

AGENDA
ORDINANCE COMMITTEE

Thursday, February 20, 2020
4:00 p.m. - Chamber A

Item 1. Call to Order.

Item 2. Roll Call.

Item 3. Approval of the minutes from January 23, 2020 meeting.

Item 4. Public Comment.

Item 5. Historical Properties list updates- Chapter 405, section VII.H.B (Historic Preservation Committee).

Item 6. Proposed Small Wireless Facility Licensing Ordinance.

Item 7. Shoreland Zone.

Item 8. Smoke Free Beaches, Moved to OC from R&P.

Item 9. Senior Property Tax Credit.

Item 10. Future agenda items.

Item 11. Adjournment.

Historic Property List Updates From the Historic Preservation Implementation Committee

Proposed Address Changes:

These properties are currently listed on the town's Historic Property List. The following properties are clerical changes to reflect today's current address and lot numbers.

Causeway Church

Currently Identified: 132 Black Point Road R081014

Amend to: 134 Black Point Road R081015

North Scarborough Grange

Currently identified as: 80 County Road R015014

Amend to: 74 County Road R015012

Bessey School

Currently identified as: 272 US Route One U041002

Amend to: 1 Bessey School Drive U041002

Proposed for removal from Historic Property List:

The following properties are recommended for removal from the Historic Property List. They reflect properties that have significant structural and or architectural changes as to be no longer identifiable with the original buildings or new information demonstrated a misidentification.

178 Spurwink Road R098023 Mitchell Farm

23 Hunnewell Road U048028 2nd Hunnewell House

2 Two Rod Road R049013 Scottow Hill Schoolhouse

22 King Street U022079 Ebb Tide (Phoenix)

New Additions

The following two properties are recommended for addition to the town's Historic Property List. Both were originally built in the early 1700's and maintain exterior architectural character. Both properties were candidates from the committee's original property list recommendations, but were pending further review.

35 Hunnewell Road U048024 Roger Hunnewell House

39 Hunnewell Road U048023 Richard Hunnewell House

Chapter 405, Zoning Ordinance**SECTION VII.H. HISTORIC PRESERVATION PROVISIONS****Proposed changes to the Historic Properties list as recommended by the Historic Preservation Committee:****B. HISTORICAL PROPERTIES**

The following is a list of buildings and properties of historical significance (“significant historical resources”) that have been designated by the Scarborough Town Council:

<i>Street Address</i>	<i>Assessors Map/Lot</i>	<i>Current or Historical Property Name</i>
193 Beech Ridge Rd	R021005	Merry Farm
213 Beech Ridge Rd	R012012	Meserve Homestead
<u>1 Bessey School Drive</u>	<u>U041002</u>	<u>Bessey School</u>
13 42 Black Point Rd	R08101 54	Causeway Church
255 Black Point Rd	U014014	Cobble Stone House
319 Black Point Rd	R090010	Foss Homestead
428 Black Point Rd	R103010	Cobble Stone House
81 Black Point Rd	R073012	Hunnewell House
79 County Rd	R015078	Ralph Temm Homestead
7480 County Rd	R01501 24	North Scarborough Grange
450 County Rd	R002005D	Universalist Church and Parsonage
1 Dresser Rd	R031020B	John Libby Homestead
12 Dunstan Landing Rd	U033013	Lettie Merrill Homestead
13 Dunstan Landing Rd	U033029	Noah Pillsbury Homestead
18 Dunstan Landing Rd	U033014	Jonathan Pillsbury Homestead
37 Dunstan Landing Rd	R065003	Old Fabyan House
49 Elmwood Ave	R057001	Owen Leighton House
4 Highland Ave	R081016	Abraham Plummer
184 Holmes Rd	R022009	Beech Ridge School
<u>35 Hunnewell Rd</u>	<u>U048024</u>	<u>Roger Hunnewell House</u>
<u>39 Hunnewell Rd</u>	<u>U048023</u>	<u>Richard Hunnewell House</u>
<u>23 Hunnewell Rd</u>	<u>U048028</u>	<u>2nd Hunnewell House</u>
<u>22 King St</u>	<u>U022079</u>	<u>Ebb Tide (formerly Phoenix)</u>
8 Lucky Lane	U029004	Ezra Carter Farm
100 Manson Libby Rd	R062006	Samuel Manson Libby Homestead

Chapter 405, Zoning Ordinance**SECTION VII.H. HISTORIC PRESERVATION PROVISIONS**

42 Manson Libby Rd	R062001	Libby Mitchell Post 76
34 Ocean Ave	U002171	Higgins Beach Inn
237 Pine Point Rd	U026049	1840 House
211 Pine Point Rd	U026058	The Old Maine House
248 Pine Point Rd	U025042	Old Blue Point Church
212 Pine Point Rd	U025002	John Harris Seavey House
265 Pine Point Rd	U024052	Proctor House
272 Route One	U041002	Bessey School
397 Route One	U038011	Dr. Haigis House
577 Route One	U034037	Southgate House
581 Route One	U034036	Southgate Barn
591 Route One	U034033	Dunstan School
605 Route One	U034029	Wayland
720 Route One	U029001	Mulbery Milliken Tavern
674 Route One	U032034	One Room Dunstan Schoolhouse
626 Route One	U032001	Dr. Bacon House
672 Route One	U032033	Benjamin Chadwick House
656 Route One	U032011	Dunstan Church (W Scar Methodist Ch)
647 Route One	U031033A	Scarborough Historical Society
649 Route One	U031033	Dunstan Grange Hall
152 Spurwink Rd	R098016	Ivory Kilburn House
178 Spurwink Rd	R098023	Mitchell Farm
194 Spurwink Rd	R097002	Stanford House
2 Two Rod Rd	R049013	Scotow Hill Schoolhouse
122 Two Rod Rd	R032001	Blossom Place
5 Winslow Homer Rd	U002044	Winslow Homer Studio

SMALL WIRELESS FACILITY LICENSING ORDINANCE

AN ORDINANCE ESTABLISHING STANDARDS FOR SMALL WIRELESS FACILITIES IN THE RIGHTS-OF-WAY IN THE TOWN OF SCARBOROUGH

Section 1 – Purpose

The purpose of this Ordinance is to establish nondiscriminatory policies and procedures for use of the rights-of-way and more specifically the placement of small wireless facilities in right-of-way within the Town's jurisdiction, which will provide public benefit consistent with the preservation of the integrity, safe usage, and reasonable aesthetic qualities of the rights-of-way and the Town as a whole.

In enacting this Ordinance, the Town is establishing uniform standards consistent with state and federal law to address the placement of small wireless facilities and associated poles in the rights-of-way, including without limitation, to:

1. prevent interference with the use of streets, sidewalks, alleys, driveways and other public ways and places;
2. prevent the creation of visual and physical obstructions and other conditions that are hazardous to vehicular and pedestrian traffic;
3. prevent interference with the facilities and operations of facilities lawfully located in rights-of-way or public property;
4. protect against environmental damage, including damage to trees;
5. prevent interference with drainage systems;
6. facilitate permitting of small cell facilities to consistent with the required time frame;
7. establish a licensing fee structure.

Persons or entities wishing to establish a small wireless facility within the Town of Scarborough shall first obtain a license from the Town of Scarborough and shall be subject to the provisions of this Ordinance.

Section 2 - Definitions

1. "Administrative Review" means ministerial review of an Application by the Town relating to the review and the issuance of a License or Annual Renewal, including review by the Administrative Review Team, to determine whether the issuance of a license is in conformity with the applicable provisions of this Ordinance.
2. "Administrative Review Team" means the review authority for issuance of licenses and Annual Renewals related to this Ordinance which is comprised of the Planning Director, or their designee, the Public Works Director, or their designee, and the Police Chief, or their designee.

3. "Administrative Review Team Coordinator" means the lead staff member on the Administrative Review Team as designated by the Planning Director.
4. "Antenna" means: (i) communications equipment that transmits, receives, or transmits and receives electromagnetic radio frequency signals used in the provision of wireless services or other wireless communications; or (ii) Communications equipment similar to equipment described in part (i) used for the transmission, reception, or transmission and reception of surface waves.
5. "Collocate" means 1) mounting or installing an antenna facility on a preexisting structure, and/or 2) modifying a structure for the purpose of mounting or installing an antenna facility on that structure. "Collocation" has a corresponding meaning.
6. "Pole" means a type of structure in the rights-of-way that is or may be used in whole or in part by or for wireline communications, electric distribution, lighting, traffic control, signage, or similar function, or for collocation of small wireless facilities; provided, such term does not include a tower, building or electric transmission structures.
7. "Rights-of-Way" or "ROW" means the area on, below, or above a public utility easement, roadway, highway, street, sidewalk, alley, or similar property, but not including a federal interstate highway.
8. "Small Wireless Facility" means a wireless facility each antenna of which could fit within an enclosure of no more than three (3) cubic feet and of which all associated wireless equipment other than antennas, electrical meters and concealment elements has a cumulative volume of no more than twenty-eight (28) cubic feet.
9. "Structure" means a pole, tower, base station, or other building, whether or not it has an existing antenna facility, that is used or to be used for the provision of wireless service.

Section 3 – Permitted Use

Permitted Use: The following uses within the rights-of-way shall be a permitted use, subject to administrative review only and issuance of a license as set forth in this Ordinance:

1. Establishing a small wireless facility;
2. Collocation of a small wireless facility; and,
3. Placement of a new, modified, or replacement pole to be used for collocation of a small wireless facility

The Town Public Works Department requires a permit for any work that requires excavation or closure of sidewalks or vehicular lanes within the ROW for such activities. Such a permit must be issued to the applicant on a non-discriminatory basis upon terms and conditions applied to any other person performing similar activities, regardless of technology, in the ROW.

Section 4 – License Required

License Required. Except as otherwise provided in this Ordinance, no person shall place any small wireless facility or any pole or structure associated with the facility in the right-of-way, without first filing an application for the same and obtaining a license therefor.

Annual licensing renewal is required to ensure compliance and consistency with the provisions set forth herein and to ensure coordination with any related efforts within the right of way which may require coordination between the Town and the Licensee.

Application Fees:

Local application fees are set forth below:

1. \$500 for up to the first five small wireless facilities in the same application, with an additional \$100 for each small wireless facility beyond five in the same application.
2. \$1,000 for the installation, modification or replacement of a pole together with the collocation of an associated small wireless facility in the rights-of-way that is a permitted use in accordance with this Ordinance.

Application Requirements. An application filed pursuant to this Ordinance shall be made by the wireless provider or its duly authorized representative and shall contain the following:

1. The applicant's name, address, telephone number, and e-mail address;
2. The names, addresses, telephone numbers, and e-mail addresses of all duly authorized representatives and consultants, if any, acting on behalf of the applicant with respect to the filing of the application.
3. A general description of the proposed small wireless facility and the purpose and intent of the proposed facility. The scope and detail of such description shall be appropriate to the nature and character of the work to be performed, with special emphasis on those matters likely to be affected or impacted by the physical work proposed.
4. Site plans and engineering drawings of the proposed use of the right of way.
 - a. To the extent the proposed facility involves location or collocation on a pole or support structure, a structural report performed by a duly licensed engineer evidencing that the pole or support structure will structurally support the collocation in accordance with applicable codes;
 - b. Visual depictions or representations of the facility;
 - c. Information indicating the horizontal and vertical location, relative to the boundaries of the right of way, of the small wireless facility.
 - d. For any ground mount facilities, visual depictions or representations not included in the construction drawings.
5. If the small wireless facility will be collocated on a pole or support structure owned by a third party, a certification that the wireless provider has permission from the owner

to collocate on the pole or support structure; and

6. A statement that the small wireless facility shall comply with all applicable codes.
7. Payment of a fee in accordance with the Application Fee provision above.

Annual Licensing & Fee: Upon installation, and until the small wireless facility is removed from the right of way, an annual licensing fee of \$270 per small wireless facility shall be submitted to the Town. The fee shall be paid by June 1 of each year (for new small wireless facilities the annual fee is applicable to facilities installed and operational by January 1 of the same year). Annual licensing renewal applications shall include:

1. The name, address, telephone and email contact information of the owner and operator of the facility.
2. A description and location map identifying the small wireless facility and associated pole location.
3. A statement that the small wireless facility complies with all applicable codes.
4. A report of any general maintenance or modifications to the facility during the preceding year.

The Town shall have 30 days to review the annual licensing renewal request. Failure to act by the Town within this time shall be deemed approval for a renewed annual license. The Town may revoke a license provided that the Administrative Review Team finds that the small wireless facility is out of compliance with any provisions of this Ordinance.

Cease Payment. A wireless provider may remove its facilities at any time from the rights-of-way and cease paying the annual licensing fee.

Routine Maintenance. An application shall not be required for routine maintenance.

Section 5 – License Applications

- (A) An application for a license or annual renewal shall be processed by the Planning & Code Department and reviewed and approved by the Administrative Review Team.
- (B) The Administrative Review Team shall review an application subject to this Ordinance considering its conformity with applicable provisions of this Ordinance, and shall issue a license on nondiscriminatory terms and conditions subject to the following requirements:
 1. For an initial application, the Administrative Review Team Coordinator shall notify the applicant in writing on or before the tenth (10) day of submission if the application is materially incomplete. In the written notice that the application is incomplete, the Administrative Review Team Coordinator must clearly and specifically identify all the missing documents or information and must specify the related code provision, ordinance, application instruction or otherwise publicly-stated procedures related to missing information; and,
 2. If the Administrative Review Team Coordinator notifies the applicant in writing that the application is incomplete in accordance with subsection (1), the

processing deadline in subsection (3) shall restart at zero on the date the applicant submits all the documents and information identified by the Administrative Review Team Coordinator to render the application complete; and,

3. The Administrative Review Team shall make its final decision to approve or deny a complete application within (i) sixty (60) days of receiving an application for the collocation of a small wireless facility using an existing structure, and (ii) 90 days for an application to collocate a small wireless facility on a new structure. These timelines may be tolled only by mutual agreement between the applicant and the Town; and
 4. The Town must advise the applicant in writing of its final decision, and if the final decision is to deny the application, the final decision document shall state the basis for a denial, including specific code provisions on which the denial was based, and send the decision document to the applicant on or before the day the Town denies the application.
- (C) The Town must process all applications on a nondiscriminatory basis and may only deny an application subject to this Ordinance if the proposed small wireless facility or new, modified, or replaced pole:
1. Materially and demonstrably interferes with the safe operation of traffic control equipment;
 2. Materially and demonstrably interferes with sight lines or clear zones for transportation or pedestrians;
 3. Materially interferes with laws of general applicability addressing pedestrian, bike, transit and vehicular traffic and safety requirements;
 4. Materially fails to comply with the Americans with Disabilities Act or similar federal or state standards regarding pedestrian access or movement;
 5. Materially fails to provide public benefit consistent with the preservation of the integrity, safe usage, and reasonable aesthetic qualities of the rights-of-way and the Town as a whole;
 6. Is proposed in a location that hinders the functioning and/or maintenance of exiting or planned drainage systems;
 7. Is proposed in a location which interferes with planned improvements within the right of way;
 8. Fails to comply with applicable codes; or
 9. Fails to comply with the provisions in this Chapter.

