feet, horizontal distance, is required, measured perpendicularly to the normal high-water line or upland edge of a wetland;
 - (v) A footpath not to exceed the standards in Section 15(P)(2)(a), may traverse the buffer;

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

- (6) Notwithstanding the requirements stated above, stairways or similar structures may be allowed with a permit from the Code Enforcement Officer, to provide shoreline access in areas of steep slopes or unstable soils provided: that the structure is limited to a maximum of four (4) feet in width; that the structure does not extend below or over the normal high-water line of a water body or upland edge of a wetland, (unless permitted by the Department of Environmental Protection pursuant to the Natural Resources Protection Act, 38 M.R.S.A. section 480-C); and that the applicant demonstrates that no reasonable access alternative exists on the property.

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

- (1) Access from shore shall be developed on soils appropriate for such use and constructed so as to control erosion.
- (2) The location shall not interfere with existing developed or natural beach areas.
- (3) The facility shall be located so as to minimize adverse effects on fisheries.

- (4) The facility shall be no larger in dimension than necessary to carry on the activity and be consistent with the surrounding character and uses of the area. A temporary pier, dock or wharf shall in no case extend beyond the shoreline by more than 30 feet.
- (5) No new structure shall be built on, over or abutting a pier, wharf, dock or other structure extending beyond the normal high-water line of a water body or within a wetland unless the structure requires direct access to the water body or wetland as an operational necessity.
- (6) New permanent piers and docks shall not be permitted unless it is clearly demonstrated to the Planning Board that a temporary pier or dock is not feasible, and a permit has been obtained from the Department of Environmental Protection, pursuant to the Natural Resources Protection Act.
- (7) No existing structures built on, over or abutting a pier, dock, wharf or other structure extending beyond the normal high-water line of a water body or within a wetland shall be converted to residential dwelling units in any district.
- (8) Structures built on, over or abutting a pier, wharf, dock or other structure extending beyond the normal high-water line of a water body or within a wetland shall not exceed twenty (20) feet in height above the pier, wharf, dock or other structure.

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

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

- (1) Campgrounds shall contain a minimum of five thousand (5,000) square feet of land, not including roads and driveways, for each site. Land supporting wetland vegetation, and land below the normal high-water line of a water body shall not be included in calculating land area per site.
- (2) The areas intended for placement of a recreational vehicle, tent or shelter, and utility and service buildings shall be set back a minimum of one hundred (100) feet, horizontal distance, from the normal high-water line of a great pond, and seventy-five (75) feet, horizontal distance, from the normal high-water line of other water bodies, tributary streams, or the upland edge of a wetland.

E. Individual Private Campsites. Individual private campsites not associated with campgrounds are allowed provided the following conditions are met:

- (1) One campsite per lot existing on the effective date of this Ordinance, or thirty thousand (30,000) square feet of lot area within the shoreland zone, whichever is less, may be permitted.

- (2) Campsite placement on any lot, including the area intended for a recreational vehicle or tent platform, shall be set back one hundred (100) feet, horizontal distance, from the normal high-water line of a great pond, and seventy-five (75) feet, horizontal distance, from the normal high-water line of other water bodies, tributary streams, or the upland edge of a wetland.
- (3) Only one recreational vehicle shall be allowed on a campsite. The recreational vehicle shall not be located on any type of permanent foundation except for a gravel pad, and no structure except a canopy shall be attached to the recreational vehicle.
- (4) The clearing of vegetation for the siting of the recreational vehicle, tent or similar shelter in a Resource Protection District shall be limited to one thousand (1000) square feet.
- (5) A written sewage disposal plan describing the proposed method and location of sewage disposal shall be required for each campsite and shall be approved by the Local Plumbing Inspector. Where disposal is off-site, written authorization from the receiving facility or land owner is required.
- (6) When a recreational vehicle, tent or similar shelter is placed on-site for more than one hundred and twenty (120) days per year, all requirements for residential structures shall be met, including the installation of a subsurface sewage disposal system in compliance with the State of Maine Subsurface Wastewater Disposal Rules unless served by public sewage facilities.

F. Commercial and Industrial Uses. The following new commercial and industrial uses are prohibited within the shoreland zone adjacent to great:

- (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. The setback requirement for parking areas serving public boat launching facilities in all districts shall be no less than fifty (50) feet, horizontal distance, from the shoreline or tributary stream if the Planning Board finds that no other reasonable alternative exists further from the shoreline or tributary stream.
- (2) Parking areas shall be adequately sized for the proposed use and shall be designed to prevent stormwater runoff from flowing directly into a water body, tributary stream or wetland and where feasible, to retain all runoff on-site.
- (3) In determining the appropriate size of proposed parking facilities, the following shall apply:
 - (a) Typical parking space: Approximately ten (10) feet wide and twenty (20) feet long, except that parking spaces for a vehicle and boat trailer shall be forty (40) feet long.
 - (b) Internal travel aisles: Approximately twenty (20) feet wide.

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

- (1) Roads and driveways shall be set back at least one-hundred (100) feet, horizontal distance, from the normal high-water line of a great pond, and seventy-five (75) feet, horizontal distance from the normal high-water line of other water bodies, tributary streams, or the upland edge of a wetland unless no reasonable alternative exists as determined by the Planning Board. If no other reasonable alternative exists, the road and/or driveway setback requirement shall be no less than fifty (50) feet, horizontal distance, upon clear showing by the applicant that appropriate techniques will be used to prevent sedimentation of the water body, tributary stream, or wetland. Such techniques may include, but are not limited to, the installation of settling basins, and/or the effective use of additional ditch relief culverts and turnouts placed so as to avoid sedimentation of the water body, tributary stream, or wetland.

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

Section 15 (H)(1) does not apply to approaches to water crossings or to roads or driveways that provide access to permitted structures and facilities located nearer to the shoreline or tributary stream due to an operational necessity, excluding temporary docks for recreational uses. Roads and driveways providing access to permitted structures within the setback area shall comply fully with the requirements of Section 15(H)(1) except for that portion of the road or driveway necessary for direct access to the structure.

- (2) Existing public roads may be expanded within the legal road right of way regardless of their setback from a water body, tributary stream or wetland.
- (3) New roads and driveways are prohibited in a Resource Protection District except that the Planning Board may grant a permit to construct a road or driveway to provide access to permitted uses within the district. A road or driveway may also be approved by the Planning Board in a Resource Protection District, upon a finding that no reasonable alternative route or location is available outside the district. When a road or driveway is permitted in a Resource Protection District the road and/or driveway shall be set back as far as practicable from the normal high-water line of a water body, tributary stream, or upland edge of a wetland.
- (4) 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).
- (5) Road and driveway grades shall be no greater than ten (10) percent except for segments of less than two hundred (200) feet.
- (6) In order to prevent road and driveway surface drainage from directly entering water bodies, tributary streams or wetlands, roads and driveways shall be designed, constructed, and maintained to empty onto an unscarified buffer strip at least (50) feet plus two times the average slope, in width between the outflow point of the ditch or culvert and the normal high-water line of a water body, tributary stream, or upland edge of a wetland. Surface drainage which is directed to an unscarified buffer strip shall be diffused or spread out to promote infiltration of the runoff and to minimize channelized flow of the drainage through the buffer strip.
- (7) Ditch relief (cross drainage) culverts, drainage dips and water turnouts shall be installed in a manner effective in directing drainage onto unscarified buffer strips before the flow gains sufficient volume or head to erode the road, driveway, or ditch. To accomplish this, the following shall apply:
 - (a) Ditch relief culverts, drainage dips and associated water turnouts shall be spaced along the road, or driveway at intervals no greater than indicated in the following table:

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

- (b) Drainage dips may be used in place of ditch relief culverts only where the grade is ten (10) percent or less.
 - (c) On sections having slopes greater than ten (10) percent, ditch relief culverts shall be placed at approximately a thirty (30) degree angle downslope from a line perpendicular to the centerline of the road or driveway.
 - (d) Ditch relief culverts shall be sufficiently sized and properly installed in order to allow for effective functioning, and their inlet and outlet ends shall be stabilized with appropriate materials.
- (8) 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, and Limited Residential 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. Signs relating to goods or services not sold or rendered on the premises shall be prohibited.
- (2) Name signs are allowed, provided such signs shall not exceed two (2) signs per premises, and shall not exceed twelve (12) square feet in the aggregate.
- (3) Residential users may display a single sign not over three (3) square feet in area relating to the sale, rental, or lease of the premises.
- (4) Signs relating to trespassing and hunting shall be allowed without restriction as to number provided that no such sign shall exceed two (2) square feet in area.
- (5) Signs relating to public safety shall be allowed without restriction.
- (6) No sign shall extend higher than twenty (20) feet above the ground.
- (7) Signs may be illuminated only by shielded, non-flashing lights.

