

# Town of Scarborough Conservation Commission

April 24, 2024 | 6:00 pm | Hybrid: Town Council Chambers B and via Zoom

To participate in the Conservation Commission meeting remotely, please follow this link:  
[https://scarboroughmaine.zoom.us/webinar/register/WN\\_Hkm-K0ZrTe-PrnrDpDUaaQ](https://scarboroughmaine.zoom.us/webinar/register/WN_Hkm-K0ZrTe-PrnrDpDUaaQ)

To view the Conservation Commission, please follow this link:  
<https://www.youtube.com/channel/UCD5Y8CFy5HpXMftV3xX73aw>

## *Agenda*

- 6:00 pm**      **Call to order and attendance**
- (1) Welcome and introductions
  - (2) Land acknowledgement
  - (3) Vote on minutes from 2/28/24 meeting
  - (4) Review 4/24/24 agenda
  - (5) Public comment
- 6:15 pm**      **Old Business**
- (1) Conserving Land & Building Resiliency:
    - a) Conservation Open Space Plan:
      - Update on process
      - Discuss definition of Open Space
    - b) Environmental Standards: update on process
  - (2) Planning Board submittals
    - General: Overview of Commission's Conservation Principles for Development
    - The Downs – discuss Downs Road culvert crossings (see attached)
- 6:55 pm**      **New Business**
- (1) Building Resiliency: FEMA Floodplain Maps (see attached)
    - Review proposed maps and ordinance
    - Provide feedback on increasing freeboard
- 7:20 pm**      **Updates**
- (1) Promoting Citizen Stewardship: Report out from sub-committee
  - (2) Town Council
  - (3) Sustainability Committee
  - (4) Parks and Conservation Land Board
- 7:30 pm**      **Adjourn**
- Next meeting:** May 22, 2024 at 6:00 pm

## Engineering & Technical Services

259 US Route One | PO Box 360 | Scarborough, ME 04070 | P: 207.730.4400 | [scarboroughmaine.org](http://scarboroughmaine.org)

# Town of Scarborough Conservation Commission

February 28, 2024 | 6:00 p.m. | Virtual via Zoom

## *Meeting Minutes - DRAFT*

### Present in person:

Commission: Bennett Flanders, Randi Hogan, Abel Plaud

Town Council: Karin Shupe

Staff: Jami Fitch, Autumn Speer

### Present via Zoom:

Commission: Cathleen Miller, Jessica Sargent, Pete Slovinsky, Maggie Vishneau, Marla Zando

Staff: Emerson Goodrich

A recording of this meeting is available online: [Conservation Commission - 2/28/24](#)

### Call to order

1. Meeting was called to order at 6:00 pm.
2. Randi offered a land acknowledgement to recognize the Wabanaki People as traditional stewards of Scarborough.
3. Abel motioned to accept the minutes as amended to reflect that Jessica is NOW the chair of the Parks and Conservation Land Board. Pete seconded. Rollcall vote was unanimous. Motion passed.
4. Public Comment
  - There were no public comments.

### Old Business

#### 1. Environmental Standards

- The environmental standards ordinance is scheduled to go to the ordinance committee 3/13.
- A GIS mapping application was developed to help understand how the proposed environmental standards will impact properties. The link was shared with the Commissioners
- Karin inquired about procedure regarding the ordinance. Autumn is giving a presentation to SEDCO on 3/27, after the Ordinance Committee takes up the ordinance. Karin inquired if Commissioners should attend the Ordinance Committee meeting to support the environmental standards.