Section 6 – Design Standards for Small Wireless Facilities in the ROW

A. Location:

Small wireless facilities in the public right-of-way shall be collocated on existing poles or structures, whenever possible. If collocation is not technologically feasible, the applicant may propose a new pole or structure.

When located a new pole or structure adjacent to a building care should be taken to locate the pole such that it is not located in-front of windows, primary walkways, primary entrances or exits, or in such a way that it would impede access to the building. Where feasible, facilities shall be located between properties as much as possible.

B. General:

Both the small wireless facility and any and all accessory equipment shall maximize use of building materials, colors and textures designed to blend with the structure to which it may be affixed and/or to harmonize with the natural surroundings.

Unless it is determined that another design is less intrusive, or placement is required under applicable law, small wireless facilities shall be as follows:

1. Small wireless facilities should not be readily noticed;
2. All equipment, including electric meters, should be located on or within the pole unless prohibited by the owner of the pole, in which case an alternative power meter box must be approved by the Administrative Review Team;
3. A small wireless facility and associated equipment located on the exterior of a pole shall be enclosed in a shroud or enclosure that is non-reflective, matted material.
4. All small wireless facilities shall be constructed out of or finished with non-reflective materials (visible exterior surfaces only);
5. Wiring and cabling shall be neat and concealed within or flush to the pole or support structure, ensuring concealment of these components to the greatest extent possible.
6. If equipment cannot be installed inside of the pole, pole attachments within 15 feet of ground level shall be positioned on the side of the pole facing away from approaching traffic in the travel lane closest to the pole, provided that if the equipment would extend over a sidewalk or road surface, the equipment shall be positioned in a way to avoid such encroachment;
7. Wireless facility equipment on the outside of a utility pole shall be placed at least 10 feet above the public way, unless otherwise permitted by Town due special circumstances of the location. However, only necessary electrical meters may be located no lower than required by the electrical supplier;
8. Shall not be lighted or marked unless required by the Federal Communications Commission (FCC), the Federal Aviation Administration (FAA), or other applicable governmental authority; and

9. Signs located at the small wireless facility shall be limited to ownership and contact information, FCC antenna registration number (if required) and any other information as required by applicable governmental authority. Commercial advertising is strictly prohibited.

C. Antennae:

1. Antenna and accessory equipment shall be treated to match the supporting structure and may be required to be non-reflective, or otherwise coated, to be visually compatible with the support structure upon which they are mounted.
2. Each individual antenna shall be located entirely within a shroud enclosure of not more than three (3) cubic feet in volume. All antennas associated with the small wireless facility shall not exceed a combined space of six cubic feet.
3. The diameter of the antenna or antenna enclosure should generally not exceed the diameter of the top of the wireless support structure pole, and to the maximum extent practical, should appear as a seamless vertical extension of the pole.
4. In no case shall the maximum diameter of the shroud be wider than one- and one-half times the diameter of the top of the pole.
5. Where maximum shroud diameter exceeds diameter of the top of the pole, the shroud shall be tapered to meet the top of the pole.
6. Unless technologically infeasible or otherwise impractical, all antenna shall be mounted to the top of the wireless support structure pole, aligned with the centerline of the structure.
7. Antennas shall be generally cylindrical in shape.
8. Antenna shall be completely housed within a cylindrical shroud that is capable of accepting paint to match the wireless support structure.

D. Height Limitations:

1. The height of a structure used for collocation of a small wireless facility, including the antenna, measured at the base of the structure shall not exceed the lesser of:
 - a. Ten (10) percent taller than other adjacent structures in the right of way; or,
 - b. Fifty (50) feet above ground level together with the minimum antenna height
2. A utility pole existing on or before **March 1, 2020** that is proposed to be used for the collocation of a small wireless facility may, on only one occasion, be increased by up to ten feet (10') to allow for the attachment of the small cell wireless antenna together with any approved concealment feature.

E. Stand-Alone Poles

If an applicant proposes to install a new stand-alone utility pole in connection with a small wireless facility, the pole and facilities shall, in addition to the requirements of section above, meet the following design standards:

1. Design of the pole shall be cylindrical and shall match the aesthetics of existing utility poles and streetlights installed adjacent to the pole.
2. Together with the small wireless facility components shall be sized to be visually pleasing.
 - a. For a pole to be considered visually pleasing, the transition between the equipment cabinet and upper pole should be considered;
 - b. The equipment associated with the small wireless facility shall be enclosed in the wireless support structure., provided that a separate equipment cabinet or vault not exceeding 28 cubic feet in size may be used if the equipment cannot reasonably be contained in the space allowed;
 - c. Each pole component shall be architecturally compatible to create a cohesive aesthetic.
3. Shall not be located within 100 feet of the apron of a fire station or other adjacent emergency service facility.
4. Shall be placed in alignment with existing trees, utility poles, and streetlights.
5. Shall be located such that it in no way impedes, obstructs, or hinders the usual pedestrian or vehicular travel, affect public safety, obstruct the legal access.
6. Shall not be located to impeded upon existing or planned pedestrian, transit or bicycle facilities.

F. Ground Mounted Equipment

1. Ground mounted equipment associated with the facility may not be permitted within the right-of-way;
 - i. Connection to ground mounted equipment located outside the right of way must be underground;
2. Ground-mounted accessory equipment shall be screened from surrounding views, to the fullest extent possible, through the use of landscaping or other decorative features to the satisfaction of the Town;
3. Grounding rods are permitted but must be located to prevent interference with the use of streets, sidewalks, alleys, driveways and other public ways and places.

G. Guy Wires Restricted

1. Guy wires and similar support structures may not be used as part of the installation of any small wireless facility, unless the small wireless facility is proposed to be attached to an existing pole that incorporated guy wires prior to the date of the small wireless facility application.

Section 7 – Effect of Permit

Authority Granted. No Property Right or Other Interest Created. A license from the Town authorizes an applicant to undertake only certain activities in accordance with this Ordinance and does not create a property right or grant authority to the applicant to impinge upon the rights of others who may already have an interest in the rights-of-way.

Section 8 – Removal, Relocation or Modification of Small Wireless Facility in the ROW

Notice: The Town shall provide the greatest practical notice possible, but no less than ninety (90) days following written notice from the Town, the wireless provider shall, at its own expense, protect, support, temporarily or permanently disconnect, remove, relocate, change or alter the position of any small wireless facilities within the rights-of-way whenever the Town has determined that such removal, relocation, change or alteration, is reasonably necessary for the construction, repair, maintenance, or installation of any Town improvement in or upon, or the operations of the Town in or upon, the rights-of-way.

Emergency Removal or Relocation of Facilities. The Town retains the right and privilege to cut or move any small wireless facility located within the rights-of-way of the Town in the event of an emergency, as the Town may determine to be necessary, appropriate or useful in response to any imminent danger to public health, safety, or property. If circumstances permit, the Town shall notify the wireless provider and provide the wireless provider an opportunity to move its own facilities prior to cutting or removing a facility and shall notify the wireless provider promptly after cutting or removing a small wireless facility.

Abandonment of Facilities. A wireless provider is required to notify the Town at least 30 days prior to abandonment of a small wireless facility. Following receipt of such notice the Town may direct the wireless provider to remove all or any portion of the small wireless facility that the Town, or any of its departments, determines would be in the best interest of the public health, safety and welfare to remove. If the wireless provider fails to remove the abandoned facility within 90 days after such notice, the Town may undertake to do so and recover the actual and reasonable expenses of doing so from the wireless provider, its successors or assigns.

Damage and Repair. The Town may require a wireless provider to repair all damage to the rights-of-way directly caused by the activities of the wireless provider and return the rights-of-way to its functional equivalence before the damage pursuant to the competitively neutral, reasonable requirements and specifications. If the wireless provider fails to make the repairs within 120 days after written notice, the Town may affect those repairs and charge the applicable party the reasonable, documented cost of such repairs.

Section 9 – Effective Date

This Ordinance shall take effect ten (30) days after its passage, approval and publication.

Section 10 – Severability

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining.

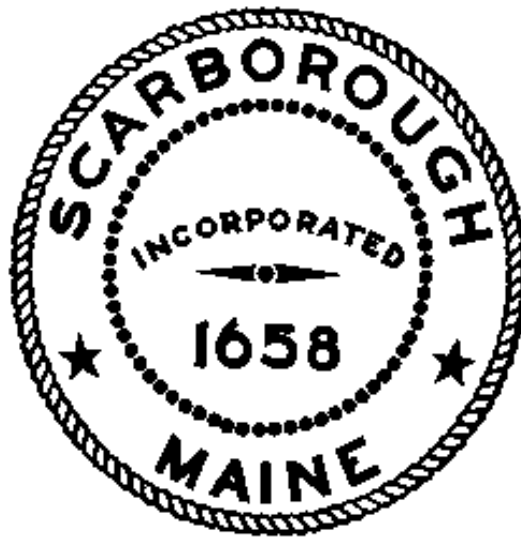
Section 11- Violations and Penalties

Any person who violates any provision of this ordinance commits a civil violation punishable by a civil penalty in the minimum amount of \$100 and the maximum amount of \$2,500. Each day a violation occurs or exists constitutes a separate violation.

CHAPTER 405C

TOWN OF SCARBOROUGH

SHORELAND ZONING ORDINANCE



Adopted August 5, 1992
Amended July 5, 1995
Amended December 15, 2004
Amended February 6, 2008
Amended July 15, 2009
Amended May 5, 2010
Amended September 5, 2012
Amended December 2, 2015
Amended November 1, 2017
Amended qq/qq/qqqq

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**CHAPTER 405C
SHORELAND ZONING ORDINANCE
FOR THE TOWN OF
SCARBOROUGH, MAINE**

Section 1. Purposes

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

Section 2. Authority

This Ordinance has been prepared in accordance with and adopted pursuant to the provisions of Title 38 Sections 435449 of the Maine Revised Statutes Annotated (M.R.S.A.).

Section 3. Applicability

This Ordinance applies to all land areas within 250 feet, horizontal distance, of the

- normal high-water line of any great pond or river
- upland edge of a coastal wetland, including all areas affected by tidal action, or
- upland edge of a freshwater wetland and all land areas within 75 feet, horizontal distance, of the normal highwater line of a stream. (amended 07/15/2009)

This Ordinance also applies to all land areas within the Stream Protection 2 District as shown on the Official Zoning Map and as further described in Section 13(C) Stream Protection 2 District. This Ordinance also applies to any structure built on, over or abutting a dock, wharf or pier, or other structure extending or located below the normal highwater line of a water body or within a wetland. (amended 02/06/2008)(amended 07/15/2009)(amended qq/qq/qqqq)

In the Shoreland Overlay District, Stream Protection Overlay District, and Stream Protection 2 Overlay District this Ordinance applies in addition to the Zoning Ordinance of the Town of Scarborough, Maine ("Scarborough Zoning Ordinance"). In the Resource Protection District, Stream Protection District, and Stream Protection 2 District this Ordinance applies in place of the Scarborough Zoning Ordinance. (amended 02/06/2008)(amended qq/qq/qqqq)

Section 4. Effective Date of Ordinance and Ordinance Amendments

The effective date of this Ordinance is the date of approval, automatic approval or approval with conditions by the Commissioner of the Department of Environmental Protection as provided in 38 M.R.S.A. subsection 438A(3). On the effective date of this Ordinance, or Ordinance Amendment, any shoreland zoning provisions previously adopted by the Town of Scarborough

are hereby repealed. Any application for a permit submitted to the Town of Scarborough within 45 days prior to the date the Commissioner of the Department of Environmental Protection determines that he/she has received the Ordinance, or Ordinance Amendment, pursuant to 38 M.R.S.A. subsection 438A(3) shall be governed by the terms of this Ordinance, or Ordinance Amendment, if this Ordinance, or Ordinance Amendment, is approved pursuant to 38 M.R.S.A. subsection 438A(3). (amended 07/15/2009)

Section 5. Availability

This Ordinance is on file in the office of the Town Clerk, who will make copies available to the public on request upon payment of the Town's reasonable expenses of reproducing the Ordinance.

Section 6. Severability

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

Section 7. Conflicts with Other Ordinances

Whenever a provision of this Ordinance conflicts with or is inconsistent with another provision of this Ordinance or of any other ordinance, regulation or statute administered by the municipality, the more restrictive provision shall control. (amended 07/15/2009)

Section 8. Amendments

This Ordinance may be amended according to the procedures set forth in Section II.G of the Scarborough Zoning Ordinance. Copies of amendments, attested and signed by the Municipal Clerk, shall be submitted to the ~~Board~~Commissioner of the Department –of Environmental Protection following the adoption by the municipal legislative body and shall not be effective unless approved by the ~~Board~~Commissioner of Environmental Protection. If the Commissioner ~~Board of Environmental Protection~~ fails to act on any amendment within fortyfive (45) days of ~~the Board's~~his/her receipt of the amendment, the amendment is automatically approved. Any application for a permit submitted to the municipality within the fortyfive (45) day period shall be governed by the terms of the amendment, if such amendment is approved by the ~~Board~~Commissioner. (amended qq/qq/qqqq)

Section 9. Districts and Zoning Map

A. Official Shoreland Zoning Map

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

1. Resource Protection
2. Stream Protection Overlay (amended qq/qq/qqqq)
3. Stream Protection 2 Overlay (amended 02/06/2008)
4. Shoreland Overlay

The Official Shoreland Zoning Map is the document entitled “Town of Scarborough Maine GIS Zoning Map,” as such may be amended from time to time pursuant to Section 8 of this Ordinance, which document shall be maintained in digital electronic form in the Town’s geographic information system database and in printed form in the office of the Town Clerk. Additional printed copies shall also be available in the Planning and Code Enforcement offices.

B. 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.

C. 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 ~~Board~~Commissioner of the Department of Environmental Protection. (amended qq/qq/qqqq)

Section 10. Interpretation of District Boundaries

The depiction of the boundaries of the shoreland zone and of the individual shoreland districts on the Official Shoreland Zoning Map is merely illustrative of their general locations. The exact boundaries shall be determined by onsite inspection and measurement from the normal highwater line or upland edge of a wetland. Such onsite inspection and measurement may be requested by the property owner at any time or by the applicant at the time of filing an application for a permit or approval under this Ordinance. As part of such onsite inspection and measurement, the property owner or the applicant for any permit or approval may present evidence from persons with training and/or experience relevant to the identification, delineation and classification of wetlands and/or the delineation of the highwater line or upland edge of a wetland. Such evidence shall be presented to the Code Enforcement Officer (or to the Planning Board if an application for a Planning Board permit or approval is pending) and the Code Enforcement Officer (or the Planning Board if an application for a Planning Board permit or approval is pending) shall make a determination as to the exact boundaries, subject to review by the Board of Appeals pursuant to section 16(G)(1)(a) of this Ordinance.

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.