J. Storm Water Runoff

- (1) All new construction and development shall be designed to minimize storm water runoff from the site in excess of the natural predevelopment conditions. Where possible, existing natural runoff control features, such as berms, swales, terraces and wooded areas, shall be retained in order to reduce runoff and encourage infiltration of stormwaters.
- (2) Storm water runoff control systems shall be maintained as necessary to ensure proper functioning.

NOTE: The Stormwater Management Law (38 M.R.S.A. section 420-D) requires a full permit to be obtained from 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

- (1) All subsurface sewage disposal systems shall be installed in conformance with the State of Maine Subsurface Wastewater Disposal Rules, and the following: a) clearing or removal of woody vegetation necessary to site a new system and any associated fill extensions, shall not extend closer than seventy-five (75) feet, horizontal distance, from the normal high-water line of a water body or the upland edge of a wetland and b) a holding tank is not allowed for a first-time residential use in the shoreland zone.

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

L. Essential Services

- (1) Where feasible, the installation of essential services shall be limited to existing public ways and existing service corridors.
- (2) The installation of essential services, other than road-side distribution lines, is not allowed in a Resource Protection or Stream Protection District, except to provide services to a permitted use within said district, or except where the applicant demonstrates that no reasonable alternative exists. Where allowed, such structures and facilities shall be located so as to minimize any adverse impacts on surrounding uses and resources, including visual impacts.
- (3) Damaged or destroyed public utility transmission and distribution lines, towers and related equipment may be replaced or reconstructed without a permit.

M. Mineral Exploration and Extraction. Mineral exploration to determine the nature or extent of mineral resources shall be accomplished by hand sampling, test boring, or other methods which create minimal disturbance of less than one hundred (100) square feet of ground surface. A permit from the Code Enforcement Officer shall be required for mineral exploration which exceeds the above limitation. All excavations, including test pits and holes, shall be immediately capped, filled or secured by other equally effective measures to restore disturbed areas and to protect the public health and safety.

Mineral extraction may be permitted under the following conditions:

- (1) A reclamation plan shall be filed with, and approved, by the Planning Board before a permit is granted. Such plan shall describe in detail procedures to be undertaken to fulfill the requirements of Section 15 (M)(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, 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, 38 M.R.S.A., section 1301 and the solid waste management rules, Chapters 400-419 of the Department of Environmental Protection's regulations may contain other applicable provisions regarding disposal of such materials.

- (b) The final graded slope shall be two and one-half to one (2 1/2:1) slope or flatter.
 - (c) Top soil or loam shall be retained to cover all disturbed land areas, which shall be reseeded and stabilized with vegetation native to the area. Additional topsoil or loam shall be obtained from off-site sources if necessary to complete the stabilization project.
- (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, or within seventy-five (75) feet horizontal distance, of other water bodies, tributary streams, or wetlands. All manure storage areas within the shoreland zone must be

constructed or modified such that the facility produces no discharge of effluent or contaminated storm water.

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

NOTE: Assistance in preparing a Conservation Plan may be available through the local Soil and Water Conservation District office.

- (4) There shall be no new tilling of soil within one-hundred (100) feet, horizontal distance, of the normal high-water line of a great pond; within seventy-five (75) feet, horizontal distance, from other water bodies; nor within twenty-five (25) feet, horizontal distance, of tributary streams and freshwater wetlands. Operations in existence on the effective date of this ordinance and not in conformance with this provision may be maintained.
- (5) Newly established livestock grazing areas shall not be permitted within one hundred (100) feet, horizontal distance, of the normal high-water line of a great pond; within seventy-five (75) feet, horizontal distance, of other water bodies; nor within twenty-five (25) feet, horizontal distance, of tributary streams and freshwater wetlands. Livestock grazing associated with ongoing farm activities, and which are not in conformance with the above setback provisions may continue, provided that such grazing is conducted in accordance with a Conservation Plan.

O. Timber Harvesting

- (1) In a Resource Protection District abutting a great pond, timber harvesting shall be limited to the following:
 - (a) Within the strip of land extending 75 feet, horizontal distance, inland from the normal high-water line, timber harvesting may be conducted when the following conditions are met:
 - (1) The ground is frozen;
 - (2) There is no resultant soil disturbance;
 - (3) The removal of trees is accomplished using a cable or boom and there is no entry of tracked or wheeled vehicles into the 75-foot strip of land;
 - (4) There is no cutting of trees less than 6 inches in diameter; no more than 30% of the trees 6 inches or more in diameter, measured at 4 ½ feet above ground level, are cut in any 10-year period; and a well-distributed stand of trees and other natural vegetation remains; and
 - (5) A licensed professional forester has marked the trees to be harvested prior to a permit being issued by the municipality.
 - (b) Beyond the 75 foot strip referred to in Section 15(O)(1)(a) above, timber harvesting is permitted in accordance with paragraph 2 below except that in no case shall the average

residual basal area of trees over 4 ½ inches in diameter at 4 1/2 feet above ground level be reduced to less than 30 square feet per acre.

- (2) Except in areas as described in Section 15(O)(1) above, timber harvesting shall conform with the following provisions:
- (a) Selective cutting of no more than forty (40) percent of the total volume of trees four (4) inches or more in diameter measured at 4 1/2 feet above ground level on any lot in any ten (10) year period is permitted. In addition:
 - (i) Within one-hundred (100) feet, horizontal distance, of the normal high-water line of a great pond, 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, and greater than seventy-five (75) feet, horizontal distance, of the normal high-water line of other water bodies or the upland edge of a wetland, harvesting operations shall not create single clearcut openings greater than ten-thousand (10,000) square feet in the forest canopy. Where such openings exceed five-thousand (5000) square feet they shall be at least one hundred (100) feet, horizontal distance, apart. Such clearcut openings shall be included in the calculation of total volume removal. Volume may be considered to be equivalent to basal area.
 - (b) 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 revegetated.
- (g) Except for water crossings, skid trails and other sites where the operation of machinery used in timber harvesting results in the exposure of mineral soil shall be located such that an unscarified strip of vegetation of at least seventy-five (75) feet, horizontal distance, in width for slopes up to ten (10) percent shall be retained between the exposed mineral soil and the normal high-water line of a water body or upland edge of a wetland. For each ten (10) percent increase in slope, the unscarified strip shall be increased by twenty (20) feet, horizontal distance. The provisions of this paragraph apply only to a face sloping toward the water body or wetland, provided, however, that no portion of such exposed mineral soil on a back face shall be closer than twenty five (25) feet, horizontal distance, from the normal high-water line of a water body or upland edge of a wetland.

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

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

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

- (2) Except in areas as described in Section P(1), above, and except to allow for the development of permitted uses, within a strip of land extending one-hundred (100) feet, horizontal distance, inland from the normal high-water line of a great pond, 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 or stream flowing to a great pond, 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
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2 - < 4 in.	1
4 – <8 in.	2
8-< 12 in.	4
12 in. or greater	8

Adjacent to other water bodies, tributary streams, and wetlands, a "well-distributed stand of trees" is defined as maintaining a minimum rating score of 16 per 25-foot by 50-foot rectangular area.

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

$$(4 \times 1) + (2 \times 2) + (3 \times 4) + (2 \times 8) = 36 \text{ points}$$

Thus, the 25-foot by 50-foot plot contains trees worth 36 points. Trees totaling 12 points (36- 24 =12) may be removed from the plot provided that no cleared openings are created.

The following shall govern in applying this point system:

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

For the purposes of Section 15(P)(2)(b) "other natural vegetation" is defined as retaining existing vegetation under three (3) feet in height and other ground cover and retaining at least five (5) saplings less than two (2) inches in diameter at four and one half (4 ½) feet above ground level for each 25-foot by 50-foot rectangle area. If five saplings do not exist, no woody stems less than two (2) inches in diameter can be removed until 5 saplings have been recruited into the plot.

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

- (c) In order to protect water quality and wildlife habitat, existing vegetation under three (3) feet in height and other ground cover, including leaf litter and the forest duff layer, shall not be cut, covered, or removed, except to provide for a footpath or other permitted uses as described in Section 15(P) paragraphs (2) and (2)(a) above.

(d) Pruning of tree branches, on the bottom 1/3 of the tree is allowed.

(e) In order to maintain a buffer strip of vegetation, when the removal of storm-damaged, diseased, unsafe, or dead trees results in the creation of cleared openings, these openings shall be replanted with native tree species unless existing new tree growth is present.

Section 15(P)(2) does not apply to those portions of public recreational facilities adjacent to public swimming areas as long as cleared areas are limited to the minimum area necessary.

- (3) At distances greater than one hundred (100) feet, horizontal distance, from a great pond, and seventy-five (75) feet, horizontal distance, from the normal high-water line of any other water body, tributary stream, or the upland edge of a wetland, there shall be allowed on any lot, in any ten (10) year period, selective cutting of not more than forty (40) percent of the volume of trees four (4) inches or more in diameter, measured 4 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.

- (4) Legally existing nonconforming cleared openings may be maintained, but shall not be enlarged, except as allowed by this Ordinance.
- (5) Fields and other cleared openings which have reverted to primarily shrubs, trees, or other woody vegetation shall be regulated under the provisions of Section 15(P).