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- Karin asked the Commission if they feel the recommended standards are strong enough. Jami affirms that no compromises were made in terms of what the group intended to achieve with the ordinance.
- Pete inquired to make sure the ordinance was not making any setback area less protected than they currently are. Autumn ensures the more restrictive setback and protections will apply, which is explicitly stated in the ordinance.
- Jami explained the ordinance was discussed and subsequently passed out of committee in January. Autumn suggests the use of the GIS application in demonstrating the impacts of the ordinance.
- Pete suggested making the setbacks in the Environmental Standards the same as the Resource Protection (RP) Zone setbacks the Shoreland Zoning Ordinance.
- *Pete motioned to change the marsh migration area setback to HAT+250' or HAT+4', whichever is greater, to be consistent with the RP setbacks. Abel seconded the motion. No further discussion was necessary. Marla recused herself from the vote. Rollcall vote was unanimous. Motion passed.*
- Pete is planning to go to the Ordinance Committee to support the environmental setbacks.
- Autumn walked the group through the GIS application.
- Abel asked about limitations the ordinance would place on redevelopment of sites. Karin noted that in the example of Café Luna, the Zoning Board approved the plans for redevelopment and did not consider environmental factors. Autumn confirmed that the environmental standards would apply to redevelopment if the site goes before the Planning Board.

## 2. Land Bond Memo

- Jami introduced the memo written in support of the Parks and Conservation Land Board's (PLCB) request to include a new land bond on the 2024 ballot. The land bond supports the Town's 30x30 goal. The memo does not state the exact dollar amount for the land bond, but states support for a land bond in an amount larger than the previous land bond.
- Jessica explained that based on monitoring of current land bond funds, they have inserted an amount of between \$5-10 million dollars, which may change subject to further research.
- Jessica and Randi reached out to the Trust for Public Land to request help from their Conservation Finance Department to conduct polling to help determine the bond amount. They have not yet decided whether or not Scarborough will be one of their 2024 projects.
- Abel and Pete note community feedback in a survey expressing concern over growth as relating to conservation.
- Jami explained that the PCLB makes the recommendation to the Town Council, and the Council ultimately approves the monetary value of the bond that will be put forth to voters, who will vote on the bond as part of the 2024 election.
- Jessica shared that there is \$1.4 million remaining in authorization from the previous land bond and explained that the money is authorized as needed and not all at once. She believes there will likely be applications in the coming year that will spend that remaining balance.
- Karin noted the land bond is moving forward currently without an Open Space Plan, but Randi relays that residents have consistently expressed support for land bonds.
- Marla asked about the timeline. Autumn, Jessica, and Karin believe the Council will vote on the bond sometime between May and July.
- *Cathleen motioned to approve the memo. Abel seconded. Pete requested including a reference to the recent community survey, which stated that 74% of respondents believe Scarborough is developing too fast and 77% of respondents are concerned with the pace of community growth and expansion. Rollcall was unanimous. Motion passed.*

- **ACTIONS:**
  - **JAMI will add wording suggested by Pete and will provide the memo to Randi for a final review.**
  - **RANDI will submit the memo to the Town Council.**

### 3. Open Space Plan

- Jami shared that Viewshed has been selected as the Open Space Plan contractor and that initial and kickoff meetings are upcoming.
- Maggie is serving as the Conservation Commission's representative on the Ad-Hoc Open Space Committee.

### 4. Planning Board Submittals

- Autumn introduced the recent planning board submittals. The projects included for this meeting include:
  - Marsh Bend Subdivision
    - Decreased from 12 to 9 lots
    - Undeveloped open space adjacent to the marsh will be given to SLT. The parcel is connected to State land, but the developer has not been able to reach anyone at MDIFW to discuss donating the land to the State.
    - **ACTION: JAMI will give AUTUMN a contact to inquire about the connection to State land.**
    - Cathleen asked about the amount of land that would be conveyed to SLT. 170,000 sq. ft (just under 4 acres) of open space would be donated to SLT.
    - Jami asked if the "no disturb buffers" could be part of common open space rather than individual parcels. She explained that, despite being marked on properties, there have been instances where buffers have been disturbed, which caused the expenditure of Town time and resources to address.
    - Autumn noted that the issue of the no disturb buffers will be discussed with the applicant at a Planning Board meeting. She also noted that it would be helpful to update ordinances to require no disturb buffers be part of common open space instead of individual parcels because this issue comes up frequently.
    - Jessica asked about other deed restrictions and easements, outside of the State and SLT, to encourage the protection of land and the provision of other amenities to the Town.
    - Autumn explained that permanent protection occurs with SLT. Home Owners' Associations may dissolve in the future, and they are not overseen by the Town. There are also issues with public access to private land and developments. Autumn agreed that question comes up occasionally and should be given more formal consideration following the completion of the Open Space Plan.
  - 6 Cummings Rd
    - Autumn used this parcel and proposed site plan is an example of where the environmental standards and buffers would be particularly helpful.
    - Pete noted the proposed plan fills the middle of Red Brook, which is an urban impaired stream and shared his concern about the project.
    - Karin suggested members of the Commission attend the Planning Board meeting to provide feedback on proposals such as this.