Section 11. Land Use Requirements

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

Section 12. Nonconformance

A. Purpose

1. Purpose:

It is the intent of this Ordinance to promote land use conformities, except that nonconforming conditions that existed before the effective date of this Ordinance or amendments thereto shall be allowed to continue, subject to the requirements set forth ~~in~~ Section 12. Except as otherwise provided in this Ordinance, a non-conforming condition shall not be permitted to become more non-conforming. (amended 07/15/2009)

1. 2. Applicability:

The provisions of this Section 12 govern only nonconforming conditions which result from noncompliance with the requirements of this Ordinance. As to such nonconforming conditions, the provisions of this Section 12 supersede the provisions of Section III of the Scarborough Zoning Ordinance. As to nonconforming conditions which result from noncompliance with the requirements of the Scarborough Zoning Ordinance, the provisions of the Scarborough Zoning Ordinance shall govern.

B. General

1. Transfer of Ownership:

Nonconforming structures, lots and uses may be transferred, and the new owner may continue the nonconforming use or continue to use the nonconforming structure or lot, subject to the provisions of this Ordinance.

2. Repair and Maintenance:

This Ordinance allows, without a permit, the normal upkeep and maintenance of nonconforming uses and structures including repairs or renovations that do not involve expansion of the nonconforming use or structure, and such other changes in a nonconforming use or structure as federal, state, or local building and safety codes may require. (amended 07/15/2009)

C. Nonconforming 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. This limitation does not apply to structures in the Stream Protection 2 Overlay District that are greater than seventy-five (75) feet from the normal high-water line of the stream, provided that the structure was in existence as of January 31, 2008. (amended 02/06/2008, amended qq/qq/qqqq)

(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) (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.

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(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) (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. This limitation does not apply to structures in the Stream Protection 2 District that are greater than seventy-five (75) feet from the normal high-water line of the stream, provided that the structure was in existence as of January 31, 2008. (amended 02/06/2008)

- (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.

(ed) 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 nonconforming 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. A nonconforming structure may be added to or expanded after obtaining a permit from the same permitting authority as that for a new structure, if such addition or expansion does not increase the nonconformity of the structure except as provided for below. (amended 02/06/2008)(amended qq/qq/qqqq)

2. FoundationsFurther Limitations:

~~(a. After January 1, 1989 if any portions of a structure is less than the required setback from the normal highwater line of a water body or tributary stream or the upland edge of a wetland, that portion of the structure shall not be expanded in floor area or volume, by 30% or more, during the lifetime of the structure. This limitation does not apply to structures in the Stream Protection 2 District that are greater than seventy-five (75) feet from the normal high water line of the stream, provided that the structure was in existence as of January 31, 2008. (amended 02/06/2008)~~

~~ba).~~ 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 Zoning Board-Board of Appeals or its designee, basing its decision on the criteria specified in Section 12(C)(2) Relocation, below.

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

~~(eb). No structure which is less than the required setback from the normal highwater line of a water body, tributary stream, or the upland edge of a wetland shall be expanded toward the water body, tributary stream, or wetland. This limitation does not apply to existing structures in the Stream Protection 2 District that are more than seventy five (75) feet from the high water line of the stream provided that the entire structure will be at least seventy five (75) feet from the stream after it is expanded. (amended 02/06/2008) (amended 07/15/2009) (amended qq/qq/qqqq)~~

23. Relocation:

A nonconforming structure may be relocated within the boundaries of the parcel on which the structure is located provided that the site of the relocation conforms to all setback requirements to the greatest practical extent as determined by the Planning Zoning Board of Appeals 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 nonconforming. (amended 07/15/2009)

In determining whether the building relocation meets the setback to the greatest practical extent, the Planning Zoning Board of Appeals 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 onsite 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 Zoning Board of Appeals shall require replanting of native vegetation to compensate for the destroyed vegetation in accordance with Section 15(RS). In addition, the area from which the relocated structure was removed must be replanted with vegetation. Replanting shall be required as follows: (amended 07/15/2009)(amended qq/qq/qqqq)

- (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. (adopted 07/15/2009)

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. (adopted 07/15/2009)

- (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. (adopted 07/15/2009)

43. Reconstruction or Replacement:

Should any nonconforming building or structure be destroyed or damaged regardless of the cause, by more than 50% of the market value of the structure before such damage, destruction or removal, by any means beyond the control of the owner, it may be rebuilt or restored provided that a permit is obtained within a period of 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 Zoning Board of Appeals 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. If no permit is obtained within 18 months, the reconstruction or replacement structure must or thereafter conform with the requirements of Section 15.B of this Ordinance unless a variance from such requirements is granted by the Board of Appeals pursuant to Section 16.G.2 of this Ordinance.

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 Code Enforcement Officer within one year of such damage, destruction, or removal.

In determining whether the building reconstruction or replacement meets the setback to the greatest practical extent the Planning Board/Zoning Board of Appeals 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. (amended qq/qq/qqqq)

~~Should any nonconforming building or structure be destroyed or damaged by any means beyond the control of the owner, it shall be rebuilt or restored within a period of one year or thereafter conform with the requirements of Section 15.B of this Ordinance unless a variance from such requirements is granted by the Board of Appeals pursuant to Section 16.G.2 of this Ordinance. If a nonconforming building or structure is demolished or removed by or for its owner, it shall not be rebuilt or replaced except in conformity with the requirements of Section 15.B of this Ordinance unless a variance from such requirements is granted by the Board of Appeals pursuant to Section 16.G.2 of this Ordinance.~~

45. Change of Use of a Nonconforming Structure

The use of a nonconforming 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. (amended 07/15/2009)

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

D. Nonconforming Uses

1. Expansions:

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

2. Resumption Prohibited:

A lot, building or structure in or on which a nonconforming use is discontinued for a period exceeding one year, or which is superseded by a conforming use, may not again be devoted to a nonconforming use except that the Planning Board may, for good cause shown by the applicant, grant up to a one year extension to that time period. This provision shall not apply to the resumption of a use of a residential structure provided that the structure has been used or maintained for residential purposes, or a non-residential land use that is permitted in the underlying zoning -duringdistrict, during the preceding five (5) year period.

3. Change of Use:

An existing nonconforming use may be changed to another nonconforming use provided that the 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~~5) above.

E. Nonconforming Lots

1. Nonconforming Lots:

A nonconforming 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. (amended 07/15/2009)

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 nonconforming lots may be conveyed separately or together, provided that the State Minimum Lot Size Law (12 M.S.R.A. sections 4807-A through 4807-D) and the State of Maine Subsurface Wastewater Disposal Rules are complied with. (amended 07/15/2009)

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.

Section 13. Establishment of Districts

A. Resource Protection District

The Resource Protection District includes areas in which developments would adversely affect water quality, productive habitat, biological ecosystems, or scenic and natural values. In developing the Official Shoreland Zoning Map, areas of the following types were included in the Resource Protection District unless such areas were already developed at the time of mapping.

1. ~~1.~~ Areas within 250 feet, horizontal distance, of the upland edge of freshwater wetlands, ~~and~~ wetlands associated with great ponds and rivers, which are rated

"moderate" or "high" value by the Maine Department of Inland Fisheries and Wildlife (MDIF&W) that are depicted on the Geographic Information System (GIS) data layer maintained by either Maine Department of Inland Fisheries and Wildlife or the Maine Department of Environmental Protection as of December 31, 2008. For the purposes of this paragraph "wetlands associated with great ponds and rivers" shall mean areas characterized by non-forested wetland vegetation and hydric soils that are contiguous with a great pond or river, and have a surface elevation at or below the water level of the great pond or river during the period of normal high water. "Wetlands associated with great ponds or rivers" are considered to be part of that great pond or river. (amended 07/15/2009)

- 2.
3. ~~2.~~ Areas within 250 feet, horizontal distance, of the upland edge of salt marshes and salt meadows which are rated "moderate" or "high" value by the Maine Department of Inland Fisheries and Wildlife (MDIF&W) as of January 1, 1973. (adopted 07/15/2009)
4. ~~3.~~ Flood plains along rivers and flood plains along artificially formed great ponds along rivers, defined by the 100 year flood plain as designated on the Federal Emergency Management Agency's (FEMA) Flood 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. This district shall also include 100-year flood plains adjacent to tidal waters as shown on FEMA's Flood Insurance Rate Maps or Flood Hazard Boundary Maps.
5. ~~4.~~ Areas of two or more contiguous acres with sustained slopes of 20% or greater.
6. ~~5.~~ Areas of two (2) or more contiguous acres supporting wetland vegetation and hydric soils, which are not part of a freshwater or coastal wetland as defined, and which are not surficially connected to a water body during the period of normal high water. (adopted 07/15/2009)
- 7.
8. ~~6.~~ Land areas along rivers subject to severe bank erosion, undercutting, or river bed movement and lands adjacent to tidal waters which are subject to severe erosion or mass movement, such as steep coastal bluffs.
- 9.
- ~~7.~~ 7. Freshwater wetlands not rated "moderate" or "high" by the Maine Department of Inland Fisheries and Wildlife but substantially surrounded by areas included in the Resource Protection District because of other characteristics described in this Section 13 (A).

B. Stream Protection Overlay District

The Stream Protection Overlay District includes all land areas within seventyfive (75) feet, horizontal distance, of the normal highwater line of a stream, exclusive of those areas within the Stream Protection 2 District and those areas within twohundred and fifty (250) feet, horizontal distance, of the normal highwater line of a great pond, or river, or within twohundred and fifty (250) feet, horizontal distance, of the upland edge of a freshwater or coastal wetland. Where a

stream and its associated shoreland area is located within twohundred 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. Areas in the Stream Protection Overlay District are subject to the requirements of the Scarborough Zoning Ordinance as well as to the requirements of this Ordinance. (amended 02/06/2008) (amended 07/15/2009) (amended qq/qq/qqqq)

C. Stream Protection 2 Overlay District

The Stream Protection 2 Overlay District includes all land areas within two hundred fifty (250) feet of the normal high water line of Stuart Brook east of the Maine Turnpike excluding the area within the travel way of Lucky Lane and the area upland of this way as shown on the Official Zoning Map and the normal high water line of the Nonesuch River as shown on the Official Zoning Map. Areas in the Stream Protection 2 Overlay District are subject to the requirements of the Scarborough Zoning Ordinance as well as to the requirements of this Ordinance. (amended 02/06/2008; amended 05/08/2010' amended 05/05/2010) (amended qq/qq/qqqq)

D. Shoreland Overlay District

All land areas in the shoreland zone which are not in the Resource Protection District, the Stream Protection District, or the Stream Protection 2 District are in the Shoreland Overlay District. Areas in the Shoreland Overlay District are subject to the requirements of the Scarborough Zoning Ordinance as well as to the requirements of this Ordinance. (amended 02/06/2008)

Section 14. Table of Land Uses

All land use activities, as indicated in Table 1, Land Uses in the Shoreland Zone, shall conform ~~with~~to all of the applicable land use standards in Section 15. The district designation for a particular site shall be determined from the Official Shoreland Zoning Map (amended 05/05/2010).

Key to Table 1:

405 – Permitting authority and requirements defers to Chapter 405, Scarborough Zoning Ordinance

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 (amended 07/15/2009)

CEO Allowed with permit issued by the Code Enforcement Officer (amended 07/15/2009)

LPI Allowed with permit issued by the Local Plumbing Inspector (amended 07/15/2009)

Abbreviations:

RP Resource Protection

SP Stream Protection ~~and Stream Protection 2~~Overlay (amended 02/06/2008)

SP2 - Stream Protection 2 Overlay

SO Shoreland Overlay

TABLE 1. LAND USES IN THE SHORELAND ZONE				
LAND USES	DISTRICTS			
	SO¹	SP¹	SP2¹	RP
1. Nonintensive recreational uses not requiring structures such as hunting, fishing and hiking	Yes	Yes	Yes	Yes
2. Motorized vehicular traffic on existing roads and trails	Yes	Yes	Yes	Yes
3. Forest management activities except for timber harvesting	Yes	Yes	Yes	Yes
4. Timber harvesting	Yes	Yes	Yes	CEO ²
5. Clearing or removal of vegetation for activities other than timber harvesting (amended 07/15/2009)	Yes	CEO	CEO ¹¹	CEO ²
6. Fire prevention activities	Yes	Yes	Yes	Yes
7. Wildlife management practices	Yes	Yes	Yes	Yes
8. Soil and water conservation practices	Yes	Yes	Yes	Yes
9. Mineral exploration	Yes ^{405¹}	405¹No	405¹No	Yes ³
10. Mineral extraction including sand and gravel extraction	405¹CEO/ PB	405¹No	405¹No	PB ⁴
11. Surveying and resource analysis	405¹Yes	405¹Yes s	405¹Yes	Yes
12. Emergency operations	405¹Yes	405¹Yes s	405¹Yes	Yes
13. Agriculture	405¹Yes	405¹Yes s	405¹Yes	CEO
14. Aquaculture (amended 07/15/2009)	405¹PB	405¹PB	405¹PB	PB
15. Principal structures and uses				
A. One and two family residential, including driveways (amended 07/15/2009)	405¹CEO	405¹PB⁵	405¹CE Q⁺²	No
B. Multiunit residential	405¹PB	405¹No PB	405¹No PB	No
C. Commercial	405¹PB	405¹No PB	405¹No PB	No
D. Industrial	405¹PB	405¹No PB	405¹No PB	No
E. Governmental and Institutional	405¹PB	405¹No PB	405¹No PB	No
F. Small nonresidential facilities for educational, scientific, or nature interpretation purposes	405¹CEO/ PB	405¹PB⁵	405¹PB⁵⁻⁺⁺	PB
16. Structures accessory to allowed uses	405¹CEO	405¹PB⁵	405¹CE Q⁺²	PB
17. Piers, docks, wharfs, bridges and other structures and uses extending over or below the normal highwater line or within a wetland				
a. Temporary	CEO	CEO	CEO	CEO

b. Permanent	PB	PB	PB	PB
18. Conversions of seasonal residences to yearround residences (amended 07/15/2009)	CEO	CEO	CEO	No
19. Home occupations (amended 07/15/2009)	405¹CEO	405¹CE Θ	405¹CE Θ	No
20. Private sewage disposal systems for allowed uses	LPI	LPI	LPI	No
21. Essential services	CEO	PB ⁶	Yes ¹¹	PB ⁶
22. Service drops, as defined, to allowed uses	Yes	Yes	Yes	Yes
23. Public and private recreational areas involving minimal structural development	PB	PB	Yes ¹¹	PB ¹⁰
24. Campgrounds	405¹PB	405¹No PB	405¹PB No	No ⁷
25. Road construction (amended 07/15/2009)	PB ⁸	PB ⁸	Yes ¹¹	No ⁹
26. <u>Land management roads</u>	<u>Yes</u>	<u>Yes</u>	<u>Yes</u>	<u>PB</u>
26 <u>27.</u> Parking facilities	CEO/PB	No <u>PB</u>	CEO/ PP B ¹¹	No ⁷
27 <u>28.</u> Marinas	PB	PB	Yes ¹¹	No
28 <u>29.</u> Filling and earthmoving of < 10 cubic yards	Yes	CEO	Yes ¹¹	CEO
29 <u>30.</u> Filling and earthmoving of > 10 cubic yards but less than 500 cubic yards (amended 07/15/2009)	CEO	PB	Yes ¹¹	PB
30 <u>1.</u> Filling and earthmoving > 500 cubic yards (adopted 07/15/2009)	PB	PB	PB	PB
31 <u>2.</u> Signs	405¹Yes	405¹Ye s	405¹Yes	405¹Ye s
32 <u>3.</u> Uses similar to allowed uses	405¹CEO/ PB	405¹CE Θ	405¹CE Θ	CEO
33 <u>4.</u> Uses similar to uses requiring a CEO permit	405¹CEO	405¹CE Θ	405¹CE Θ	CEO
34 <u>5.</u> Uses similar to uses requiring a PB permit (amended 07/15/2009)	405¹PB	405¹PB	405¹PB	PB

¹In the Shoreland Overlay ~~District~~, Stream Protection Overlay, and Stream Protection 2 Overlay district uses are governed by the district regulations of the Scarborough Zoning Ordinance for the district in which the property is located, unless otherwise indicated in this table. (amended 07/15/2009)(amended qq/qq/qqqq)

²In RP not permitted within 75 feet of the normal highwater line of great ponds, except to remove safety hazards.