Q. Erosion and Sedimentation Control

- (1) All activities which involve filling, grading, excavation or other similar activities which result in unstabilized soil conditions and which require a permit shall also require a written soil erosion and sedimentation control plan. The plan shall be submitted to the permitting authority for approval and shall include, where applicable, provisions for:
- (a) Mulching and revegetation of disturbed soil.
 - (b) Temporary runoff control features such as hay bales, silt fencing or diversion ditches.
 - (c) Permanent stabilization structures such as retaining walls or rip-rap.
- (2) In order to create the least potential for erosion, development shall be designed to fit with the topography and soils of the site. Areas of steep slopes where high cuts and fills may be required shall be avoided wherever possible, and natural contours shall be followed as closely as possible.

- (3) Erosion and sedimentation control measures shall apply to all aspects of the proposed project involving land disturbance, and shall be in operation during all stages of the activity. The amount of exposed soil at every phase of construction shall be minimized to reduce the potential for erosion.
 - (4) Any exposed ground area shall be temporarily or permanently stabilized within one (1) week from the time it was last actively worked, by use of riprap, sod, seed, and mulch, or other effective measures. In all cases permanent stabilization shall occur within nine (9) months of the initial date of exposure. In addition:
 - (a) Where mulch is used, it shall be applied at a rate of at least one (1) bale per five hundred (500) square feet and shall be maintained until a catch of vegetation is established.
 - (b) Anchoring the mulch with netting, peg and twine or other suitable method may be required to maintain the mulch cover.
 - (c) Additional measures shall be taken where necessary in order to avoid siltation into the water. Such measures may include the use of staked hay bales and/or silt fences.
 - (5) Natural and man-made drainage ways and drainage outlets shall be protected from erosion from water flowing through them. Drainageways shall be designed and constructed in order to carry water from a twenty five (25) year storm or greater, and shall be stabilized with vegetation or lined with riprap.
- R. Soils.** All land uses shall be located on soils in or upon which the proposed uses or structures can be established or maintained without causing adverse environmental impacts, including severe erosion, mass soil movement, improper drainage, and water pollution, whether during or after construction. Proposed uses requiring subsurface waste disposal, and commercial or industrial development and other similar intensive land uses, shall require a soils report based on an on-site investigation and be prepared by state-certified professionals. Certified persons may include Maine Certified Soil Scientists, Maine Registered Professional Engineers, Maine State Certified Geologists and other persons who have training and experience in the recognition and evaluation of soil properties. The report shall be based upon the analysis of the characteristics of the soil and surrounding land and water areas, maximum ground water elevation, presence of ledge, drainage conditions, and other pertinent data which the evaluator deems appropriate. The soils report shall include recommendations for a proposed use to counteract soil limitations where they exist.
- S. Water Quality.** No activity shall deposit on or into the ground or discharge to the waters of the State any pollutant that, by itself or in combination with other activities or substances, will impair designated uses or the water classification of the water body, tributary stream or wetland.
- T. Archaeological Site.** Any proposed land use activity involving structural development or soil disturbance on or adjacent to sites listed on, or eligible to be listed on the National Register of Historic Places, as determined by the permitting authority, shall be submitted by the applicant to the Maine Historic Preservation Commission for review and comment, at least twenty (20) days prior to action being taken by the permitting authority. The permitting authority shall consider comments received from the Commission prior to rendering a decision on the application.

16. Administration

A. Administering Bodies and Agents

- (1) Code Enforcement Officer. A Code Enforcement Officer shall be appointed or reappointed annually by July 1st.
- (2) Board of Appeals. A Board of Appeals shall be created in accordance with the provisions of 30-A M.R.S.A. section 2691.
- (3) Planning Board. A Planning Board shall be created in accordance with the provisions of State law.

B. Permits Required. After the effective date of this Ordinance no person shall, without first obtaining a permit, engage in any activity or use of land or structure requiring a permit in the district in which such activity or use would occur; or expand, change, or replace an existing use or structure; or renew a discontinued nonconforming use. A person who is issued a permit pursuant to this Ordinance shall have a copy of the permit on site while the work authorized by the permit is performed.

- (1) A permit is not required for the replacement of an existing road culvert as long as:
 - (a) The replacement culvert is not more than 25% longer than the culvert being replaced;
 - (b) The replacement culvert is not longer than 75 feet; and
 - (c) Adequate erosion control measures are taken to prevent sedimentation of the water, and the crossing does not block fish passage in the watercourse.
- (2) A permit is not required for an archaeological excavation as long as the excavation is conducted by an archaeologist listed on the State Historic Preservation Officer's level 1 or level 2 approved list, and unreasonable erosion and sedimentation is prevented by means of adequate and timely temporary and permanent stabilization measures.
- (3) Any permit required by this Ordinance shall be in addition to any other permit required by other law or ordinance.

C. Permit Application

- (1) Every applicant for a permit shall submit to the Planning Board a written application, including a sketch or site plan as defined by the Planning Board.
- (2) All applications shall be signed by an owner or individual who can show evidence of right, title or interest in the property or by an agent, representative, tenant, or contractor of the owner with authorization from the owner to apply for a permit hereunder, certifying that the information in the application is complete and correct.

- (3) All applications shall be dated, and the Code Enforcement Officer or Planning Board, as appropriate, shall note upon each application the date and time of its receipt.
- (4) If the property is not served by a public sewer, a valid plumbing permit or a completed application for a plumbing permit, including the site evaluation approved by the Plumbing Inspector, shall be submitted whenever the nature of the proposed structure or use would require the installation of a subsurface sewage disposal system.

D. Procedure for Administering Permits. Within 35 days of the date of receiving a written application, the Planning Board or Code Enforcement Officer, as indicated in Section 14, shall notify the applicant in writing either that the application is a complete application, or, if the application is incomplete, that specified additional material is needed to make the application complete. The Planning Board or the Code Enforcement Officer, as appropriate, shall approve, approve with conditions, or deny all permit applications in writing within 35 days of receiving a completed application. However, if the Planning Board has a waiting list of applications, a decision on the application shall occur within 35 days after the first available date on the Planning Board's agenda following receipt of the completed application, or within 35 days of the public hearing, if the proposed use or structure is found to be in conformance with the purposes and provisions of this Ordinance.

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

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

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

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

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

- (1) There is no location on the property, other than a location within the Resource Protection District, where the structure can be built.
- (2) The lot on which the structure is proposed is undeveloped and was established and recorded in the registry of deeds of the county in which the lot is located before the adoption of the Resource Protection District.
- (3) All proposed buildings, sewage disposal systems and other improvements are:
 - (a) Located on natural ground slopes of less than 20%; and
 - (b) Located outside the floodway of the 100-year flood-plain along rivers and artificially formed great ponds along rivers, based on detailed flood insurance studies and as delineated on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate Maps; all buildings, including basements, are elevated at least one foot above the 100-year flood-plain elevation; and the development is otherwise in compliance with any applicable municipal flood-plain ordinance.

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

- (4) The total ground-floor area, including cantilevered or similar overhanging extensions, of all principal and accessory structures is limited to a maximum of 1,500 square feet. This limitation shall not be altered by variance.
- (5) All structures, except functionally water-dependent structures, are set back from the normal high-water line of a water body, tributary stream or upland edge of a wetland to the greatest practical extent, but not less than 75 feet, horizontal distance. In determining the greatest practical extent, the Planning Board shall consider the depth of the lot, the slope of the land, the potential for soil erosion, the type and amount of vegetation to be removed, the proposed building site's elevation in regard to the flood-plain, and its proximity to moderate-value and high-value wetlands.

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

G. Installation of Public Utility Service. A public utility, water district, sanitary district or any utility company of any kind may not install services to any new structure located in the shoreland zone unless written authorization attesting to the validity and currency of all local permits required under this or any previous Ordinance has been issued by the appropriate municipal

officials or other written arrangements have been made between the municipal officials and the utility.

H. Appeals

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

- (a) Administrative Appeals: To hear and decide administrative appeals, on an appellate basis, where it is alleged by an aggrieved party that there is an error in any order, requirement, decision, or determination made by, or failure to act by, the Planning Board in the administration of this Ordinance; and to hear and decide administrative appeals on a de novo basis where it is alleged by an aggrieved party that there is an error in any order, requirement, decision or determination made by, or failure to act by, the Code Enforcement Officer in his or her review of and action on a permit application under this Ordinance. Any order, requirement, decision or determination made, or failure to act, in the enforcement of this ordinance is not appealable to the Board of Appeals.
- (b) Variance Appeals: To authorize variances upon appeal, within the limitations set forth in this Ordinance.