- Randi, Abel, and Pete suggested reducing impervious surface by reducing parking and the size of the building.

## New Business

### 1. Stormwater Management Fee

- Karin explained that she is interested in establishing a stormwater management fee in Scarborough, notably to collect fees from businesses that do not pay taxes.
- Everyone in Scarborough would get assigned a fee based on the amount of impervious area on their parcel.
- Karin shared this would raise more funds for Scarborough, as well as deter development. She noted that Portland, Bangor, and Lewiston have implemented fees.
- Pete asked about porous pavement factoring into the fee, and Jami states it is not usually calculated as impervious surface, although the applicability of porous pavement depends on which watershed you are in.
- Kathleen expressed support for the fee as a way to incentivize doing less harm and encouraging less paving.
- Autumn suggests updating the Town's ordinance to decrease the amount of impervious cover allowed on parcels. Currently, Scarborough ordinances allow 85% of a parcel to be impervious. She noted that 60% would be a more appropriate amount.
- Pete asked about what will be recommended in the Low Impact Development (LID) standards in terms of impervious surface, which will be potentially published in June or July. Jami stated that it is less than 85%. She also shared that the process of developing LID standards has been remanded to the State, so the process will likely take longer than initially anticipated.
- Pete asked if 60% impervious cover is still too high. Autumn suggested that standards should differ based on zoning.
- **ACTION: AUTUMN will look into changing the impervious surface allowances.**
- Karin noted the need to identify where funds from the stormwater fee would go.
- **ACTION: JAMI will share a review of Portland's stormwater fee implementation with the group.**
- Jami noted that it may make sense for Scarborough to work with neighboring communities on a regional effort. Portland's process to develop a stormwater fee took about five years.
- Pete underscored that the fee supports goals in the Comprehensive Plan to protect the marsh.

## Updates

### 1. Education Subcommittee

- Marla reached out to Beverly Johnson to plan a program around Blue Carbon and the Marsh.
- Cathleen asked for suggestions for topics and connections with other events supporting Open Space and the Land Bond.

### 3. Sustainability Committee

- Commercial PACE Program going to the Ordinance Committee in March.

### 4. Parks and Conservation Land Board

- Will be discussing next steps for the bond referendum and quantitative assessment for that.

Meeting adjourned at 7:43 pm.

**Next Meeting:**

March 27th, 2024 @ 6:00 pm

## **Open Space Ad-Hoc Committee**

### **Discussion Question for Committee Members & Representative Groups**

One of the first items the Open Space Ad-Hoc Committee will tackle is determining what we mean when we talk about “open space.” As a member of the Ad-Hoc Committee, you represent another group or committee, and the input you provide through the Ad-Hoc Committee should be consistent with that of your representative group.

Please discuss the following with your group:

**What should qualify as “Open Space?” Please select all that your group feels should be considered.**

- ☐ Conserved areas
- ☐ State or Federally-owned properties
- ☐ Town-owned properties
- ☐ Scarborough Land Trust properties
- ☐ HOA parks and natural areas
- ☐ Conserved farmland
- ☐ Other farmland
- ☐ Passive parks (ex. trails and green space)
- ☐ Active parks (ex. playgrounds, basketball, tennis courts)
- ☐ Playing fields
- ☐ Community gardens
- ☐ Trails
- ☐ Scenic areas
- ☐ Beaches
- ☐ Cemeteries
- ☐ Other \_\_\_\_\_

## Conservation Commission Principles

Through thoughtful planning and design, every land development project holds the potential to protect, conserve, restore, and sustain a healthy environment and ecosystem in Scarborough. Conserving land has positive economic benefits: preservation of habitat, open space, trails, and parks creates jobs, enhances property values, expands local businesses, attracts new or relocating businesses, increases local tax revenues, increases the accessibility of recreation, improves the health and wellbeing of residents and visitors, provides health care cost savings to residents, improves water quality, prevents and controls flooding, and promotes a sense of local community. Conserving natural lands and working harbors, farms, and forests can generate financial returns, both to the Town and its residents, and create significant cost savings as well.