³Requires permit from the Code Enforcement Officer if more than 100 square feet of surface area, in total, is disturbed.

⁴In RP not permitted in areas so designated because of wildlife value.

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

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

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

⁸Except that no permit is required for the repair or maintenance of an existing road culvert or for the replacement of an existing road culvert, as long as the replacement culvert is:

- (1) not more than one standard culvert size wider in diameter than the culvert being replaced;
- (2) not more than 25% longer than the culvert being replaced; and
- (3) not longer than 75 feet.

Ancillary culverting activities, including excavation and filling, are included in this exception. The person repairing, replacing or maintaining an existing culvert pursuant to this exception shall ensure that erosion control measures are taken to prevent sedimentation of the water and that the crossing does not block fish passage in the water course.

⁹Except to provide access to permitted uses within the district, or where no reasonable alternative route or location is available outside the RP area, in which case a permit is required from the PB.

¹⁰May include no more than one accessory food concession stand, cart or booth located inside a structure existing on August 5, 1992, provided no on-site waste water disposal is required for the operation of the concession. [Planning Board review is not required to operate such a concession at a recreational area which lawfully existed on August 5, 1992]. (amended 07/05/95)

¹¹ Uses located greater than 75 feet, horizontal distance, from the normal high water line shall be allowed. Uses less than 75 feet, horizontal distance from the normal high water line shall be regulated by the authority established in the SP column.

¹² See further restrictions in Section 15(B)(1)

Section 15. Land Use Standards

All land use activities within the shoreland zone shall conform ~~with~~to the following provisions, if applicable.

A. ~~A.~~ Minimum Lot Standards

1.

1. ~~1. (a).~~ The minimum lot area in the Resource Protection District shall be 30,000 square feet.

~~(b).~~ The minimum lot area in the Stream Protection, ~~and~~ Stream Protection 2, and Shoreland Overlay Districts shall be the same as in the underlying adjacent zoning district under the Scarborough Zoning Ordinance.

1. ~~If more than one district adjoins the land in the Stream Protection or Stream Protection 2 Districts, the minimum lot area for the least restricted adjacent zoning district shall govern. (amended 02/06/2008)~~
2. ~~e. The minimum lot area in the Shoreland Overlay District shall be the same as in the underlying district pursuant to the Scarborough Zoning Ordinance.~~
3. ~~2.~~ The minimum shore frontage for all lots in the Shoreland Zone shall be 100 feet, measured in a straight line between the points of intersection of the side lot lines with the shore line at the normal high water line. The minimum width of any portion of any lot within 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 100 feet. This provision shall not apply to lots in the Shoreland Overlay District when the property is also located in the Coastal Residential 1 (CD-CR1) District or Coastal Mixed Use-Limited (CD-CML) District, where the minimum shore frontage and lot width shall be 48 feet.

- 4.
5. ~~3-~~ Land below the normal high water line of a water body or upland edge of a wetland and land beneath roads or right of ways serving more than two ~~(2)~~ lots shall not be included toward calculating minimum lot area.
6. ~~4-~~
7. If a property owner voluntarily transfers the fee simple ownership of land within the Stream Protection 2 District to the Town of Scarborough or to a land trust or other conservation organization approved by the Planning Board for the purpose of public open space and public access to or along the stream, the property owner shall be entitled to a density bonus. The amount of the bonus shall be one and a half times the number of the dwelling units that could have been built on the transferred land within the Stream Protection 2 District without consideration of the stream setback requirement based upon the net residential area and density for the zone that determines the applicable density and lot area for the land based upon the requirements as set out in the Zoning Ordinance. This bonus shall be in addition to any other density bonus provided for in the Zoning Ordinance including the density bonus for the transfer of development rights. The units resulting from this density bonus may be:
 - (a) ~~a-~~ Developed on another portion of the same parcel on which development is permitted that is not located within the Stream Protection 2 District, or
 - (b) ~~b-~~ Transferred to another parcel in accordance with the Development Transfer Provisions of Section VIID of the Zoning Ordinance.Units resulting from this density bonus must be built or transferred in accordance with Section VIID of the Zoning Ordinance within ten (10) years of the date of the transfer of the land to the Town, land trust, or conservation organization. The right to build or transfer a unit shall lapse at the conclusion of the ten (10) year period. The Planning Department shall establish and maintain a registry of any bonus units created under this provision and shall track the utilization of those units over time to ensure compliance with these provisions. (amended 02/06/2008) (amended qq/qq/qqqq)
8. ~~5-~~ If more than one residential dwelling unit is constructed or established on a single parcel as part of a residential development, all dimensional requirements shall be met for each additional dwelling unit. If more than one principal governmental, institutional, commercial, mixed-use 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 principal structure or use except in the Shoreland Overlay District when the underlying district is the TVC-4 or I-O District, the dimensional requirements shall be met for each additional principal structure rather than each principal use. (amended 09/05/2012)

B. Principal and Accessory Structures

1. All new principal and accessory structures shall be set back from the highest annual tide for lands subject to tidal action; the normal high water line of other water bodies, tributary streams, or the upland edge of a wetland in accordance with the following:

- (a) ~~(a)-~~ In the Shoreland Overlay and Stream Protection Overlay District, at least seventy-five (75) feet, horizontal distance, except as provided in the following subsection b._
- (b) ~~b-~~ In the Shoreland Overlay District, when the property is located east of the railroad right-of-way and the underlying zoning district is the Town and Village Centers Pine Point District – TVC-4 and/or the Industrial Overlay District – I-O, the setback may be reduced to no less than twenty-five (25) feet provided that a vegetated buffer strip at least twenty-five (25) feet in width is provided and maintained adjacent to the upland edge of the wetland. If a natural buffer does not currently exist, the vegetated buffer shall include a well-distributed stand of native vegetation including shrubs, plants, and ground cover appropriate to the specific environment. The buffer shall be designed by an appropriate professional and shall be approved by the Planning Board. If a vegetated buffer strip is not provided, the setback shall be seventy-five (75) feet.
- (c) ~~e-~~ 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.

~~d-~~ In the Stream Protection 2 District all new principal structures shall be set back at least two hundred fifty (250) feet from the normal high water line, except as provided for under subsection B.1-~~(g-)~~ below. Accessory structures in the Stream Protection 2 District shall be allowed in accordance with subsection B.1-~~(h-)~~ below. This limitation does not apply to structures in the Stream Protection 2 District that are greater than seventy-five (75) feet from the normal high-water line of the stream, provided that the structure was in existence as of January 31, 2008. (amended 02/06/2008), (qq/qq/qqqq)

In addition:

- (d) ~~e-~~ 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 waterdependent uses. For these uses there is no required shoreland setback.
- (e) ~~f-~~ For principal structures, water and wetland setback measurements shall be taken from the top of a coastal bluff that has been identified on Coastal Bluff maps as being “highly unstable” or “unstable” by the Maine Geological Survey pursuant to its “Classification of Coastal Bluffs” and published on the most recent Coastal Bluff map. If the applicant and the permitting official(s) are in disagreement as to the specific location of a “highly unstable” or “unstable” bluff, or where the top of the bluff is located, the applicant may at his or her expense, employ a Maine Registered Professional Engineer, a Maine Certified Soil Scientist, a Maine State Geologist, or other qualified individual to make a determination. If agreement is still not reached, the applicant may appeal the matter to the board of appeals. (adopted 07/15/2009)

- (f) ~~g.~~ On a non-conforming lot of record on which only a residential structure exists, and it is not possible to place an accessory structure meeting the required water body, tributary stream or wetland setbacks, the code enforcement officer may issue a permit to place a single accessory structure, with no utilities, for the storage of yard tools and similar equipment. Such accessory structure shall not exceed eighty (80) square feet in area nor eight (8) feet in height, and shall be located as far from the shoreline or tributary stream as practical and shall meet all other applicable standards, including lot coverage and vegetation clearing limitations. In no case shall the structure be located closer to the shoreline or tributary stream than the principal structure. (adopted 07/15/2009)
- (g) ~~h.~~ The Code Enforcement Officer may issue a permit for a new principal structure within the Stream Protection 2 District provided the following standards are met:
- i. ~~i.~~ There is no location on the property, other than a location within the Stream Protection 2 District, where the structure can be constructed.
 - ii.
 - iii. ~~ii.~~ The lot on which the structure is proposed was created and recorded in the Cumberland County Registry of Deeds prior to (~~date of ordinance amendment~~ ~~qq/qq/qqqq~~).
 - iv.
 - v. ~~iii.~~ The structure is setback from the normal high water line to the greatest practical extent and is located at least 75 feet from the normal high water line. In determining the greatest practical extent the Code Enforcement Officer shall consider the size of the lot, the depth of the lot, the slope of the land, the potential for soil erosion, the location of other structures on the property, 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. (adopted 05/05/2010)
- (h) ~~i.~~ In the Stream Protection 2 District new accessory structures shall be permitted within the 250 foot setback to the normal high water line, provided the structure is located at least 75 feet from the normal high water line. (adopted 05/05/2010)

2. ~~2.~~ Principal or accessory structures and expansions of existing which are permitted in the Resource Protection ~~and Stream Protection~~ Districts shall not exceed thirtyfive (35) feet in height. In all other districts, height is governed by Chapter 405, Town of Scarborough Zoning Ordinance. This provision shall not apply to structures such as transmission towers, windmills, wind energy systems, antennas, and similar structures having no floor area. Additionally, this provision shall not apply to a cupola, dome, widow's walk or other similar feature. (amended 07/15/2009) (~~qq/qq/qqqq~~) Additionally, this provision shall not apply to a cupola, dome, widow's walk or other similar feature.

3.

4. ~~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 floodplain soils. ~~(amended 07/15/2009).~~ Accessory structures may be placed in accordance with the standards of Chapter 405A, Town of Scarborough Floodplain Management Ordinance, and need not meet the elevation requirements of this paragraph. (amended 07/15/2009) (~~amended qq/qq/qqqq~~)

5.

6. ~~4.~~ The total footprint area of all structures, parking lots, driveways and other non-vegetated surfaces within the Shoreland Zone shall not exceed twenty (20) percent of the lot or portion thereof located within the Shoreland Zone, including land area previously developed except as provided for in the following subsections:

(a) In the Shoreland Overlay District, when the property is located east of the railroad right-of-way and the underlying zoning district is the Town and Village Centers Pine Point District – TVC-4 and/or the Industrial Overlay District – I-O, the total footprint area shall not exceed seventy-five (75) percent of the lot or portion thereof located within the Shoreland Zone, including land area previously developed. (amended 09/05/2012)

(b) The total footprint area for functionally water-dependent uses shall not exceed seventy (70) percent of the lot or portion thereof located within the Shoreland Zone, including land area previously developed. (amended 09/05/2012)

(c) In the Shoreland Overlay District, when the property is also located in the Coastal Residential 1 (CD-CR1) District or Coastal Mixed Use-Limited (CD-CML) District, the total footprint area shall not exceed thirty-five (35) percent of the lot or portion thereof located within the Shoreland Zone, including land area previously developed. (adopted 12/02/15)

(d) Naturally occurring ledge and rock outcroppings are not counted as non-vegetated surfaces when calculating lot coverage for lots of record on March 24, 1990 and in continuous existence since that date. (amended qq/qq/qqqq _____)

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: (amended qq/qq/qqqq _____)

(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 rivers, streams, coastal wetlands, and tributary streams, as designated on the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps or Flood Hazard Boundary Maps, or the flood of record, or in the absence of these, by soil types identified as recent flood plain soils.

- (f) The area behind the wall is re-vegetated 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;

6. ~~5.~~ Notwithstanding the requirements stated above, stairways or similar structures may be allowed with a permit from the Code Enforcement Officer, to provide shoreline access in areas of steep slopes or unstable soils provided; that the structure is limited to a maximum of four (4) feet in width; that the structure does not extend below or over the normal highwater 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 480C); and that the applicant demonstrates that no reasonable access alternatives exists on the property. (amended 07/15/2009)

C. Piers, Docks, Wharfs, Bridges and Other Structures and Uses Extending Over or Beyond the Normal HighWater Line of a Water Body or within a Wetland (amended qq/qq/qqqq)

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

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

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

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

45. The facility shall be no larger in dimension than necessary to carry on the activity and be consistent with existing conditions, use, and character of the area. A temporary pier, dock or wharf in non-tidal waters shall not be wider than six feet for non-commercial uses. (amended _____)

~~5.~~

6. No new structure shall be built on, over or abutting a pier, wharf, dock or other structure extending beyond the normal highwater 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.

7. New permanent piers and docks on non-tidal waters shall not be permitted unless it is clearly demonstrated to the Planning Board that a temporary pier or dock is not feasible, and a permit has been obtained from the Department of Environmental Protection, pursuant to the Natural Resources Protection Act. (amended _____)

8. No existing structures built on, over or abutting a pier, dock, wharf or other structure extending beyond the normal highwater line of a water body or within a wetland shall be converted to residential dwelling units in any district.

9. Structures built on, over or abutting a pier, wharf, dock or other structure extending beyond the normal highwater 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.

10. Vegetation may be removed in excess of the standards in Section 15(P) of this ordinance in order to conduct shoreline stabilization of an eroding shoreline, provided that a permit is obtained from the Planning Board. Construction equipment must access the shoreline by barge when feasible as determined by the Planning Board.

- (a) When necessary, the removal of trees and other vegetation to allow for construction equipment access to the stabilization site via land must be limited to no more than 12 feet in width. When the stabilization project is complete the construction equipment accessway must be restored.
- (b) Revegetation must occur in accordance with Section 15(S).

~~6. No existing structures built on, over or abutting a pier, dock, wharf or other structure extending beyond the normal highwater line of a water body or within a wetland shall be converted to residential dwelling units in any district.~~

~~7. Structures built on, over or abutting a pier, wharf, dock or other structure extending beyond the normal highwater 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.~~

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 highwater 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 seventyfive (75) feet from the normal highwater line of water bodies, tributary streams, or the upland edge of a wetland.

E. [Reserved]

F. 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 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. (amended 07/15/2009)

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 onsite. (amended 07/15/2009)

3. Size and configuration of parking spaces shall comply with the requirements of the Scarborough Zoning Ordinance and, where applicable, the Scarborough Site Plan Review Ordinance.