(2) Variance Appeals. Variances may be granted only under the following conditions:

- (a) Variances may be granted only from dimensional requirements including, but not limited to, lot width, structure height, percent of lot coverage, and setback requirements.
- (b) Variances shall not be granted for establishment of any uses otherwise prohibited by this Ordinance.
- (c) The Board shall not grant a variance unless it finds that:
 - (i) The proposed structure or use would meet the provisions of Section 15 except for the specific provision which has created the non-conformity and from which relief is sought; and
 - (ii) The strict application of the terms of this Ordinance would result in undue hardship. The term "undue hardship" shall mean:
 - a. That the land in question cannot yield a reasonable return unless a variance is granted;
 - b. That the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;
 - c. That the granting of a variance will not alter the essential character of the locality; and
 - d. That the hardship is not the result of action taken by the applicant or a prior owner.

- (d) Notwithstanding Section 16(H)(2)(c)(ii) above, the Board of Appeals may grant a variance to an owner of a residential dwelling for the purpose of making that dwelling accessible to a person with a disability who resides in or regularly uses the dwelling. The board shall restrict any variance granted under this subsection solely to the installation of equipment or the construction of structures necessary for access to or egress from the dwelling by the person with the disability. The board may impose conditions on the variance, including limiting the variance to the duration of the disability or to the time that the person with the disability lives in the dwelling. The term “structures necessary for access to or egress from the dwelling” shall include railing, wall or roof systems necessary for the safety or effectiveness of the structure.
- (e) The Board of Appeals shall limit any variances granted as strictly as possible in order to ensure conformance with the purposes and provisions of this Ordinance to the greatest extent possible, and in doing so may impose such conditions to a variance as it deems necessary. The party receiving the variance shall comply with any conditions imposed.
- (f) A copy of each variance request, including the application and all supporting information supplied by the applicant, shall be forwarded by the municipal officials to the Commissioner of the Department of Environmental Protection at least twenty (20) days prior to action by the Board of Appeals. Any comments received from the Commissioner prior to the action by the Board of Appeals shall be made part of the record and shall be taken into consideration by the Board of Appeals.

(3) Administrative Appeals

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

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

(4) Appeal Procedure

(a) Making an Appeal

- (i) An administrative or variance appeal may be taken to the Board of Appeals by an aggrieved party from any decision of the Code Enforcement Officer or the Planning

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

- (ii) Applications for appeals shall be made by filing with the Board of Appeals a written notice of appeal which includes:
 - a. A concise written statement indicating what relief is requested and why the appeal or variance should be granted.
 - b. A sketch drawn to scale showing lot lines, location of existing buildings and structures and other physical features of the lot pertinent to the relief sought.
- (iii) Upon receiving an application for an administrative appeal or a variance, the Code Enforcement Officer or Planning Board, as appropriate, shall transmit to the Board of Appeals all of the papers constituting the record of the decision appealed from.
- (iv) The Board of Appeals shall hold a public hearing on an administrative appeal or a request for a variance within thirty-five (35) days of its receipt of a complete written application, unless this time period is extended by the parties.

(b) Decision by Board of Appeals

- (i) A majority of the full voting membership of the Board shall constitute a quorum for the purpose of deciding an appeal.
 - (ii) The person filing the appeal shall have the burden of proof.
 - (iii) The Board shall decide all administrative appeals and variance appeals within thirty five (35) days after the close of the hearing, and shall issue a written decision on all appeals.
 - (iv) The Board of Appeals shall state the reasons and basis for its decision, including a statement of the facts found and conclusions reached by the Board. The Board shall cause written notice of its decision to be mailed or hand-delivered to the applicant and to the Department of Environmental Protection within seven (7) days of the Board's decision. Copies of written decisions of the Board of Appeals shall be given to the Planning Board, Code Enforcement Officer, and the municipal officers.
- (5) Appeal to Superior Court. Except as provided by 30-A M.R.S.A. section 2691(3)(F), any aggrieved party who participated as a party during the proceedings before the Board of Appeals may take an appeal to Superior Court in accordance with State laws within forty-five (45) days from the date of any decision of the Board of Appeals.
- (6) Reconsideration. In accordance with 30-A M.R.S.A. section 2691(3)(F), the Board of Appeals may reconsider any decision within forty-five (45) days of its prior decision. A request to the

Board to reconsider a decision must be filed within ten (10) days of the decision that is being reconsidered. A vote to reconsider and the action taken on that reconsideration must occur and be completed within forty-five (45) days of the date of the vote on the original decision. Reconsideration of a decision shall require a positive vote of the majority of the Board members originally voting on the decision, and proper notification to the landowner, petitioner, planning board, code enforcement officer, and other parties of interest, including abutters and those who testified at the original hearing(s). The Board may conduct additional hearings and receive additional evidence and testimony.

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

I. Enforcement

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

(2) Code Enforcement Officer

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

(b) The Code Enforcement Officer may conduct on-site inspections to insure compliance with all applicable laws and conditions attached to permit approvals. The Code Enforcement Officer shall also investigate all complaints of alleged violations of this Ordinance.

(c) The Code Enforcement Officer shall keep a complete record of all essential transactions of the office, including applications submitted, permits granted or denied, variances granted or denied, revocation actions, revocation of permits, appeals, court actions, violations investigated, violations found, and fees collected. On a biennial basis, a summary of this record shall be submitted to the Director of the Bureau of Land and Water Quality within the Department of Environmental Protection.

(3) Legal Actions. When the above action does not result in the correction or abatement of the violation or nuisance condition, the Municipal Officers, upon notice from the Code Enforcement Officer, are hereby directed to institute any and all actions and proceedings, either legal or equitable, including seeking injunctions of violations and the imposition of fines, that may be appropriate or necessary to enforce the provisions of this Ordinance in the name of the municipality. The municipal officers, or their authorized agent, are hereby authorized to enter into administrative consent agreements for the purpose of eliminating violations of this Ordinance and recovering fines without Court action. Such agreements shall not allow an illegal structure or use to continue unless there is clear and convincing evidence that the illegal structure or use was constructed or conducted as a direct result of erroneous advice given by an

authorized municipal official and there is no evidence that the owner acted in bad faith, or unless the removal of the structure or use will result in a threat or hazard to public health and safety or will result in substantial environmental damage.

- (4) Fines. Any person, including but not limited to a landowner, a landowner's agent or a contractor, who violates any provision or requirement of this Ordinance shall be penalized in accordance with 30-A, M.R.S.A. section 4452.

17. Definitions.

Accessory structure or use - a use or structure which is incidental and subordinate to the principal use or structure. Accessory uses, when aggregated, shall not subordinate the principal use of the lot. A deck or similar extension of the principal structure or a garage attached to the principal structure by a roof or a common wall is considered part of the principal structure.

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

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

Aquaculture - the growing or propagation of harvestable freshwater, estuarine, or marine plant or animal species.

Basal Area - the area of cross-section of a tree stem at 4 1/2 feet above ground level and inclusive of bark.

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

Boat Launching Facility - a facility designed primarily for the launching and landing of watercraft, and which may include an access ramp, docking area, and parking spaces for vehicles and trailers.

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.

Commercial use - the use of lands, buildings, or structures, other than a "home occupation," defined below, the intent and result of which activity is the production of income from the buying and selling of goods and/or services, exclusive of rental of residential buildings and/or dwelling units.

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

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

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

Driveway - a vehicular access-way less than five hundred (500) feet in length serving two single-family dwellings or one two-family dwelling, or less.

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

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

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

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

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

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

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

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

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

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

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

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

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

Functionally water-dependent uses - those uses that require, for their primary purpose, location on submerged lands or that require direct access to, or location in, coastal or inland waters and that can not be located away from these waters. The uses include, but are not limited to commercial and recreational fishing and boating facilities, excluding recreational boat storage buildings, finfish and shellfish processing, fish storage and retail and wholesale fish marketing facilities, waterfront dock and port facilities, shipyards and boat building facilities, marinas, navigation aids, basins and channels, retaining walls, industrial uses dependent upon water-borne transportation or requiring large volumes of cooling or processing water that can not reasonably be located or operated at an inland site, and uses that primarily provide general public access to coastal or inland waters.

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

Ground cover – small plants, fallen leaves, needles and twigs, and the partially decayed organic matter of the forest floor.

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

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

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

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

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

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

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

Marina - a business establishment having frontage on navigable water and, as its principal use, providing for hire offshore moorings or docking facilities for boats, and which may also provide accessory services such as boat and related sales, boat repair and construction, indoor and outdoor storage of boats and marine equipment, bait and tackle shops and marine fuel service facilities.

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

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

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

Minimum lot width - the closest distance between the side lot lines of a lot. When only two lot lines extend into the shoreland zone, both lot lines shall be considered to be side lot lines.

Multi-unit residential - a residential structure containing three (3) or more residential dwelling units.

Native – indigenous to the local forests.

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

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

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

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

Normal high-water line - that line which is apparent from visible markings, changes in the character of soils due to prolonged action of the water or changes in vegetation, and which distinguishes between predominantly aquatic and predominantly terrestrial land. Areas contiguous with rivers and great ponds that support non-forested wetland vegetation and hydric soils and that are at the same or lower elevation as the water level of the great pond during the period of normal high-water are considered part of the great pond.