These five conservation principles guide the Conservation Commission's work:

1. **Protect large, contiguous, undisturbed natural areas wherever possible.** Design developments to create open space linkages to adjacent and regional natural areas so that nature exists not as islands but as connected habitat. Preserve permanent open space as an integral part of new development to both protect critical natural areas and to provide opportunities for recreation and environmental education. Larger contiguous habitat areas, especially proximal to the Scarborough Marsh or its tributaries, are better able to serve as buffers from development and natural hazards such as floods, and connected habitats help wildlife to move safely across the landscape. The State of Maine has designated the Scarborough Marsh as a Focus Area of Statewide Ecological Significance based on its unusually rich convergence of rare plant and animal occurrences, high value habitat, and relatively intact natural landscape. The protection of the Scarborough Marsh and its tributaries is a high priority of both the State of Maine and the Town of Scarborough.
2. **Maintain, create, or restore broad buffer zones between natural areas and human-dominated land uses, including development and agriculture.** Buffer areas minimize adverse impacts of human activity on highly sensitive natural resource areas. Impervious areas—principally roads, roofs, and parking lots—should be minimized, wherever feasible. Buffers of natural vegetation along streams, around water bodies and wetlands, and at the perimeter of sensitive natural areas are important for clean water, healthy habitats, and flood damage prevention.

### Scarborough Conservation Commission

3. **Locate and plan new development in ways that protect natural areas;** direct human uses toward the least sensitive natural areas; and provide buffers between sensitive natural areas and intensive use areas. Where possible, encourage development of altered land instead of breaking new ground. Avoid and minimize disturbance to natural areas before, during, and after construction.
4. **Minimize disruption to storage and movement of water** across and through the landscape to protect water quality and quantity, reduce flooding, recharge ground water, and preserve habitat for fish and other aquatic life.
5. **Encourage the use of green infrastructure to manage stormwater in developed areas,** utilizing practices such as rain gardens, bioswales, street trees, permeable pavement, and green roofs that allow runoff to infiltrate into the soil. Green infrastructure reduces runoff, improves water quality, provides natural cooling, and beautifies neighborhoods.

# MEMO

**To:** Scarborough Conservation Commission  
**From:** Jami Fitch, Sustainability Manager  
**Date:** April 24, 2024  
**Re:** Downs Road

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## Background

The Downs development team is requesting a subdivision amendment that will include upgrading Downs Road to bring it up to Town standards. The section of Downs Road that will be improved was constructed through a large wetland system. There is also a State-mapped significant vernal pool in proximity to the road. The Downs development has placed a conservation easement around the vernal pool, and the ownership of the easement is held by the Downs. The developer is proposing to install two “critter crossings” (open-bottomed culverts) under Downs Road to help wildlife move from one side of the road to the other. They have indicated that the stormwater conveyance culvert near the commercial development will also function as a “critter-crossing.”

Slides that were presented by the development team at the 4/16 Planning Board meeting are attached. A couple of notes were added to the slides to provide some context.

## Discussion Questions

- Are two “critter crossings” sufficient, and are they in the correct locations (see slide 12 of 14)? What are your thoughts on what the designer is calling a third crossing into the stormwater conveyance channel?
  - The Commission could recommend that the locations of the “critter-crossings” be moved to areas where migrating amphibians would be more likely encounter them.
- Is it appropriate for the developer to hold the easement?
  - The Commission could recommend that the Planning Board include a condition of approval that requires the transfer of the easement to a third party.
- Is the size of the conservation easement sufficient (see slide 10 of 14)? One edge of the vernal pool does not have a 250’ buffer, and the easement area is surrounded by a large area of wetlands.
  - The Commission could recommend that the Planning Board include a condition of approval that requires expanding the conservation easement.
- There is an existing road through the upper portion of the conservation easement that the developer is proposing to use as a construction access and future upgrades. Is there any

## Engineering & Technical Services

concern with construction vehicles or future roadway use driving through the conservation easement?