G. 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 seventyfive (75) feet, horizontal distance, from the normal high water line of 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. (amended 07/15/2009)

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. (amended 07/15/2009)

Section 15(G)(1) does not apply to approaches to water crossings nor 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(G)(1) except for that portion of the road or driveway necessary for direct access to the structure.(amended 07/15/2009)

2. Existing public roads may be expanded within the legal road rightofway regardless of their setback from a water body, tributary stream, or wetland. (amended 07/15/2009)

3. [Reserved]

4. New roads and driveways are prohibited in a Resource Protection District except that the Planning Board may grant a permit to construct a road or driveway to provide access to permitted uses within the district. A road or driveway providing access to permitted uses within or outside the district, 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. ~~New roads and driveways are prohibited in a Resource Protection District except to provide access to permitted uses within the district, or as approved by the Planning Board upon a finding that no reasonable alternative route or location is available outside the district, in which case the road and/or driveway shall be set back as far as practicable from the normal highwater line of a water body, tributary stream, or upland edge of a wetland.~~ (amended qq/qq/qqqq)

5. Road and driveway banks shall be no steeper than a slope of two (2) horizontal to one (1) vertical, and shall be graded and stabilized in accordance with the provisions for erosion and sedimentation control contained in Section(15)Q. (amended 07/15/2009)

6. Road and driveway grades shall be no greater than ten (10) percent except ~~for~~ segmentsfor segments of less than two hundred (200) feet. (amended 07/15/2009)

7. In order to prevent road and driveway surface drainage from directly entering water bodies, tributary streams, or wetlands roads and driveways shall be designed, constructed, and maintained to empty onto an unscarified buffer strip at least fifty (50) feet plus two times the average slope, in width between the outflow point of the ditch or culvert and the normal highwater 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. (amended 07/15/2009)

8. Ditch relief (cross drainage) culverts, drainage dips and water turnouts shall be installed in a manner effective in directing drainage onto unscarified buffer strips before the flow gains sufficient volume or head to erode the road, driveway or ditch. To accomplish this, the following shall apply: (amended 07/15/2009)

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: (amended 07/15/2009)

Grade (Percent)	Spacing (Feet)
02	250
35	200135
610	10080
1115	80-60

1620	60-45
21+	40

b. Drainage dips may be used in place of ditch relief culverts only where ~~the~~
grade the grade is ten (10) percent or less. (amended 07/15/2009)

c. ~~On sections~~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. (amended 07/15/2009)

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

9. Ditches, culverts, bridges, dips, water turnouts and other storm water runoff control installations associated with roads and driveways shall be maintained on a regular basis to assure effective functioning. (amended 07/15/2009)

H. Signs

Signs ~~in the Resource Protection and Stream Protection~~ Districts shall comply with the applicable requirements of the Scarborough Zoning Ordinance, Section XII. (amended qq/qq/qqqq) and, in addition, with the following requirements.

~~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. (amended 07/15/2009)~~

~~2. Name signs are 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. (amended 07/15/2009)~~

~~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. (amended 07/15/2009)~~

~~5. Signs relating to public safety shall be allowed without restriction. (amended 07/15/2009)~~

~~6. No sign shall extend higher than twenty (20) feet above the ground.~~

~~7. Signs may be illuminated only by shielded, nonflashing lights.~~

I. Storm Water Runoff

1. All new construction and development shall be designed to ensure storm water runoff from the site will be less than or equal to that 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. (amended 07/15/2009)

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

J. 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 requirements of the Scarborough Plumbing Ordinance, 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. (amended 07/15/2009)

K. 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, Stream Protection, or Stream Protection 2 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. (amended 02/06/2008) (amended 07/15/2009)

3. Damage or destroyed public utility transmission and distribution lines, towers and related equipment may be replaced or reconstructed without a permit.(adopted 07/15/2009)

L. 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, so as to restore disturbed areas and to protect the public health and safety.

Mineral extraction may be permitted under the following conditions:

1. A reclamation plan shall be filed with, and approved by the Planning Board before a permit is granted. Such plan shall describe in detail procedures to be undertaken to fulfill the requirements of Section 15(M) below. (amended 07/15/2009)

2. No part of any extraction operation, including drainage and runoff control features shall be permitted within seventyfive (75) feet, horizontal distance, of the normal highwater line of any 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. (amended 07/15/2009)

3. [Reserved]

4. Within twelve (12) months following the completion of extraction operations at any extraction site, which operations shall be deemed complete when less than one hundred (100) cubic yards of materials are removed in any consecutive twelve (12) month period, ground levels and grades shall be established in accordance with the following:

- a. All debris, stumps, and similar material shall be removed for disposal in an approved location, or shall be buried onsite. Only materials generated onsite may be buried or covered onsite.
 - b. The final graded slope shall be two and one half to one (2 1/2:1) slope or flatter. (amended 07/15/2009)
 - 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 offsite sources if necessary to complete the stabilization project.
5. In keeping with the purpose 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.
6. Mineral extraction shall also comply with all applicable requirements of the Extractive Industry, Waste Control, Landfill and Land Reclamation Ordinance of the Town of Scarborough.

M. 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). (amended 07/15/2009)
2. Manure shall not be stored or stockpiled within seventyfive (75) feet horizontal distance, of 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. (amended 07/15/2009)
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. Nonconformance with the provisions of said plan shall be considered to be a violation of this Ordinance. This requirement shall not apply to agricultural activities in the Stream Protection 2 District that are occurring at least 75 feet, horizontal distance, from the normal high water line. (amended 07/15/2009) (amended 05/05/2010)
4. There shall be no new tilling of soil within seventyfive (75) feet, horizontal distance, from water bodies and coastal wetlands; nor within twentyfive (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. (amended 07/15/2009)
5. Newly established livestock grazing areas shall not be permitted within seventyfive (75) feet, horizontal distance of water bodies and coastal wetlands, nor; within twentyfive (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. (amended 07/15/2009)

N. Timber Harvesting (revised and adopted 07/15/2009)

- (1) **Shoreline integrity and sedimentation.** Persons conducting timber harvesting and related activities must take reasonable measures to avoid the disruption of shoreline

integrity, the occurrence of sedimentation of water, and the disturbance of water body and tributary stream banks, water body and tributary stream channels, shorelines, and soil lying within water bodies, tributary streams and wetlands. If, despite such precautions, the disruption of shoreline integrity, sedimentation of water, or the disturbance of water body and tributary stream banks, water body and tributary stream channels, shorelines, and soil lying within water bodies, tributary streams and wetlands occurs, such conditions must be corrected.

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

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

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

(i) No accumulation of slash shall be left within 50 feet, horizontal distance, of the normal high-water line or upland edge of a wetland; and

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

(3) Timber harvesting and related activities must leave adequate tree cover and shall be conducted so that a well-distributed stand of trees is retained. This requirement may be satisfied by following one of the following three options. This requirement shall not apply to timber harvesting activities in the Stream Protection 2 District that are occurring at least 75 feet, horizontal distance, from the normal high water line: (amended 05/05/2010)

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

(i) Harvesting of no more than 40 percent of the total volume on each acre of trees 4.5 inches DBH or greater in any 10 year period is allowed. Volume may be considered to be equivalent to basal area;

(ii) A well-distributed stand of trees which is windfirm, and other vegetation including existing ground cover, must be maintained; and,

(iii) Within 75 feet, horizontal distance, of the normal high-water line of rivers, streams, and great ponds, and within 75 feet, horizontal distance, of the upland edge of a freshwater or coastal wetlands, there must be no cleared openings. At distances greater than 75 feet, horizontal distance, of the normal high-water line of a river or great pond or upland edge of a wetland, timber harvesting and related activities must not create single cleared openings greater than 14,000 square feet in the forest canopy. Where such openings exceed 10,000 square feet, they must be at least 100 feet, horizontal distance, apart. Such cleared openings will be included in

the calculation of total volume removal. Volume may be considered equivalent to basal area.

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

(i) The residual stand must contain an average basal area of at least 60 square feet per acre of woody vegetation greater than or equal to 1.0 inch DBH, of which 40 square feet per acre must be greater than or equal to 4.5 inches DBH;

(ii) A well-distributed stand of trees which is windfirm, and other vegetation including existing ground cover, must be maintained; and,

(iii) Within 75 feet, horizontal distance, of the normal high-water line of water bodies and within 75 feet, horizontal distance, of the upland edge of wetlands, there must be no cleared openings. At distances greater than 75 feet, horizontal distance, of the normal high-water line of a river or great pond, or upland edge of a wetland, timber harvesting and related activities must not create single cleared openings greater than 14,000 square feet in the forest canopy. Where such openings exceed 10,000 square feet, they must be at least 100 feet, horizontal distance, apart. Such cleared openings will be included in the calculation of the average basal area. Volume may be considered equivalent to basal area.

(c) **Option 3** (Outcome based), which requires: An alternative method proposed in an application, signed by a Licensed Forester or certified wildlife professional, submitted by the landowner or designated agent to the State of Maine Department of Conservation's Bureau of Forestry (Bureau) for review and approval, which provides equal or better protection of the shoreland area than this rule.

Landowners must designate on the Forest Operations Notification form required by 12 M.R.S.A. chapter 805, subchapter 5 which option they choose to use. If landowners choose Option 1 or Option 2, compliance will be determined solely on the criteria for the option chosen. If landowners choose Option 3, timber harvesting and related activities may not begin until the Bureau has approved the alternative method.

The Bureau may verify that adequate tree cover and a well-distributed stand of trees is retained through a field procedure that uses sample plots that are located randomly or systematically to provide a fair representation of the harvest area. this option shall only become effective on the statutory date established under 38 M.R.S.A. section 438-A(5), until such time Section 15(N)(3)(c) is not in effect.

Option 3 requires: An alternative method proposed in an application, signed by a Licensed Forester or certified wildlife professional, submitted by the landowner or designated agent to the State of Maine Department of Conservation's Bureau of Forestry (Bureau) for review and approval, which provides equal or better protection of the shoreland area than this rule.

~~Landowners must designate on the Forest Operations Notification form required by 12 M.R.S.A. Chapter 805, subchapter 5 which option they choose to use. If landowners choose Option 1 or Option 2, compliance will be determined solely on the criteria for the option chosen. If landowners choose Option 3, timber harvesting and related activities may not begin until the Bureau has approved the alternative method.~~

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

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

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

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

(c) Setbacks:

(i) Equipment must be operated to avoid the exposure of mineral soil within 25 feet, horizontal distance, of any water body, tributary stream, or wetland. On slopes of 10 percent or greater, the setback for equipment operation must be increased by 20 feet, horizontal distance, plus an additional 10 feet, horizontal distance, for each 5 percent increase in slope above 10 percent. Where slopes fall away from the resource, no increase in the 25-foot setback is required.

(ii) Where such setbacks are impracticable, appropriate techniques shall be used to avoid sedimentation of the water body, tributary stream or wetland. Such techniques may include the installation of sump holes or settling basins, and/or the effective use of additional ditch relief culverts and ditch water turnouts placed to avoid sedimentation of the water body, tributary stream, or wetland. If, despite such precautions, sedimentation or the disruption of shoreline integrity occurs, such conditions must be corrected.

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

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

- (i) 100 feet, horizontal distance, from the normal high-water line of a great pond, river or freshwater or coastal wetland;
- (ii) 50 feet, horizontal distance, from the normal high-water line of streams; and
- (iii) 25 feet, horizontal distance, from the normal high-water line of tributary streams

(b) The minimum 100 foot setback specified in Section 15(N)(5)(a)(i) above may be reduced to no less than 50 feet, horizontal distance, and the 50 foot setback specified in Section 15(N- 1)(5)(a)(ii) above may be reduced to no less than 25 feet, horizontal distance, if, prior to construction, the landowner or the landowner's designated agent demonstrates to the Planning Board's satisfaction that no reasonable alternative exists and that appropriate techniques will be used to prevent sedimentation of the water body, tributary stream, or wetland. Such techniques may include, but are not limited to, the installation of settling basins, and/or the effective use of additional ditch relief culverts and turnouts placed to avoid sedimentation of the water body, tributary stream or wetland. If, despite such precautions, sedimentation or the disruption of shoreline integrity occurs, such conditions must be corrected.

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

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

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

(f) **Road closeout and discontinuance.** Maintenance of the water control installations required in Section 15(N)(5)(e) must continue until use of the road is discontinued and the road is put to bed by effective installation of water bars or

other adequate road drainage structures at appropriate intervals, constructed to avoid surface water flowing over or under the water bar, and extending a sufficient distance beyond the traveled way so that water does not reenter the road surface.

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

(h) **Exception.** Extension or enlargement of presently existing roads need not conform to the setback requirements of Section 15(N)(5)(a) if, prior to extension or enlargement, the landowner or the landowner's designated agent demonstrates to the Planning Board's satisfaction that no reasonable alternative exists and that appropriate techniques will be used to prevent sedimentation of the water body, tributary stream, or wetland. Such techniques may include, but are not limited to, the installation of settling basins, and/or the effective use of additional ditch relief culverts and turnouts placed to avoid sedimentation of the water body, tributary stream, or wetland. If, despite such precautions, sedimentation or the disruption of shoreline integrity occurs, such conditions must be corrected.

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

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

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

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

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

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

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

- (i) a map showing the location of all proposed permanent crossings;
- (ii) the GPS location of all proposed permanent crossings;
- (iii) for any temporary or permanent crossing that requires a permit from state or federal agencies, a copy of the approved permit or permits; and
- (iv) a statement signed by the responsible party that all temporary and permanent crossings will be constructed, maintained, and closed out in accordance with the requirements of this Section.

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

- (i) concentrated water runoff does not enter the stream or tributary stream;
- (ii) sedimentation of surface waters is reasonably avoided;
- (iii) there is no substantial disturbance of the bank, or stream or tributary stream channel;
- (iv) fish passage is not impeded; and,
- (v) water flow is not unreasonably impeded.

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

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

- (i) ~~Bridges and culverts must be installed and maintained to provide an opening sufficient in size and structure to accommodate 10 year frequency water flows or with a cross-sectional area at least equal to 2 1/2 times the cross-sectional area of the river, stream, or tributary stream channel.~~ Bridges and culverts must be installed and maintained to provide an opening sufficient in size and structure to accommodate 25 year frequency water flows or with a cross-sectional area at least equal to 3 times the cross-sectional area of the river, stream, or tributary stream channel.

(ii) Temporary bridge and culvert sizes may be smaller than provided in Section 15(N)(6)(g)(i) if techniques are effectively employed such that in the event of culvert or bridge failure, the natural course of water flow is maintained and sedimentation of the water body or tributary stream is avoided. Such crossing structures must be at least as wide as the channel and placed above the normal high-water line. Techniques may include, but are not limited to, the effective use of any, a combination of, or all of the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. it shall be designed to provide an opening with a cross-sectional area at least 3 ½ times the cross-sectional area of the river, stream or tributary stream channel; or

3. it shall be dismantled and removed in a fashion to reasonably avoid sedimentation of the river, stream or tributary stream. If, despite such precautions, sedimentation or the disruption of shoreline integrity occurs, such conditions must be corrected.