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

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

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

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

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

Public facility - any facility, including, but not limited to, buildings, property, recreation areas, and roads, which are owned, leased, or otherwise operated, or funded by a governmental body or public entity.

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

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

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

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

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

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

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

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

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.

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

1. in the case of electric service
 - a. the placement of wires and/or the installation of utility poles is located entirely upon the premises of the customer requesting service or upon a roadway right-of-way; and
 - b. the total length of the extension is less than one thousand (1,000) feet.

2. in the case of telephone service

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

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

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

Shoreland zone - the land area located within two hundred and fifty (250) feet, horizontal distance, of the normal high-water line of any great pond or McGurdy Stream; within 250 feet, horizontal distance, of the upland edge of a freshwater wetland; or within seventy-five (75) feet, horizontal distance, of the normal high-water line of a stream.

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

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

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

Stream - a free-flowing body of water from the outlet of a great pond or the confluence of two (2) perennial streams as depicted on the most recent edition of a United States Geological Survey 7.5 minute series topographic map, or if not available, a 15-minute series topographic map, to the point where the body of water becomes a river or flows to another water body or wetland within the shoreland area. Additionally, Lane's Brook shall be considered a stream.

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

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

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

M.R.S.A. section 414, any surface waste water disposal system, or any municipal or quasi-municipal sewer or waste water treatment system..

Sustained slope - a change in elevation where the referenced percent grade is substantially maintained or exceeded throughout the measured area.

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

Tributary stream – means a channel between defined banks created by the action of surface water, which is characterized by the lack of terrestrial vegetation or by the presence of a bed, devoid of topsoil, containing waterborne deposits or exposed soil, parent material or bedrock; and which is connected hydrologically with other water bodies. “Tributary stream” does not include rills or gullies forming because of accelerated erosion in disturbed soils where the natural vegetation cover has been removed by human activity.

This definition does not include the term "stream" as defined elsewhere in this Ordinance, and only applies to that portion of the tributary stream located within the shoreland zone of the receiving water body or wetland.

Upland edge of a wetland - the boundary between upland and wetland. 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 or stream.

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

Wetland - a freshwater wetland.

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

Town of Vienna

Wireless Telecommunications Facilities Siting Ordinance

Section 1. Title

This Ordinance shall be known and cited as the "Wireless Telecommunications Facilities Siting Ordinance" of Vienna, Maine, (hereinafter referred to as the "ordinance").

Section 2. Authority

This ordinance is adopted pursuant to the enabling provisions of Article VIII, Part 2, Section 1 of the Maine Constitution; the provisions of Title 30-A M.R.S.A. Section 3001 (Home Rule), and the provisions of the Planning and Land Use Regulation Act, Title 30-A M.R.S.A. Section 4312 et seq.

Persons or entities wishing to establish a wireless telecommunications facility or make major modifications to an existing wireless telecommunications facility within the Town of Vienna shall first obtain an application for a conditional use permit from the Vienna Planning Board (hereinafter "Planning Board") and shall be subject to the provisions of this Ordinance.

Section 3. Purpose

The purpose of this ordinance is to provide a process and a set of standards for the construction of wireless telecommunications facilities in order to:

- 1 Preserve the character and appearance of the Town of Vienna while allowing adequate telecommunication services to be developed;
- 2 Provide standards and requirements for the regulation, placement, design, appearance, construction, monitoring, modification, and removal of wireless telecommunication facilities;
- 3 Preserve property values, and protect historic and scenic areas within the Town;
- 4 Locate facilities in a manner which promotes the general safety, health, welfare and quality of life of the citizens of Vienna;
- 5 Require, where possible, the colocation of additional communications facilities, towers, and sites;
- 6 Implement a municipal policy concerning the provision of wireless telecommunications services, and the siting of their facilities;
- 7 Establish clear guidelines, standards and time frames for the exercise of municipal authority to regulate wireless telecommunications facilities;
- 8 Ensure that all telecommunications carriers providing facilities or services within Vienna comply with the ordinances of Vienna.

Section 4. Applicability

This local land use ordinance applies to all construction and expansion of wireless telecommunications facilities, except as provided in section 4.1.

No wireless telecommunication facility as listed in Section 4.1 shall be considered exempt from Section 7.2.D

No wireless telecommunication facility shall be considered exempt from this Ordinance by virtue of colocation with an exempt facility as listed in section 4.1

4.1. Exemptions

The following are exempt from the provisions of this ordinance:

- A.) Emergency Wireless Telecommunications Facility. Temporary wireless communication facilities for emergency communications by public officials.
- B.) Amateur (ham) radio stations. Amateur (ham) radio stations licensed by the Federal Communications Commission (FCC).
- C.) Parabolic antenna. Parabolic Antennas less than seven (7) feet in diameter, that are an accessory use of the property.

- D.) Maintenance or repair. Maintenance, repair or reconstruction of a wireless telecommunications facility and related equipment, provided that there is no change in the height or any other dimension of the facility.
- E.) Temporary wireless telecommunications facility. Temporary wireless telecommunications facility, in operation for a maximum period of one hundred eighty (180) days.
- F.) Antennas as Accessory Uses. An antenna that is an accessory use to a residential dwelling unit.
- G.) Citizens' Band Radio
- H.) Pre-existing Facility. This Ordinance does not render illegal any structure, facility or use which legally existed, has received permit approval, or is in a pending approval process prior to the effective date of this Ordinance.
- I.) Radio dispatch services for local businesses.

Section 5. Review and Approval Authority

5.1. Approval Required

No person shall construct or expand a wireless telecommunication facility without approval of the Planning Board as follows:

- A.) Expansion of an Existing Facility and Colocation. Approval by the Planning Board is required for any expansion of an existing wireless telecommunications facility that increases the height of the facility by no more than 20 feet; accessory use of an existing wireless telecommunications facility; or colocation on an existing wireless telecommunications facility.
- B.) New Construction. Approval of the Planning Board is required for construction of a new wireless telecommunications facility; and any expansion of an existing wireless telecommunications facility that increases the height of the facility by more than 20 feet.

5.2 Approval Authority

In accordance with Section 5.1 above, the Planning Board shall review applications for wireless telecommunications facilities and make written findings on whether the proposed facility complies with this Ordinance.

Section 6. Approval Process

6.1. Pre-Application Conference

All persons seeking approval of the Planning Board under this ordinance shall meet with the Planning Board no less than thirty (30) days before filing an application. At this meeting, the Planning Board shall explain to the applicant the ordinance provisions, as well as application forms and submissions that will be required under this ordinance.

6.2. Application

All persons seeking approval of the Planning Board under this ordinance shall submit an application as provided below. The Planning Board shall be responsible for ensuring that notice of the application has been published in a newspaper of general circulation in the community.

A.) Application for Expansion of an Existing Facility and Colocation.

Applications must include the following materials and information:

- 1.) Documentation of the applicant's right, title, or interest in the property where the facility is to be sited, including name and address of the property owner and the applicant.
- 2.) A copy of the FCC license for the facility or a signed statement from the owner or operator of the facility attesting that the facility complies with current FCC regulations.
- 3.) Identification of districts, sites, buildings, structures or objects, significant in American history, architecture, archeology, engineering or culture, that are listed, or eligible for listing, in the National Register of Historic Places (see 16 U.S.C. 470w(5); 36 CFR 60 and 800).
- 4.) Location map and elevation drawings of the proposed facility and any other proposed structures, showing color, and identifying structural materials.

5.) For proposed expansion of a facility, a signed statement that commits the owner of the facility, and his or her successors in interest, to:

a.) respond in a timely, comprehensive manner to a request for information from a potential colocation applicant, in exchange for a reasonable fee not in excess of the actual cost of preparing a response;

b.) negotiate in good faith for shared use by third parties;

c.) allow shared use if an applicant agrees in writing to pay reasonable charges for colocation;

d.) require no more than a reasonable charge for shared use, based on community rates and generally accepted accounting principles. This charge may include but is not limited to a pro rata share of the cost of site selection, planning project administration, land costs, site design, construction and maintenance, financing, return on equity, depreciation, and all of the costs of adopting the tower or equipment to accommodate a shared user without causing electromagnetic interference.

6.) for colocation permits, a copy of the lease/contract with the owner of the existing structure.

B.) Application for New Construction.

An application must be submitted to the Planning Board. The application must include the following information:

1.) Contacts:

Applicant shall submit the exact legal name, address or principal place of business and phone number of the following:

- a. Applicant. If applicant is not a person, it shall also give the type of business entity and the state in which it is registered
- b. Person to whom correspondence or communications in regard to the application are to be sent. Notices, orders and other papers may be served upon the person so named, and such service shall be deemed to be service upon the applicant. Person to be contacted in the event of an emergency involving the facility. This person shall be available on a 24-hour basis and authorized by the applicant to act on behalf of the applicant regarding an emergency situation.
- c. Owner of the property on which the proposed tower shall be located and of the owner(s) of the tower or structure on which the proposed facility shall be located. Written permission of the owner(s) to apply for a conditional use permit shall also be submitted along with written permission from the owner(s) of the proposed property(s) or facilities site(s) for the Town's independent consultant(s) to conduct any necessary site visit(s).
- d. Names and addresses of abutting landowners and landowners within 500' of the site property boundaries.