- The Commission could recommend that all activity be eliminated from the vernal pool buffer.



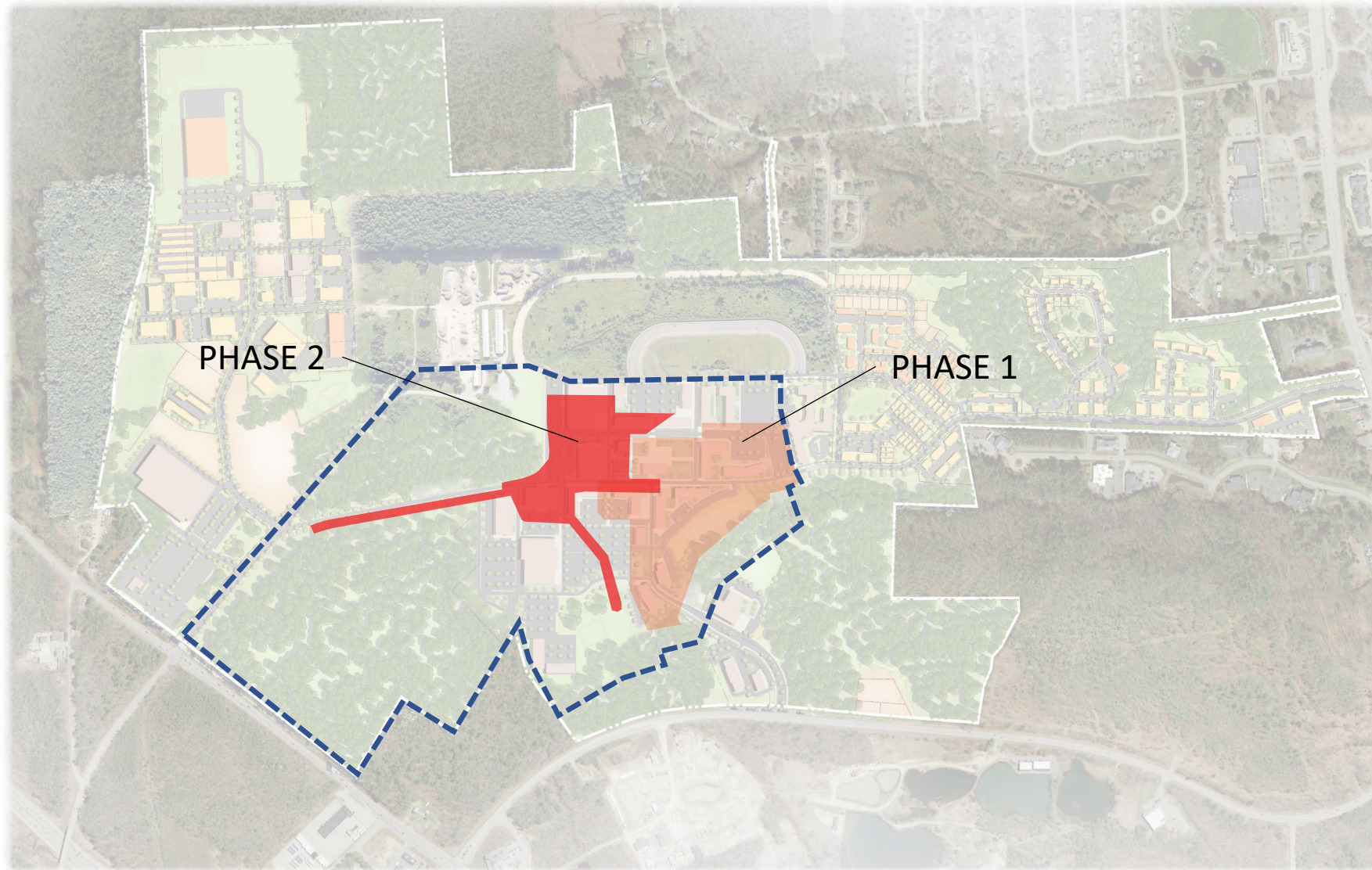