(7) Slope Table

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

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

O. 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 highwater line, except to remove safety hazard trees as described in section Q. s- (amended 07/15/2009) (amended qq/qq/qqqq)

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. (amended 07/15/2009)

2. Except in areas as described in Section 15(O)(1), above, and except to allow for the development of permitted uses, within a strip of land extending seventyfive (75) feet, horizontal distance, from any water body, tributary stream, or the upland edge of a wetland, a buffer strip of vegetation shall be preserved as follows: (amended 07/15/2009)

a. There shall be no cleared opening greater than 250 square feet in the forest canopy (or other exiting 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 is allowed provided that a cleared line of sight to the water through the buffer strip is not created. (amended 07/15/2009)

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(O)(2)(b) a "welldistributed stand of trees" shall be defined as maintaining a rating score of 16 or more in any 25foot by 50foot rectangle (1250 square feet) area as determined by the following rating system. (amended 07/15/2009)

Diameter of Tree at 4 1/2 feet Above Ground Level (inches)	Points
2 < 4 in.	1
4 < 8 in.	2
8 - < 12 in	4
12 in. or greater	8

The following shall govern in applying this point system: (adopted 07/15/2009)

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

For the purposes of Section 15(O)(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 the 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 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(O) paragraphs 2 and 2a above. (adopted 07/15/2009)

d. Pruning of tree branches, on the bottom 1/3 of the tree is allowed. (amended 07/15/2009)

e. In order to maintain a buffer strip of vegetation, when the removal of storm-damaged, dead or hazard trees results in the creation of cleared openings, these openings shall be replanted with native tree species in accordance with Section 15 (P), below, unless existing new tree growth is present.

f. In order to maintain the vegetation in the shoreline buffer, clearing or removal of vegetation for allowed activities, including associated construction and related equipment operation, within or outside the shoreline buffer, must comply with the requirements of Section 15(O)(2). (amended qq/qq/qqqq)

~~In order to maintain a buffer strip of vegetation, when the removal of stormdamaged, diseased, unsafe, or dead trees results in the creation of cleared openings, these openings shall be replanted as soon as seasonally practical, not to exceed one (1) calendar year, with native tree species unless existing new tree growth is present. (amended 07/15/2009)~~

Section 15(O)(2) above shall 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. (amended 07/15/2009).

3. At distances greater than seventyfive (75) feet, horizontal distance, from the normal highwater line of any 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. – This requirement shall not apply to vegetation removal activities in the Stream Protection 2 District that are occurring at least 75 feet, horizontal distance, from the normal high water line. (amended 07/15/2009) (amended 05/05/2010)

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. (amended 07/15/2009)

4. Legally existing nonconforming cleared openings may be maintained, but shall not be enlarged, except as allowed by this Ordinance. (amended 07/15/2009)

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)(O). (amended 07/15/2009)

P. Hazard Trees, Storm-Damaged Trees, and Dead Tree Removal

(1) Hazard trees in the shoreland zone may be removed without a permit after consultation with the Code Enforcement Officer if the following requirements are met:

(a) Within the shoreline buffer, if the removal of a hazard tree results in a cleared opening in the tree canopy greater than two hundred and fifty (250) square feet, replacement with native tree species is required, unless there is new tree growth already present. New tree growth must be as near as practicable to where the hazard tree was removed and be at least two (2) inches in diameter, measured at four and one half (4.5) feet above the ground level. If new growth is not present, then replacement trees shall consist of native species and be at least four (4) feet in height, and be no less than two (2) inches in diameter. Stumps may not be removed.

- (b) Outside of the shoreline buffer, when the removal of hazard trees exceeds forty (40) percent of the volume of trees four (4) inches or more in diameter, measured at four and one half (4.5) feet above ground level in any ten (10) year period, and/or results in cleared openings exceeding twenty-five (25) percent of the lot area within the shoreland zone, or ten thousand (10,000) square feet, whichever is greater, replacement with native tree species is required, unless there is new tree growth already present. New tree growth must be as near as practicable to where the hazard tree was removed and be at least two (2) inches in diameter, measured at four and one half (4.5) feet above the ground level. If new growth is not present, then replacement trees shall consist of native species and be at least two (2) inches in diameter, measured at four and one half (4.5) feet above the ground level.
- (c) The removal of standing dead trees, resulting from natural causes, is permissible without the need for replanting or a permit, as long as the removal does not result in the creation of new lawn areas, or other permanently cleared areas, and stumps are not removed. For the purposes of this provision dead trees are those trees that contain no foliage during the growing season.
- (d) The Code Enforcement Officer may require the property owner to submit an evaluation from a licensed forester or arborist before any hazard tree can be removed within the shoreland zone.
- (e) The Code Enforcement Officer may require more than a one-for-one replacement for hazard trees removed that exceed eight (8) inches in diameter measured at four and one half (4.5) feet above the ground level.
- (2) Storm-damaged trees in the shoreland zone may be removed without a permit after consultation with the Code Enforcement Officer if the following requirements are met:

 - (a) Within the shoreline buffer, when the removal of storm-damaged trees results in a cleared opening in the tree canopy greater than two hundred and fifty (250) square feet, replanting is not required, but the area shall be required to naturally revegetate, and the following requirements must be met:

 - (i) The area from which a storm-damaged tree is removed does not result in new lawn areas, or other permanently cleared areas;
 - (ii) Stumps from the storm-damaged trees may not be removed;
 - (iii) Limbs damaged from a storm event may be pruned even if they extend beyond the bottom one-third (1/3) of the tree; and
 - (iv) If after one growing season, no natural regeneration or regrowth is present, replanting of native tree seedlings or saplings is required at a density of one seedling per every eighty (80) square feet of lost canopy.

(b) Outside of the shoreline buffer, if the removal of storm damaged trees exceeds 40% of the volume of trees four (4) inches or more in diameter, measured at four and one half (4.5) feet above the ground level in any ten (10) year period, or results, in the aggregate, in cleared openings exceeding 25% of the lot area within the shoreland zone or ten thousand (10,000) square feet, whichever is greater, and no natural regeneration occurs within one growing season, then native tree seedlings or saplings shall be replanted on a one-for-one basis.

Q. Exemptions to Clearing and Vegetation Removal Requirements

The following activities are exempt from the clearing and vegetation removal standards set forth in Section 15(O), provided that all other applicable requirements of this chapter are complied with, and the removal of vegetation is limited to that which is necessary:

- (1) The removal of vegetation that occurs at least once every two (2) years for the maintenance of legally existing areas that do not comply with the vegetation standards in this chapter, such as but not limited to cleared openings in the canopy or fields. Such areas shall not be enlarged, except as allowed by this section. If any of these areas, due to lack of removal of vegetation every two (2) years, reverts back to primarily woody vegetation, the requirements of Section 15(O) apply;
- (2) The removal of vegetation from the location of allowed structures or allowed uses, when the shoreline setback requirements of section 15(B) are not applicable;
- (3) The removal of vegetation from the location of public swimming areas associated with an allowed public recreational facility;
- (4) The removal of vegetation associated with allowed agricultural uses, provided best management practices are utilized, and provided all requirements of section 15(M) are complied with;
- (5) The removal of vegetation associated with brownfields or voluntary response action program (VRAP) projects provided that the removal of vegetation is necessary for remediation activities to clean-up contamination on a site in a general development district, commercial fisheries and maritime activities district or other equivalent zoning district approved by the Commissioner that is part of a state or federal brownfields program or a voluntary response action program pursuant 38 M.R.S.A section 343-E, and that is located along:
 - (a) A coastal wetland; or
 - (b) A river that does not flow to a great pond classified as GPA pursuant to 38 M.R.S.A section 465-A.

- (6) The removal of non-native invasive vegetation species, provided the following minimum requirements are met:
- (a) If removal of vegetation occurs via wheeled or tracked motorized equipment, the wheeled or tracked motorized equipment is operated and stored at least twenty-five (25) feet, horizontal distance, from the shoreline, except that wheeled or tracked equipment may be operated or stored on existing structural surfaces, such as pavement or gravel;
 - (b) Removal of vegetation within twenty-five (25) feet, horizontal distance, from the shoreline occurs via hand tools; and
 - (c) If applicable clearing and vegetation removal standards are exceeded due to the removal of non-native invasive species vegetation, the area shall be revegetated with native species to achieve compliance.
- (7) The removal of vegetation associated with emergency response activities conducted by the Department, the U.S. Environmental Protection Agency, the U.S. Coast Guard, and their agents.

R. Revegetation Requirements

When revegetation is required in response to violations of the vegetation standards set forth in Section 15(O), to address the removal of non- native invasive species of vegetation, or as a mechanism to allow for development that may otherwise not be permissible due to the vegetation standards, including removal of vegetation in conjunction with a shoreline stabilization project, the revegetation must comply with the following requirements.

- (1) The property owner must submit a revegetation plan, prepared with and signed by a qualified professional, that describes revegetation activities and maintenance. The plan must include a scaled site plan, depicting where vegetation was, or is to be removed, where existing vegetation is to remain, and where vegetation is to be planted, including a list of all vegetation to be planted.
- (2) Revegetation must occur along the same segment of shoreline and in the same area where vegetation was removed and at a density comparable to the pre-existing vegetation, except where a shoreline stabilization activity does not allow revegetation to occur in the same area and at a density comparable to the pre-existing vegetation, in which case revegetation must occur along the same segment of shoreline and as close as possible to the area where vegetation was removed:
- (3) If part of a permitted activity, revegetation shall occur before the expiration of the permit. If the activity or revegetation is not completed before the expiration of the permit, a new revegetation plan shall be submitted with any renewal or new permit application.

- (4) Revegetation activities must meet the following requirements for trees and saplings:
- (a) All trees and saplings removed must be replaced with native noninvasive species;
 - (b) Replacement vegetation must at a minimum consist of saplings;
 - (c) If more than three (3) trees or saplings are planted, then at least three (3) different species shall be used;
 - (d) No one species shall make up 50% or more of the number of trees and saplings planted;
 - (e) If revegetation is required for a shoreline stabilization project, and it is not possible to plant trees and saplings in the same area where trees or saplings were removed, then trees or sapling must be planted in a location that effectively reestablishes the screening between the shoreline and structures; and
 - (f) A survival rate of at least eighty (80) percent of planted trees or saplings is required for a minimum five (5) years period.
- (5) Revegetation activities must meet the following requirements for woody vegetation and other vegetation under three (3) feet in height:
- (a) All woody vegetation and vegetation under three (3) feet in height must be replaced with native noninvasive species of woody vegetation and vegetation under three (3) feet in height as applicable;
 - (b) Woody vegetation and vegetation under three (3) feet in height shall be planted in quantities and variety sufficient to prevent erosion and provide for effective infiltration of stormwater;
 - (c) If more than three (3) woody vegetation plants are to be planted, then at least three (3) different species shall be planted;
 - (d) No one species shall make up 50% or more of the number of planted woody vegetation plants; and
 - (e) Survival of planted woody vegetation and vegetation under three feet in height must be sufficient to remain in compliance with the standards contained within this chapter for minimum of five (5) years
- (6) Revegetation activities must meet the following requirements for ground vegetation and ground cover:
- (a) All ground vegetation and ground cover removed must be replaced with native herbaceous vegetation, in quantities and variety sufficient to prevent erosion and provide for effective infiltration of stormwater;

(b) Where necessary due to a lack of sufficient ground cover, an area must be supplemented with a minimum four (4) inch depth of leaf mulch and/or bark mulch to prevent erosion and provide for effective infiltration of stormwater; and

(c) Survival and functionality of ground vegetation and ground cover must be sufficient to remain in compliance with the standards contained within this chapter for minimum of five (5) years.

PS. 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: (amended 07/15/2009)

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

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

3. Erosion and sedimentation control measures shall apply to all aspects of the proposed project involving land disturbance, and shall be in operation during all stages of the activity. The amount of exposed soil at every phase of construction shall be minimized to reduce the potential for erosion.

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

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

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

QT. 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 onsite investigation and be prepared by statecertified 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.

RU. 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. (amended qq/qq/qqqq)

SV. Archaeological Sites

Any proposed land use activity involving structural development or soil disturbances 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.

Section 16. Administration

A. Administrating Bodies and Agents

The Code Enforcement Officer, Board of Appeals and Planning Board charged with administering this Ordinance shall be the same Code Enforcement Officer, Board of Appeals and Planning Board as administer the Scarborough Zoning Ordinance.

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. (amended 07/15/2009)

C. Permit Application

1. Every applicant for a permit shall submit a written application, including a scaled plan, on a form provide by the municipality, to the appropriate official as indicated in Section 14.
2. All applications shall be signed by an owner or individual who can show evidence of right, title or interest in the property or by an agent, representative, tenant, or contractor of the owner with authorization from the owner to apply for a permit hereunder, certifying that the information in the application is complete and correct. (amended 07/15/2009)

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 external plumbing permit or completed application for an external 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. (amended 07/15/2009)

(5) When an excavation contractor will perform an activity that requires or results in more than one (1) cubic yard of soil disturbance, the person responsible for management of erosion and sedimentation control practices at the site must be certified in erosion control practices by the Maine Department of Environmental Protection. This person must be present at the site each day earthmoving activity occurs for a duration that is sufficient to ensure that proper erosion and sedimentation control practices are followed. This is required until erosion and sedimentation control measures have been installed, which will either stay in place permanently or stay in place until the area is sufficiently covered with vegetation necessary to prevent soil erosion. The name and certification number of the person who will oversee the activity causing or resulting in soil disturbance shall be included on the permit application. This requirement does not apply to a person or firm engaged in agriculture or timber harvesting if best management practices for erosion and sedimentation control are used; and municipal, state and federal employees engaged in projects associated with that employment. (amended qq/qq/qqqq)

D. Procedure for Administering Permits

Within 35 days of the date of receiving a written application, the ~~permitting authority 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 ~~permitting authority 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 is the permitting authority and 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 permitting authority's~~ agenda following receipt of the completed application, or within 35 days of the public hearing, if one is held. Permits shall be approved if the proposed use or structure is found to be in conformance with the purposes and provisions of this Ordinance.

The applicant shall have the burden of proving that the proposed land use activity is in conformity with the purposes and provisions of this Ordinance. The permitting authority reserves the right to request additional plans or information, depending on the nature of the proposal and its anticipated impacts. The permitting authority may also engage the services of one or more professional consultants to review the materials submitted by the applicant, the cost of which shall be paid by the applicant.

After the submission of a complete application to the ~~Planning Board, the Board-permitting authority, the permitting authority~~ shall approve an application or approve it with conditions if it

makes a positive finding based on the information presented that the proposed use: (amended qq/qq/qqqq)

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

If a permit is either denied or approved with conditions, the reasons as well as conditions shall be stated in writing. No approval shall be granted for an application involving a structure if the structure would be located in an unapproved subdivision or would violate any other local ordinance or regulation or statute administered by the municipality. (amended 07/15/2009)

E. Expiration of Permit

Permits shall expire one year from the date of issuance if a substantial start is not made in construction or (where no construction is involved) commencement of the use does not occur during that period. If a substantive 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. (amended 07/15/2009)

Upon good cause shown, the person or board issuing the original permit or approval may extend its effectiveness for an additional six months. As used in this Section 16.E, "substantial start of construction" means completion of all of the following operations for all of the buildings or structures authorized by the permit or approval:

- implementation of erosion and storm water control measures
- installation of footings
- installation of foundations
- waterproofing (if necessary) of the foundations
- construction of the drainage systems
- completion of all back filling (but not including final grading and landscaping)

F. Installation of Public Utility Service

No public utility, water district, sanitary district or any utility company of any kind may install services to any new structure located in the shoreland zone unless written authorization attesting to the validity and currency of all local permits required under this or any previous Ordinance,

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

G. Appeals

1. Powers and Duties of the Board of Appeals

The Board of Appeals shall have the following powers:

a. Administrative Appeals: To hear and decide appeals where it is alleged that there is an error in any order, requirement, decision, or determination made by, or failure to act by, the Code Enforcement Officer or Planning Board in the enforcement or administration of this Ordinance. An appeal of a decision by the Board of Appeals must go directly to Superior Court.