2.) Permits

Applicant shall submit copies of all pertinent submittals and showings pertaining to:

- a. FCC permitting/licensing, including Environmental Assessments and Environmental Impact Statements as required by the national Environmental Protection Act of 1969, section 47, and documentation from Maine Historical Preservation Society;
- b. FAA Notice of Construction or Alteration aeronautical studies;
- c. All pertinent data, assumptions and calculations relating to service coverage
- d. All pertinent calculations and/or measurement data related to non-ionizing radiation exposure, regardless of whether categorical exemption from routine environmental evaluation under FCC rules is claimed.

3.) Maps.

a.) Location map. A USGS 7.5 minute topographic map showing the location of all structures and wireless telecommunications facilities above 150 feet in height above ground level, except antennas located on roof tops, within a five (5) mile radius of the proposed facility, unless this information has been previously made available to the municipality. This requirement may be met by submitting current information (within thirty days of the date the application is filed) from the FCC Tower Registration Database.

b.) Vicinity map. at a scale of 1" = 416' (1:5000) with contour intervals no greater than 10 feet (3 meters) showing the entire vicinity within a 2500' radius of the facility site, and including the topography, public and

private roads and driveways, buildings and structures, bodies of water, wetlands, landscape features, historic sites, habitats for endangered species, indicating the property lines of the proposed facility site parcel and all abutters to the facility site parcel. Indicate any access easement or right of way needed for access from a public way to the facility site, and the names of all abutters or property owners along the access easement or who have deeded rights to the easement.

c.) Existing conditions map. A recent survey of the area within 500 feet of the facility site at a scale no smaller than 1" = 40' (1:480 or metric equivalent) with topography drawn with a minimum of 10 feet contour intervals, showing existing utilities, property lines, existing buildings or structures, stone walls or fence lines, wooded areas, existing wells and springs. show the boundary of any wetlands or floodplains or watercourses, and of any bodies of water included in the Shoreland Zoning District within 500' from the facility site. The survey plan must have been completed, on the ground, by a land surveyor registered in the State of Maine within two years prior to the application date.

4.) A site plan:

a.) prepared and certified by a professional engineer registered in Maine indicating the location, type, and height of the proposed facility, antenna capacity, on-site and abutting off-site land uses, means of access, setbacks from property lines, and all applicable American National Standards Institute (ANSI) technical and structural codes; and

b.) certified by the applicant that the proposed facility complies with all FCC standards for radio emissions ; and

c.) including a boundary survey for the project performed by a land surveyor licensed by the State of Maine.

5.) A scenic assessment, consisting of the following:

a.) Elevation drawings of the proposed facility, and any other proposed structures, showing height above ground level;

b.) A landscaping plan indicating the proposed placement of the facility on the site; location of existing structures, trees, and other significant site features; the type and location of plants proposed to screen the facility; the method of fencing, the color of the structure, and the proposed lighting method.

c.) Photo simulations of the proposed facility taken from perspectives determined by the Planning Board, or their designee, during the pre-application conference. Each photo must be labeled with the line of sight, elevation, and with the date taken imprinted on the photograph. The photos must show the color of the facility and method of screening.

d.) A narrative discussing:

i.) the extent to which the proposed facility would be visible from or within a designated scenic resource,

ii.) the tree line elevation of vegetation within 100 feet of the facility, and

iii.) the distance to the proposed facility from the designated scenic resource's noted viewpoints.

6.) Technical Documentation.

a.) A written description of how the proposed facility fits into the applicant's telecommunications network. This submission requirement does not require disclosure of confidential business information.

b.) Proposed equipment plan, to include enough detail for evaluation of the proposed facility. Independent contractor hired to evaluate the application may request more detail if not enough is provided.

7.) Evidence demonstrating that no existing building, site, or structure can accommodate the applicant's proposed facility, the evidence for which may consist of any one or more of the following:

a.) Evidence that no existing facilities are located within the targeted market coverage area as required to meet the applicant's engineering requirements,

- b.) Evidence that existing facilities do not have sufficient height or cannot be increased in height at a reasonable cost to meet the applicant's engineering requirements,
 - c.) Evidence that existing facilities do not have sufficient structural strength to support applicant's proposed antenna and related equipment. Specifically:
 - i.) Planned, necessary equipment would exceed the structural capacity of the existing facility, considering the existing and planned use of those facilities, and these existing facilities cannot be reinforced to accommodate the new equipment.
 - ii.) The applicant's proposed antenna or equipment would cause electromagnetic interference with the antenna on the existing towers or structures, or the antenna or equipment on the existing facility would cause interference with the applicant's proposed antenna.
 - iii.) Existing or approved facilities do not have space on which planned equipment can be placed so it can function effectively.
 - d.) For facilities existing prior to the effective date of this ordinance, the fees, costs, or contractual provisions required by the owner in order to share or adapt an existing facility are unreasonable. Costs exceeding the pro rata share of a new facility development are presumed to be unreasonable. This evidence shall also be satisfactory for a tower built after the passage of this ordinance;
 - e.) Evidence that the applicant has made diligent good faith efforts to negotiate colocation on an existing facility, building, or structure, and has been denied access;
- 8.) Identification of districts, sites, buildings, structures or objects, significant in American history, architecture, archeology, engineering or culture, that are listed, or eligible for listing, in the National Register of Historic Places (see 16 U.S.C. 470w(5); 36 CFR 60 and 800).
- 9.) A signed irrevocable statement valid for the duration of the existence of the tower stating that the owner of the wireless telecommunications facility and his or her successors and assigns agree to:
- a.) respond in a timely, comprehensive manner to a request for information from a potential colocation applicant, in exchange for a reasonable fee not in excess of the actual cost of preparing a response;
 - b.) negotiate in good faith for shared use of the wireless telecommunications facility by third parties;
 - c.) allow shared use of the wireless telecommunications facility if an applicant agrees in writing to pay reasonable charges for colocation;
 - d.) require no more than a reasonable charge for shared use, based on community rates and generally accepted accounting principles. This charge may include but is not limited to a pro rata share of the cost of site selection, planning project administration, land costs, site design, construction, financing, return on equity, depreciation, and all of the costs of adapting the tower or equipment to accommodate a shared user without causing electromagnetic interference. The amortization of the above costs by the facility owner shall be accomplished at a reasonable rate, over the useful life span of the facility.
- 12.) Evidence of financial ability to cover the costs of tower construction maintenance, and insurance coverage.
- 13.) A form of surety approved by the Planning Board to pay for the costs of removing the facility if it is abandoned.
- 14.) Five-Year Plan. A written five-year plan for utilization of the proposed facilities. This plan shall include justification for capacity in excess of immediate needs, as well as plans for further development within the Town.
- 15.) Evidence that a notice of the application has been published in a local newspaper of general circulation in the community.

16.) Applicants must be a telecommunication provider or must provide a copy of its lease/contract with an existing telecommunication provider. A permit shall not be granted for a tower to be built on speculation.

6.3. Submission Waiver

The Planning Board may waive any of the submission requirements based upon a written request of the applicant submitted at the time of application. A waiver of any submission requirement may be granted only if the Planning Board finds in writing that due to special circumstances of the application, the information is not required to determine compliance with the standards of this Ordinance.

6.4. Fees

A.) Planning Board Application Fee

A conditional use permit application for Planning Board approval shall include payment of an application fee of \$75.00. The application shall not be considered complete until this fee is paid. An applicant is entitled to a refund of the application portion of the fee if the application is withdrawn within fifteen (15) days of date of filing, less all expenses incurred by the Town of Vienna to review the application.

B. Planning Board Review Fee

An applicant for approval by the Planning Board shall pay all reasonable and customary fees (e.g. certified mailings, advertisements, consultant fees, etc.) incurred by the Town that are necessary to review the application and assure that the facility meets the conditions of this Ordinance after completion, including hiring independent consultants to evaluate the application. A retainer of \$1000.00 will accompany the application, and the Planning Board shall place it in an escrow account. If the contract with an independent consultant is estimated to cost more than the retainer submitted with the application, the total estimate cost for the consultant must be provided in the retainer by the applicant before the application is considered complete and review started. That portion of the review fee not used shall be returned to the applicant within thirty (30) days of the Planning Board's decision to approve or deny the application. The review fee shall be paid in full prior to the start of construction.

C. Notification of application

The applicant shall be responsible for insuring that abutting landowners and landowners within 500' of the site property boundaries be notified of the application by certified mail no later than thirty (30) days after the Vienna Planning Board pre-application conference as detailed in Section 6.1 and that receipts and copies of the letters be forwarded to the Planning Board and the Vienna Board of Selectmen. The Planning Board shall post a notice of the application for public review at the Town Office and in at least two places of public gathering within the Town of Vienna and abutting towns.

D. Provision for Hiring Independent Consultants

1. Upon submission of an application for a conditional use permit under this Ordinance, the Vienna Planning Board shall hire independent consultants whose services shall be paid for by the applicant's review fee. These consultants shall be qualified professionals with an appropriate combination of training, record of service, and certification in one of the following fields: a) telecommunications/radio frequency engineering; b) structural engineering; and if determined necessary by the Vienna Planning Board, c) other fields of expertise.
2. Upon submission of a complete application for a conditional use permit under this Ordinance, the Vienna Planning Board shall provide its independent consultant(s) with the full application for their analysis and review.

6.5. Notice of Complete Application

Upon receipt of an application, the Planning Board shall provide the applicant with a dated receipt. Within 30 (thirty) working days of receipt of an application the Planning Board shall review the application and determine if the application meets the submission requirements. The Planning Board shall review any requests for a waiver from the submission requirements and shall act on these requests prior to determining the completeness of the application.

If the application is complete, the Planning Board shall notify the applicant in writing of this determination and require the

applicant to provide a sufficient number of copies of the application to the Planning Board.

If the application is incomplete, the Planning Board shall notify the applicant in writing, specifying the additional materials or information required to complete the application.

If the application is deemed to be complete, the Planning Board shall notify all abutters to the site as shown on the Assessor's records, by first-class mail, that an application has been accepted. This notice shall contain a brief description of the proposed activity and the name of the applicant, give the location of a copy of the application available for inspection, and provide the date, time, and place of the Planning Board meeting at which the application will be considered. Failure on the part of any abutter to receive such notice shall not be grounds for delay of any consideration of the application nor denial of the project.

6.6. Public Hearing

A public hearing shall be held within 30 days of the notice of the complete application.

6.7. Approval

A.) Expansion of existing facility as defined in Section 5.1(A) Within thirty (30) days of receiving a complete application for approval under section 5.1(A), the Planning Board shall approve, approve with conditions, or deny the application in writing, together with the findings on which that decision is based. The Planning Board shall approve the application if the Planning Board finds that the application complies with the provisions in Section 7.1 of this ordinance.

The Planning Board shall notify all abutters of the decision to issue a permit under this section. The time period may be extended upon agreement between the applicant and the Planning Board.

B.) New construction as defined in Section 5.1(B) Within ninety (90) days of receiving a complete application for approval, the Planning Board shall approve, approve with conditions, or deny the application in writing, together with the findings on which that decision is based. However, if the Planning Board has a waiting list of applications that would prevent the Planning Board from making a decision within the required ninety (90) day time period, then a decision on the application shall be issued within sixty (60) days of the public hearing, if necessary, or within 60 days of the completed Planning Board review. This time period may be extended upon agreement between the applicant and the Planning Board.

Section 7. Standards of Review

To obtain approval from the Planning Board, an application must comply with the standards in this section.

7.1. Approval Standards for Expansion of existing facility as defined in Section 5.1(A)

The Planning Board must find that the application meets the following standards:

- A.) The proposed facility is an expansion, accessory use, or colocation to a structure existing at the time the application is submitted.
- B.) The applicant has sufficient right, title, or interest to locate the proposed facility on the existing structure.
- C.) The proposed facility increases the height of the existing structure by no more than twenty (20) feet.
- D.) The proposed facility will be constructed with materials and colors that match or blend with the surrounding natural or built environment, to the maximum extent practicable.
- E.) The proposed facility, to the greatest degree practicable, shall have no unreasonable adverse impact upon districts, sites, buildings, structures or objects, significant in American history, architecture, archeology, engineering or culture, that are listed, or eligible for listing, in the National Register of Historic Places (see 16 U.S.C. 470w(5); 36 CFR 60 and 800).

7.2. Approval Standards for New construction as defined in Section 5.1(B)

The Planning Board must find that the application includes the following documentation and meets the following standards:

- A.) Priority of Location. New wireless telecommunications facilities must be located according to the priorities below. The applicant shall demonstrate that a facility of a higher priority cannot reasonably accommodate the applicant's proposed facility.

- 1.) Colocation on an existing wireless telecommunications facility or other existing structure in either Vienna or a

town in the surrounding area.

B.) Coverage Area. The Town of Vienna must be included in the primary coverage area.

C.) Design for Colocation. A new wireless telecommunications facility and related equipment must be designed and constructed to accommodate expansion for future colocation of at least three additional wireless telecommunications facilities or providers. However, the Planning Board may waive or modify this standard where the district height limitation effectively prevents future colocation.

D.) Height. New towers shall not exceed the minimum height necessary to provide adequate coverage for the telecommunications facilities proposed for use on the tower. Applicant may submit a request for additional height to accommodate future sharing and shall provide design information and data to justify such additional height. In no case shall facility height exceed 199 feet, triggering the FAA and FCC rules and regulations regarding lighting of towers. Exceptions may be made if applicant can adequately demonstrate to an independent qualified consultant (as specified by Section 6.4.D) that denial of greater height would effectively prohibit service or that colocation would not be possible.

E.) Setbacks.

1.) A new or expanded wireless telecommunications facility must comply with the set back requirements for the zoning district in which it is located, or be set back one hundred five percent (105%) of its height from all property lines, whichever is greater. The setback may be satisfied by including the areas outside the property boundaries if secured by an easement. The following exemptions apply:

a.) The setback may be reduced by the Planning Board upon a showing by the applicant that:

- i. The facility is designed to collapse in a manner that will not harm other property
- ii. Ice build-up and discharge will not present a public safety hazard,
- iii. Any hazard guy wires or tower structure will not adversely affect public safety.

b.) An antenna is exempt from the setback requirement if it extends no more than five (5) feet horizontally from the edge of the structure to which it is attached, and it does not encroach upon an abutting property.

2.) Existing wireless telecommunication facilities that undergo major modifications must meet setback requirements.

F.) Landscaping. A new wireless telecommunications facility and related equipment must be screened with plants from view by abutting properties, to the maximum extent practicable. Existing plants and natural land forms on the site shall also be preserved to the maximum extent practicable.

G.) Fencing. A new wireless telecommunications facility must be fenced to discourage trespass on the facility and to discourage climbing on any structure by trespassers. A sign no greater than two (2) square feet indicating the name of the facility owner(s) and a 24-hour emergency telephone number shall be posted adjacent to the entry gate. No Trespassing or other warning signs, and the federal tower registration plate, where applicable, may be posted on the fence or as required to meet federal requirements.

H.) Lighting. A new wireless telecommunications facility must be illuminated only as necessary to comply with FAA or other applicable state and federal requirements. However, security lighting may be used as long as it is shielded to be down-directional to retain light within the boundaries of the site, to the maximum extent practicable.

I.) Color and Materials. A new wireless telecommunications facility must be constructed with materials and colors that match or blend with the surrounding natural or built environment, to the maximum extent practicable. Unless otherwise required, muted colors, earth tones, and subdued hues shall be used.

J.) Structural Standards. A new wireless telecommunications facility must comply with the current Electronic Industries Association/ Telecommunications Industries Association (EIA/TIA) 222 Revision Standard entitled "Structural Standards for Steel Antenna Towers and Antenna Supporting Structures."

K.) Visual Impact. The proposed wireless telecommunications facility will have no unreasonable adverse impact upon designated scenic resources within the Town, as identified either in the municipally adopted comprehensive plan, or by a State or federal agency.

1.) In determining the potential unreasonable adverse impact of the proposed facility upon the designated scenic resources, the Planning Board shall consider the following factors:

- a.) The extent to which the proposed wireless telecommunications facility is visible above tree line, from the viewpoint(s) of the impacted designated scenic resource;
- b.) the type, number, height, and proximity of existing structures and features, and background features within the same line of sight as the proposed facility;
- c.) the extent to which the proposed wireless telecommunications facility would be visible from the viewpoint(s);
- d.) the amount of vegetative screening;
- e.) the distance of the proposed facility from the viewpoint and the facility's location within the designated scenic resource; and
- f.) the presence of reasonable alternatives that allow the facility to function consistently with its purpose.

L.) Noise. During construction, repair, or replacement, operation of a back-up power generator at any time during a power failure, and testing of a back-up generator between 8 a.m. and 9 p.m. is exempt from existing municipal noise standards.

M.) Historic & Archaeological Properties. The proposed facility, to the greatest degree practicable, will have no unreasonable adverse impact upon a historic district, site or structure which is currently listed on or eligible for listing on the National Register of Historic Places.

N.) Environmental Impact. All construction related to the facility, including access roads, will be limited to the minimum excavation needed to meet the requirements of the project and use techniques to avoid erosion and degradation of ground water during and after construction.