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

c. Determination of greatest practical extent for applications pursuant to Section 12.C. 2-4 of this Ordinance.

2. Variance Appeal

Variances may be permitted only under the following conditions:

a. Variances may be granted only from dimensional requirements including but not limited to, lot width, structure height, percent of lot coverage, and setback requirements.

b. Variances shall not be granted for establishment of any uses otherwise prohibited by this Ordinance.

c. The Board shall not grant a variance unless it finds that:

(1) The proposed structure or use would meet the provisions of Section 15 except for the specific provision which has created the nonconformity and from which relief is sought; and

(2) The strict application of the terms of this Ordinance would result in undue hardship.

The term "undue hardship" shall mean:

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

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

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

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

d. The Board of Appeals shall limit any variances granted as strictly as possible in order to insure conformance with the purposes and provisions of this Ordinance to the greatest

extent possible, and in doing so may impose such conditions to a variance as it deems necessary. The party receiving the variance shall comply with any conditions imposed.

3. Appeal Procedure

The appeals procedures under this Ordinance shall be as provided in Section V.C. of the Scarborough Zoning Ordinance. Appeals may be granted only by a majority vote of those members present and voting. Administrative appeals from decisions of the Code Enforcement Officer or Planning Board shall be filed within 30 days of the date of written notification to the applicant of the decision, ruling or order appealed from.

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. (adopted 07/15/2009)

(4) **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.

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

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

H. Enforcement

1. Nuisances

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

2. Code Enforcement Officer

a. The Code Enforcement Officer shall enforce the provisions of this Ordinance as provided in Section IV.A of the Scarborough Zoning Ordinance.

b. The Code Enforcement Officer shall conduct onsite 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, beginning in 1992, a summary of this record shall be submitted by March 1 to the Director of the Bureau of Land and Water Quality within the Department of Environmental Protection. (amended 07/15/2009)~~

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 authorize 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 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 Title 30A, M.R.S.A section 4452. (amended 07/15/2009)

Section 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 crosssection of a tree stem at 4 1/2 feet above ground level and inclusive of bark.

Basement: -

aAny 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. (amended qq/qq/qqqq)

Boat Launching Facility:

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

Bureau of Forestry: State of Maine Department of Agriculture, Conservation, and Forestry, Bureau of Forestry. (amended qq/qq/qqqq)

Campground:

Any area or tract of land to accommodate one 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. (adopted 07/15/2009)

Coastal wetland:

All tidal and subtidal lands; all lands with vegetation present that is tolerant of salt water and occurs primarily in a salt water or estuarine habitat; and any swamp, marsh, bog, beach, flat or other contiguous low land which is subject to tidal action during the highest tide level for the year in which an activity is proposed as identified in tide tables published by the National Ocean Service. Coastal wetlands may include portions of coastal sand dunes. All areas below the highest annual maximum spring tide level are coastal wetlands. These areas may consist of rocky ledges, sand and cobble beaches, mud flats, etc., in addition to salt marshes and salt meadows. (amended 07/15/2009) (qq/qq/qqqq)

Commercial use:

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

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

DBH:

The diameter of a standing tree measured 4.5 feet from ground level. (adopted 07/15/2009)

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. (adopted 07/15/2009)

Dimensional requirements:

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

Disruption of shoreline integrity:

The alteration of the physical shape, properties, or condition of a shoreline at any location by timber harvesting and related activities. A shoreline where shoreline integrity has been disrupted is recognized by compacted, scarified and/or rutted soil, an abnormal channel or shoreline crosssection, and in the case of flowing waters, a profile and character altered from natural conditions. (adopted 07/15/2009)

Driveway:

A vehicular accessway less than five hundred (500) feet in length serving two single family dwellings or one two-family dwelling, or less. (amended 07/15/2009)

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:

The construction, alteration or maintenance of 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 of a structure, including all extensions such as, but not limited to: attached decks, garages, porches and greenhouses. (amended qq/qq/qqqq)

Expansion of use:

The addition of weeks or months to a use's operating season; additional hours of operation; or the use of more ~~floor area~~footprint of a structure –or ground area devoted to a particular use. (amended qq/qq/qqqq)

Family:

One or more persons occupying a premise 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. (amended qq/qq/qqqq)

Floor area:

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

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. (amended qq/qq/qqqq)

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.

Forest stand:

A contiguous group of trees sufficiently uniform in age class distribution, composition, and structure, and growing on a site of sufficiently uniform quality, to be a distinguishable unit. (adopted 07/15/2009)

Forested wetland:

A fresh water wetland dominated by woody vegetation that is 6 meters tall 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. (amended 07/15/2009)

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 waterdependent uses:

Those uses that require, for their primary purpose, location on submerged lands or that require direct access to, or location in, coastal and inland waters and which cannot be located away from these waters. The uses include, but are not limited to commercial and recreational fishing and boating facilities, excluding recreational boat storage buildings, 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 aides, basins and channels, industrial uses dependent upon waterborne transportation or requiring large volumes of cooling or processing water and which cannot reasonably be located or operated at an inland site, and uses which primarily provide general public access to marinecoastal or inland ~~or tidal~~ waters.

Recreational boat storage buildings are not considered to be a functionally water-dependent use.
(amended 07/15/2009) (amended qq/qq/qqqq)

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 purpose of this Ordinance, where the artificially formed or increased inland body of water is completely surrounded by land held by a single owner.
(amended 07/15/2009)

Ground cover:

Small plants, fallen leaves, needles and twigs, and the partially decayed organic matter of the forest floor. (adopted 07/15/2009)

Harvest area:

The area where timber harvesting and related activities, including the cutting of trees, skidding, yarding, and associated road construction take place. The area affected by a harvest encompasses the area within the outer boundaries of these activities, excepting unharvested areas greater than 10 acres within the area affected by a harvest. (adopted 07/15/2009)

Hazard tree: - a tree with a structural defect, combination of defects, or disease resulting in a structural defect that under the normal range of environmental conditions at the site exhibits a high probability of failure and loss of a major structural component of the tree in a manner that will strike a target. A normal range of environmental conditions does not include meteorological anomalies, such as, but not limited to: hurricanes; hurricane-force winds; tornados; microbursts; or significant ice storm events. Hazard trees also include those trees that pose a serious and imminent risk to bank stability. A target is the area where personal injury or property damage

could occur if the tree or a portion of the tree fails. Targets include roads, driveways, parking areas, structures, campsites, and any other developed area where people frequently gather and linger.

Height of a structure:

The vertical distance between the mean original grade at the downhill side of the structure and the highest point of the structure, excluding chimneys, steeples, antennas, and similar appurtenances that have no floor area. (amended 07/15/2009)

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 one person 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. (adopted 07/15/2009)

Land management road:

A route or track consisting of a bed of exposed mineral soil, gravel, or other surfacing materials constructed for, or created by, the passage of motorized vehicles and used primarily for timber harvesting and related activities, including associated log yards, but not including skid trails or skid roads. (adopted 07/15/2009)

Licensed forester:

A forester licensed under 32 M.R.S.A. Chapter 76. (adopted 07/15/2009)

Lot area:

The area of land enclosed within the boundary lines of a lot, minus land below the normal highwater 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, boat 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 the side lot lines. (amended 07/15/2009)

Multiunit residential:

A residential structure containing three (3) or more residential dwelling units.

Native:

Indigenous to the local forest. (adopted 07/15/2009)

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. (adopted 07/15/2009)

Nonconforming 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.

Nonconforming 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.

Nonconforming use:

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

Non-native invasive species of vegetation: - species of vegetation listed by the Maine Department of Agriculture, Conservation and Forestry as being invasive in Maine ecosystems and not native to Maine ecosystems.

Nonvegetated surfaces:

The area covered by structures and associated constructed facilities, areas which have been or will be covered by a low-permeability material, such as asphalt or concrete, and areas such as gravel roads and unpaved parking areas, which have been or will be compacted through design or use to reduce their permeability. Common impermeable surfaces include roof tops, walkways, patios, driveways, parking lots or storage areas, concrete or asphalt paving, gravel roads, packed earthen materials, and oiled, macadam, or other surfaces which similarly impede the natural infiltration of water. (adopted 07/15/2009)

Normal highwater line (non-tidal waters):

That line which is apparent from visible markings, changes in the character of soils due to prolonged action of the water or changes in vegetation, and which distinguishes between predominantly aquatic and predominantly terrestrial land. Areas contiguous with rivers and great ponds that support non-forested wetland vegetation and hydric soils and that are at the same or lower elevation as the water level of the river or great pond during the period of normal high-water are considered part of the river or great pond. (amended 07/15/2009)

Outlet stream: - any perennial or intermittent stream, as shown on the most recent highest resolution version of the national hydrography dataset available from the United States Geological Survey on the website of the United States Geological Survey or the national map, that flows from a freshwater wetland.

Person:

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

Piers, docks, wharfs, bridges and other structures and uses extending over or beyond the normal highwater 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:

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

Principal structure:

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

Principal use:

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

Public facility:

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

Recent flood plain soils:

The following soil series as described and identified by the National Cooperative Soil Survey:

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

Recreational facility:

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

Recreational vehicle:

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

Replacement system:

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

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 home, and rental units that contain cooking, sleeping, and toilet facilities regardless of the time-period rented. Recreational vehicles are not residential dwelling units. (amended 07/15/2009)

Residual basal area:

The ~~sum~~average of the basal area of trees remaining on a harvested site. (adopted 07/15/2009)
(amended qq/qq/qqqq)

Residual stand:

A stand of trees remaining in the forest following timber harvesting and related activities.

Riprap:

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

River:

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

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. (amended qq/qq/qqqq)

Salt marsh:

Areas of a coastal wetland that support salt tolerant species, and where at average high tide during the growing season, the soil is regularly inundated by tidal waters. The predominant species is saltmarsh cordgrass (*Spartina alterniflora*). More open areas often support widgeon grass, eelgrass, and Sago pondweed. (amended 07/15/2009)

Salt meadow:

Areas of a coastal wetland that support salt tolerant plant species bordering the landward side of salt marshes or open coastal water, where the soil is saturated during the growing season but which is really inundated by tidal water. Indigenous plant species include salt meadow cordgrass (*Spartina patens*) and black rush; common three square occurs in fresher areas. (amended 07/15/2009)

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

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

Service drop:

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

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 rightofway; 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 highwater 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. (amended 07/15/2009)

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.(amended 07/15/2009)

Shoreland zone:

The land area located within two hundred and fifty (250) feet, horizontal distance, of the normal highwater line of any great pond or river; within 250 feet, horizontal feet, of the upland edge of a coastal wetland, including all areas affected by tidal action; within 250 feet, horizontal distance, of a freshwater wetland; or within seventyfive (75) feet, horizontal distance, of the normal highwater line of a stream. (amended 07/15/2009)

Shoreline:

The normal high-water line, or upland edge of a fresh water or coastal wetland. (adopted 07/15/2009)

Skid road or skid trail:

A route repeatedly used by forwarding machinery or animal to haul or drag forest products from the stump to the yard or landing, the construction of which requires minimal excavation. (adopted 07/15/2009)

Slash:

The residue, e.g., treetops and branches, left on the ground after a timber harvest. (adopted 07/15/2009)

Stream:

a free-flowing body of water from the outlet of a great pond or the confluence of two (2) perennial streams as depicted on the most recent , highest resolution version of the national hydrography dataset available from the United States Geological Survey on the website of the United States Geological Survey or the national map to the point where the stream becomes a river or where the stream meets the shoreland zone of another water body or wetland. When a stream meets the shoreland zone of a water body or wetland and a channel forms downstream of the water body or wetland as an outlet, that channel is also a stream. (amended qq/qq/qqq)

Structure:

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

Substantial start:

- cCompletion of thirty (30) percent of a permitted structure or use measured as a percentage of estimated total cost. (amended qq/qq/qqqq)

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. (amended 07/15/2009)

Sustained slope:

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

Tidal Waters:

All waters affected by tidal action during the ~~maximum-spring~~highest annual tide. (adopted 07/15/2009) (amended qq/qq/qqqq)

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 (O), *Clearing or Removal of Vegetation for Activities Other Than Timber Harvesting*. (amended 07/15/2009)

Timber harvesting and related activities:

Timber harvesting, the construction and maintenance of roads used primarily for timber harvesting and other activities conducted to facilitate timber harvesting. (adopted 07/15/2009)

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

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. (amended 07/15/2009)

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

Upland edge of a wetland:

The boundary between upland and wetland. For purposes of a coastal wetland, this boundary is the line formed by the landward limits of the salt tolerant vegetation and/or the maximum spring tide level, including all areas affected by tidal action. For purposes of a freshwater wetland, the upland edge is formed where the soils are not saturated for a duration sufficient to support wetland vegetation; or where the soils support the growth of wetland vegetation, but such vegetation is dominated by woody stems that are six (6) meters (approximately twenty (20) foot) tall or taller. (amended 07/15/2009)

Vegetation:

All live trees, shrubs, and other plants including without limitation, trees both over and under 4 inches in diameter, measured at 4 ½ feet above ground level. (amended 07/15/2009)

Velocity zone - an area of special flood hazard extending from offshore to the inland limit of the primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources.

Vernal Pool:

A vernal pool is a natural, temporary to semi-permanent body of water occurring in a shallow depression that typically fills during the spring or fall and may dry during the summer. Vernal pools have no permanent inlet or outlet and no viable populations of predatory fish. A vernal pool may provide the primary breeding habitat for wood frogs, spotted salamanders, blue-spotted

salamanders, and fairy shrimp, as well as valuable habitat for other plants and wildlife, including several rare, threatened, and endangered species. (adopted 07/15/2009)

Volume of a structure:

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

Water body:

Any great pond, river or stream.

Water crossing:

Any project extending from one bank to the opposite bank of a river, stream, tributary stream, or wetland whether under, through, or over the water or wetland. Such projects include but may not be limited to roads, fords, bridges, culverts, water lines, sewer lines, and cables as well as maintenance work on these crossings. This definition includes crossings for timber harvesting equipment and related activities. (amended 07/15/2009)

Wetland:

A freshwater or coastal wetland.