7.3 Standard Conditions of Approval

The following standard conditions of approval shall be a part of any approval or conditional approval issued by the Planning Board. Where necessary to ensure that an approved project meets the criteria of this ordinance, the Planning Board can impose additional conditions of approval. Reference to the conditions of approval shall be clearly noted on the final approved site plan, and shall include a statement that:

- 1.) The owner of the wireless telecommunications facility and his or her successors and assigns agree to:
 - a.) respond in a timely, comprehensive manner to a request for information from a potential colocation applicant, in exchange for a reasonable fee not in excess of the actual cost of preparing a response;
 - b.) negotiate in good faith for shared use of the wireless telecommunications facility by third parties;
 - c.) allow shared use of the wireless telecommunications facility if an applicant agrees in writing to pay reasonable charges for colocation.
 - d.) require no more than a reasonable charge for shared use of the wireless telecommunications facility, based on community rates and generally accepted accounting principles. This charge may include, but is not limited to, a pro rata share of the cost of site selection, planning project administration, land costs, site design, construction and maintenance, financing, return on equity, depreciation, and all of the costs of adapting the tower or equipment to accommodate a shared user without causing electromagnetic interference. The amortization of the above costs by

the facility owner shall be accomplished at a reasonable rate, over the life span of the useful life of the wireless telecommunications facility.

e.) no advertising will be allowed on any part of the facility.

2.) Upon request by the municipality, the applicant shall certify compliance with all applicable FCC radio frequency emissions regulations and prove structural integrity and safety of the facility.

Section 8. Amendment to an Approved Application

Any changes to an approved application must be approved by the Planning Board, in accordance with Section 5.

Section 9. Abandonment

A wireless telecommunications facility that is not operated for a continuous period of twelve (12) months shall be considered abandoned. The Planning Board shall notify the owner of an abandoned facility in writing and order the removal of the facility within ninety (90) days of receipt of the written notice. The owner of the facility shall have thirty (30) days from the receipt of the notice to demonstrate to the Planning Board that the facility has not been abandoned.

If the Owner fails to show that the facility is in active operation, the owner shall have sixty (60) days to remove the facility. If the facility is not removed within this time period, the Town may remove the facility at the owner's expense. The owner of the facility shall pay all site reclamation costs deemed necessary and reasonable to return the site to its pre-construction condition, including the removal of roads, and reestablishment of vegetation.

If a surety has been given to the municipality for removal of the facility, the owner of the facility may apply to the Planning Board for release of the surety when the facility and related equipment are removed to the satisfaction of the Planning Board.

Section 10. Appeals

Any person aggrieved by a decision of the Planning Board under this ordinance may appeal the decision to the Board of Appeals. Written notice of an appeal must be filed with the Town of Vienna Board of Appeals within thirty (30) days of the decision. The notice of appeal shall clearly state the reasons for the appeal.

Section 11. Administration and Enforcement

The Municipal Officers or an enforcement agent, as appointed by the Board of Selectmen, shall enforce this ordinance. If the enforcement agent finds that any provision of this ordinance has been violated, the enforcement agent shall notify in writing the person responsible for such violation, indicating the nature of the violation, and ordering the action necessary to correct it. The enforcement agent shall order correction of the violation and may take any other legal action to ensure compliance with this ordinance.

The Board of Selectmen, or their authorized agent, are 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 a violation of this ordinance to continue unless: there is clear and convincing evidence that the violation occurred as a direct result of erroneous advice given by an authorized municipal official upon which the applicant reasonably relied to its detriment and there is no evidence that the owner acted in bad faith; the removal of the violation will result in a threat to public health and safety or substantial environmental damage.

Section 12. Penalties

Any person who owns or controls any building or property that violates this ordinance shall be fined in accordance with Title 30-A M.R.S.A. § 4452. Each day such violation continues after notification by the Code Enforcement Officer shall constitute a separate offense.

Section 13. Conflict and Severability

13.1 Conflicts with other Ordinances

Whenever a provision of this ordinance conflicts with or is inconsistent with another provision of this ordinance or of any other ordinance, regulation, or statute, the more restrictive provision shall apply.

13.2 Severability

The invalidity of any part of this ordinance shall not invalidate any other part of this ordinance.

13.3 Consistency with Federal Law

These regulations are intended to be consistent with state and federal law, particularly the Telecommunications Act of 1996 in that: a.) they do not prohibit or have the effect of prohibiting the provision of personal wireless services; b) they are not intended to be used to unreasonably discriminate among providers of functionally equivalent services, and c) they do not regulate personal wireless services on the basis of environmental effects of radio frequency emissions to the extent that the regulated services and facilities comply with the regulations of the Federal Communications Commission concerning such emissions.

Section 14. Definitions

The terms used in this ordinance shall have the following meanings:

"Antenna" means any system of poles, panels, rods, reflecting discs or similar devices used for the transmission or reception of radio or electromagnetic frequency signals.

"Antenna Height" means the vertical distance measured from the base of the antenna support structure at grade to the highest point of the structure, even if said highest point is an antenna. Measurement of tower height shall include antenna, base pad, and other appurtenances and shall be measured from the finished grade of the facility site. If the support structure is on a sloped grade, then the average between the highest and lowest grades shall be used in calculating the antenna height.

"Colocation" means the use of a wireless telecommunications facility by more than one wireless telecommunications provider.

"Expansion" means the addition of antennas, towers, or other devices to an existing structure.

"FAA" means the Federal Aviation Administration, or its lawful successor.

"FCC" means the Federal Communications Commission, or its lawful successor.

"Height" means the vertical measurement from a point on the ground at the mean finish grade adjoining the foundation as calculated by averaging the highest and lowest finished grade around the building or structure, to the highest point of the building or structure. The highest point shall exclude farm building components, flagpoles, chimneys, ventilators, skylights, domes, water towers, bell towers, church spires, processing towers, tanks, bulkheads, or other building accessory features usually erected at a height greater than the main roofs of buildings.

"Historic or Archaeological Resources" means resources that are:

1. Listed individually in the National Register of Historic Places or eligible for listing on the National Register;
2. 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;
3. Individually listed on a state inventory of historic places in states with historic preservation programs approved by the Secretary of the Interior;
4. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified by Secretary of the Interior through the Maine Historic Preservation Commission; or
5. Areas identified by a governmental agency such as the Maine Historic Preservation Commission as having significant value as an historic or archaeological resource and any areas identified in the municipality's comprehensive plan, which have been listed or are eligible to be listed on the National Register of Historic Places.

"Historic District" means a geographically definable area possessing a significant concentration, linkage or continuity of

sites, buildings, structures or objects united by past events or aesthetically by plan or physical development and identified in the municipality's comprehensive plan, which is listed or is eligible to be listed on the National Register of Historic Places. Such historic districts may also comprise individual elements separated geographically, but linked by association or history.

"Historic Landmark" means any improvement, building or structure of particular historic or architectural significance to the Town relating to its heritage, cultural, social, economic or political history, or which exemplifies historic personages or important events in local, state or national history identified in the municipality's comprehensive plan, which have been listed or are eligible to be listed on the National Register of Historic Places.

"Line of sight" means the direct view of the object from the designated scenic resource.

"Parabolic Antenna" (also known as a satellite dish antenna) means an antenna which is bowl-shaped, designed for the reception and or transmission of radio frequency communication signals in a specific directional pattern.

"Principal Use" means the use other than one which is wholly incidental or accessory to another use on the same premises.

"Public Recreational Facility" means a regionally or locally significant facility, as defined and identified either by State statute or in the municipality's adopted comprehensive plan, designed to serve the recreational needs of municipal property owners.

"Designated Scenic Resource" means that specific location, view, or corridor, as identified as a scenic resource in the municipally adopted comprehensive plan or by a State or federal agency, that consists of:

1.) a three dimensional area extending out from a particular viewpoint on a public way or within a public recreational area, focusing on a single object, such as a mountain, resulting in a narrow corridor, or a group of objects, such a downtown skyline or mountain range, resulting in a panoramic view corridor; or

2.) lateral terrain features such as valley sides or woodland as observed to either side of the observer, constraining the view into a narrow or particular field, as seen from a viewpoint on a public way or within a public recreational area.

"Targeted Market Coverage Area" means the area which is targeted to be served by this proposed telecommunications facility.

"Unreasonable Adverse Impact" means that the proposed project would produce an end result which is:

1.) excessively out-of-character with the designated scenic resources affected, including existing buildings structures and features within the designated scenic resource, and

2.) would significantly diminish the scenic value of the designated scenic resource.

"Viewpoint" means that location which is identified either in the municipally adopted comprehensive plan or by a federal or State agency, and which serves as the basis for the location and determination of a particular designated scenic resource.

"Wireless Telecommunications Facility" or "Facility" means any structure, antenna, tower, or other device which provides radio/television transmission, commercial mobile wireless services, unlicensed wireless services, cellular phone services, specialized mobile radio communications (SMR), common carrier wireless exchange phone services, specialized mobile radio communications (SMR), common carrier wireless exchange access services, and personal communications service (PCS) or pager services.

Section 15. Effective Date

This ordinance becomes effective on the date that the ordinance is adopted by the public at Town Meeting or referendum.