Windfirm:

The ability of a forest stand to withstand strong winds and resist windthrow, wind rocking, and major breakage. (adopted 07/15/2009)

Woody vegetation:

Live trees or woody, non-herbaceous shrubs. (adopted 07/15/2009)

MEMORANDUM

TO: Cape Elizabeth Town Council
FROM: Ordinance Committee
DATE: February 28, 2014
SUBJECT: Fort William Park No smoking amendment

The Town Council referred to the Ordinance Committee a recommendation from the Fort Williams Advisory Commission (FWAC) that the Fort Williams Park Regulations, located in Chapter 12, Miscellaneous Offenses, be amended to prohibit smoking in Fort Williams.

The Ordinance Committee reviewed the recommendation and spoke with William Brownell, the FWAC Chair, at the February 7, 2014 meeting. The Ordinance Committee heard public comment from the Opportunity Alliance, which is one of 27 Healthy Maine Partnerships in the state. The committee also reviewed examples of regulations in the city of Portland, the State of Maine, and other parts of the country.

The Ordinance Committee decided that a definition of smoking be added to the proposed amendment and voted 3-0 to recommend the amendments to the Town Council for consideration.

CHAPTER 12
MISCELLANEOUS OFFENSES
(Revisions Eff. Through 08/08/13)

Article IV. Fort Williams Park Regulations.
[Adopted eff. 11/11/77 under R. S. 1964, T. 30, Sec. 2151 and Revised eff. 10/08/08 and 08/08/13]

Sec. 12-4-8 Regulation of Park Activities. The town council is hereby authorized to adopt rules and regulations to manage commercial activities in the Park, activities that include, but are not limited to, vending. (Added eff. 08/08/13)

Sec. 12-4-9 Smoking Prohibited. Smoking in the Park is prohibited.

Smoking means the lighting, inhaling, exhaling, burning or carrying of any cigar, cigarette, pipe, other tobacco product or e-cigarette, or carrying or having in one's possession any lighted object giving off smoke from tobacco or any other substance that emits smoke that is customarily used and intended for inhalation into the lungs.

Tobacco or tobacco product means any form of tobacco, including but not limited to cigarettes, cigars, pipe tobacco, chewing tobacco or snuff, and any material or device

used in the smoking, chewing or other form of tobacco consumption, including but not limited to cigarette papers or pipes.

Sec. 12-4-9- 10 Penalty. Any person found to have violated any provision in Article IV shall be punishable by a fine not to exceed Two Hundred Fifty (\$250.00) per day of infraction to be recovered for the use of the Town. The Town shall also recover any fee that would have been assessed if a proper and timely permit had been granted. (Amended eff. 08/08/13)

South Portland City Council
Position Paper of the Interim City Manager

Subject:

ORDINANCE #4-16/17 – Amending Article VIII of Chapter 18, “Parks and Recreation,” and Article I of Chapter 23, “Streets and Sidewalks,” of the Code of Ordinances regarding smoking/tobacco use in parks and recreation facilities and at school bus stops. Passed first reading on 10/3/16. ROLL CALL VOTE. Passage requires majority vote.

Position:

At the September 26th workshop, Kevin Adams, Parks and Recreation Director along with Jana Richards from Opportunity Alliance Public Health Program addressed the issues regarding the establishment of Tobacco free and Vapor free zones in public parks and recreational areas. The Council also directed staff to add school bus stops to the list of areas where smoking would be prohibited.

The following are proposed changes to Sec. 18—81 through and including 18-86 in Article VIII, of Chapter 18

Sec. 18-81. Title.

This article shall be known as the “City of South Portland Tobacco-Free Parks and Recreation Facilities/School Bus Stops Ordinance.”

Sec. 18-82. Purpose.

This ordinance is enacted to protect, preserve, and promote the health, safety and welfare of the residents and visitors that use the City of South Portland’s parks, beaches, outdoor recreation facilities, and school bus stops. The purpose of this ordinance is to decrease the exposure of individuals, and children in particular, to secondhand smoke in their outdoor environment.

Sec. 18-83. Definitions.

Electronic smoking device means a device used to deliver nicotine or any other substance intended for human consumption that may be used by a person to simulate smoking through inhalation of vapor or aerosol from the device, including,

without limitation, a device manufactured, distributed, marketed or sold as an electronic cigarette, electronic cigar, electronic pipe, electronic hookah or so-called vape pen.

Smoking means carrying or having in one's possession a lighted or heated cigarette, cigar or pipe or a lighted or heated tobacco or plant product intended for human consumption through inhalation whether natural or synthetic in any manner or in any form. "Smoking" includes the use of an electronic smoking device.

Tobacco products means any of the following: (1) A product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to, cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, or snuff; or (2) An electronic device that delivers nicotine or other vaporized liquids to the person inhaling from the device, including, but not limited to, an electronic smoking device ~~Cigarettes, cigars, pipes, snuff, dip, chewing tobacco, weed, plant, and other kinds and forms of tobacco, prepared in such a manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking.~~ "Tobacco product" does not include a product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for other therapeutic purposes where the product is marketed and sold solely for such an approved purpose.

Sec. 18-84. Tobacco use prohibited.

(a) ____ It shall be unlawful for any person to use tobacco products at or within 25 feet of all parks, beaches and outdoor recreation facilities owned and/or maintained by the City, including, but not limited to, the following:

Anthoine Creek Park
Bug Light Park
Clarks Pond Trail System
Firefighters Park
Ge Erskine Park
Greenbelt Walkway
High Street Park
Hinckley Park
Fisherman's Point Park
Legere Park
Legion Square Park
Mill Creek Park
Mountain View/Nelson Park
Pierce Street Park
School Street Park
Spring Point Shoreway
Thomas Knight Park
Wainwright Recreation Complex

Wilkinson Park
Willard Beach
Willard Park

(b) It shall be unlawful for any person to use tobacco products at or within 25 feet of all designated school bus stops within the City limits. The designated school bus stops are posted annually on the City of South Portland School Department website.

(c) Nothing in this ordinance shall prohibit smoking on privately owned residential property.

Sec. 18-85. Signage.

The Parks and Recreation Department shall work with the Public Works Department to post signage notifying the public of this prohibition at or near the parks, beaches and outdoor recreation facilities specified herein, as well as in such other locations that, in its sole discretion, the Parks and Recreation Department deems necessary to notify the public of this ordinance.

Sec. 18-86. Enforcement.

The South Portland Police Department shall investigate and enforce the provisions contained in this ordinance. Nothing in this ordinance shall prevent the enforcement agent from obtaining voluntary compliance by way of warning, notice or education.

The following are proposed changes to Sec. 23-19, Smoking at school bus stops, in Article I, of Chapter 23

Sec. 23-19. Smoking at school bus stops.

Smoking/tobacco use at school bus stops is regulated under Article VIII (Tobacco-Free Parks and Recreation Facilities/School Bus Stops) of Chapter 18, "Parks and Recreation," of the Code of Ordinances.

These ordinance amendments to Chapter 18, "Parks and Recreation," and Chapter 23, "Streets and Sidewalks" are brought forward to for first reading and to set October 17th for second reading and action.

Secs. 23-~~19~~20--23-24. Reserved.

This amendment passed first reading on October 3, 2016 and is in order for second reading and action.

Requested Action:

Council passage of ORDINANCE #4-16/17.

A handwritten signature in dark ink, reading "Donald H. Gurish". The signature is written in a cursive style with a large, looped "D" and a stylized "G".

Interim City Manager



CITY OF SOUTH PORTLAND

THOMAS E. BLAKE
Mayor

DON GERRISH
Interim City Manager

SALLY J. DAGGETT
Jensen Baird Gardner & Henry

EMILY F. CARRINGTON
City Clerk

District One
CLAUDE V. Z. MORGAN

District Two
PATRICIA A. SMITH

District Three
EBEN C. ROSE

District Four
LINDA C. COHEN

District Five
BRAD FOX

At Large
MAXINE R. BEECHER

At Large
THOMAS E. BLAKE

IN CITY COUNCIL

ORDINANCE #4-16/17

THE COUNCIL of the City of South Portland hereby ordains that Chapter 18, "Parks and Recreation," and Chapter 23, "Streets and Sidewalks," of the "Code of Ordinances of the City of South Portland, Maine" be and hereby are amended as follows (additions are underlined; deletions are ~~struck out~~):

Chapter 18

PARKS AND RECREATION

• • •

ARTICLE VIII. TOBACCO-FREE PARKS AND RECREATION FACILITIES/SCHOOL BUS STOPS

Sec. 18-81. Title.

This article shall be known as the "City of South Portland Tobacco-Free Parks and Recreation Facilities/School Bus Stops Ordinance."

Sec. 18-82. Purpose.

This ordinance is enacted to protect, preserve, and promote the health, safety and welfare of the residents and visitors that use the City of South Portland's parks, beaches, ~~and~~ outdoor recreation facilities, and school bus stops. The purpose of this ordinance is to decrease the exposure of individuals, and children in particular, to secondhand smoke in their outdoor environment.

Sec. 18-83. Definitions.

Electronic smoking device means a device used to deliver nicotine or any other substance intended for human consumption that may be used by a person to simulate smoking through inhalation of vapor or aerosol from the device, including, without limitation, a device manufactured, distributed, marketed or sold as an electronic cigarette, electronic cigar, electronic pipe, electronic hookah or so-called vape pen.

Smoking means carrying or having in one's possession a lighted or heated cigarette, cigar or pipe or a lighted or heated tobacco or plant product intended for human consumption through inhalation whether natural or synthetic in any manner or in any form. "Smoking" includes the use of an electronic smoking device.

Tobacco products -means any of the following: (1) A product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to, cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, or snuff; or (2) An electronic device that delivers nicotine or other vaporized liquids to the person inhaling from the device, including, but not limited to, an electronic smoking device ~~Cigarettes, cigars, pipes, snuff, dip, chewing tobacco, weed, plant, and other kinds and forms of tobacco, prepared in such a manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking.~~ "Tobacco product" does not include a product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for other therapeutic purposes where the product is marketed and sold solely for such an approved purpose.

Sec. 18-84. Tobacco use prohibited.

(a) It shall be unlawful for any person to use tobacco products at or within 25 feet of all parks, beaches and outdoor recreation facilities owned and/or maintained by the City, including, but not limited to, the following:

Anthoine Creek Park
Bug Light Park
Clarks Pond Trail System
Firefighters Park
Ge Erskine Park
Greenbelt Walkway
High Street Park
Hinckley Park
Fisherman's Point Park
Legere Park
Legion Square Park
Mill Creek Park

Mountain View/Nelson Park
Pierce Street Park
School Street Park
Spring Point Shoreway
Thomas Knight Park
Wainwright Recreation Complex
Wilkinson Park
Willard Beach
Willard Park

(b) It shall be unlawful for any person to use tobacco products at or within 25 feet of all designated school bus stops within the City limits. The designated school bus stops are posted annually on the City of South Portland School Department website.

(c) Nothing in this ordinance shall prohibit smoking on privately owned residential property.

Sec. 18-85. Signage.

The Parks and Recreation Department shall work with the Public Works Department to post signage notifying the public of this prohibition at or near the parks, beaches and outdoor recreation facilities specified herein, as well as in such other locations that, in its sole discretion, the Parks and Recreation Department deems necessary to notify the public of this ordinance.

Sec. 18-86. Enforcement.

The South Portland Police Department shall investigate and enforce the provisions contained in this ordinance. Nothing in this ~~Tobacco-Free Ordinance~~ shall prevent the enforcement agent from obtaining voluntary compliance by way of warning, notice or education.

Sec. 18-87. Penalties.

Any person in violation of any provision of this ordinance shall be subject to a civil penalty and upon adjudication thereof shall be fined in the amount of one hundred dollars (\$100.00) for the first offense; two hundred and fifty dollars (\$250.00) for a second offense; and five hundred dollars (\$500.00) for each violation thereafter.

Chapter 23

STREETS AND SIDEWALKS

ARTICLE I. IN GENERAL

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Sec. 23-19. Smoking at school bus stops.

Smoking/tobacco use at school bus stops is regulated under Article VIII (Tobacco-Free Parks and Recreation Facilities/School Bus Stops) of Chapter 18, "Parks and Recreation," of the Code of Ordinances.

Secs. 23-2019--23-24. Reserved.

Chapter 86. Beaches

Article I. General Restrictions

[Adopted 8-22-1967 by the Board of Selectmen]

§ 86-1. Dogs.

[Amended 9-21-1993; 4-14-2000]

- A. Between April 1 and June 15, dogs are not permitted within the beach areas unless on a leash and under charge of a responsible person. From June 16 through September 15, dogs are not permitted within beach areas between the hours of 8:00 a.m. and 6:00 p.m. From 6:00 p.m. until 8:00 a.m., dogs are permitted within beach areas only when on a leash and under charge of a responsible person. Exceptions: This section does not apply to dogs on the property of their owner or on another property with the owner's permission, to Seeing Eye dogs or other dogs assisting an individual with a disability or to working police dogs.

[Amended 4-7-2001]

- B. It shall be a violation of this article for any person who owns, possesses or controls a dog to fail to remove and dispose of any feces left by his/her dog at the Harbor Park, on any public beach, beach access point, beach area road or anywhere within the boundaries of the estuary as depicted on the map prepared by the Wells National Estuarine Research Reserve on December 16, 1999. Exception: licensed hunters actively engaged in duck hunting with a dog.

(1) For the purposes of this section, disposal shall be accomplished by transporting such feces to an appropriate waste receptacle.

(2) This section shall not apply to working police dogs while on duty or to a dog accompanying any handicapped person who, by reason of his/her handicap, is physically unable to comply with the requirements of this section.

[1] *Editor's Note: See also Ch. 80, Animals.*

§ 86-2. Horses and other large domesticated animals.

[Added 4-14-2000; amended 9-20-2016]

- A. Horses, ponies, llamas, vicunas, alpacas and other large domesticated animals are not permitted within the beach areas between April 1 and October 1.

- B. It shall be a violation of this article for any person who owns, possesses or controls a horse or other large domesticated animals to fail to remove and dispose of any feces left by his/her horse or large domesticated animal at the Harbor Park, on any public beach, beach access point, beach area road, or Wells Harbor, including parking lots.

(1) For the purposes of this section, disposal shall be accomplished by transporting such feces to an appropriate nonmunicipal waste receptacle.

§ 86-3. Litter.

Papers, bottles, cans or other refuse must not be left within the beach areas unless deposited in receptacles provided for that purpose.^[1]

[1] *Editor's Note: Former § 142-3, Hunting and firearms, which immediately followed this section, was deleted at time of adoption of Code 11-7-2000 (see Ch. 1, General Provisions, Art. I.).*

§ 86-4. Golf.

Any phase of golf shall not be played on the beaches from March 1 to November 1.

§ 86-5. Smoking.

[Added 10-18-2016^[1]]

- A. Smoking is not permitted on any beach in the Town of Wells.
- B. For the purposes of this section, the term "smoking" includes carrying or having in one's possession a lighted or heated cigarette, cigar or pipe or a lighted or heated tobacco or plant product intended for human consumption through inhalation, whether natural or synthetic, in any manner or in any form. "Smoking" includes the use of an electronic smoking device.

[1] *Editor's Note: This ordinance also renumbered former § 86-5, Violations and penalties.*

§ 86-5.1. Violations and penalties.

[Amended 11-7-2000; 3-19-2019]

Any person who violates this article commits a civil violation and shall be subject to a civil penalty of not less than \$50 and not more than \$250 for each violation.