# THE DOWNS



## TOWN CENTER DISTRICT PLANNING BOARD SUBDIVISION REVIEW — PHASE 2

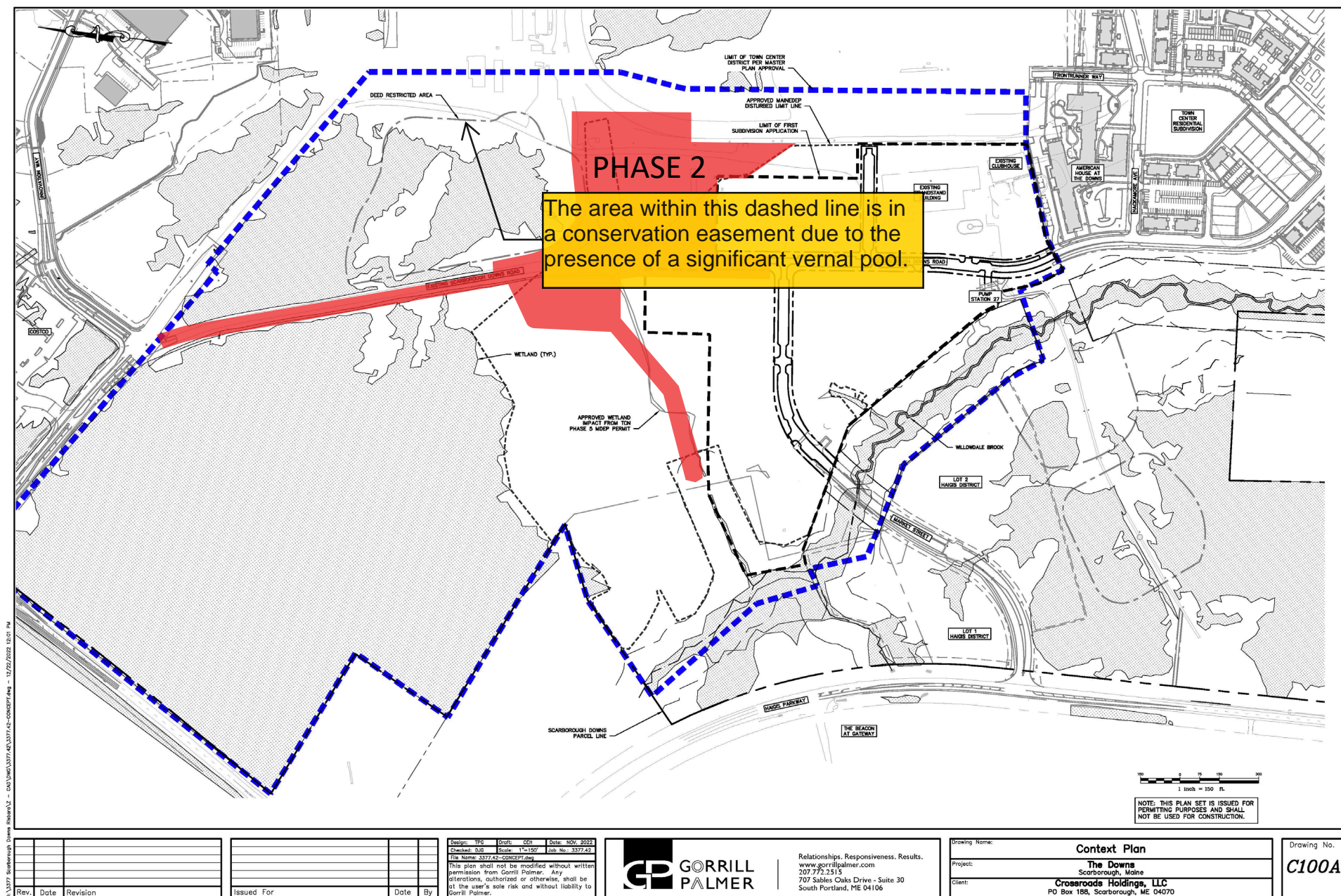


# Town Center District



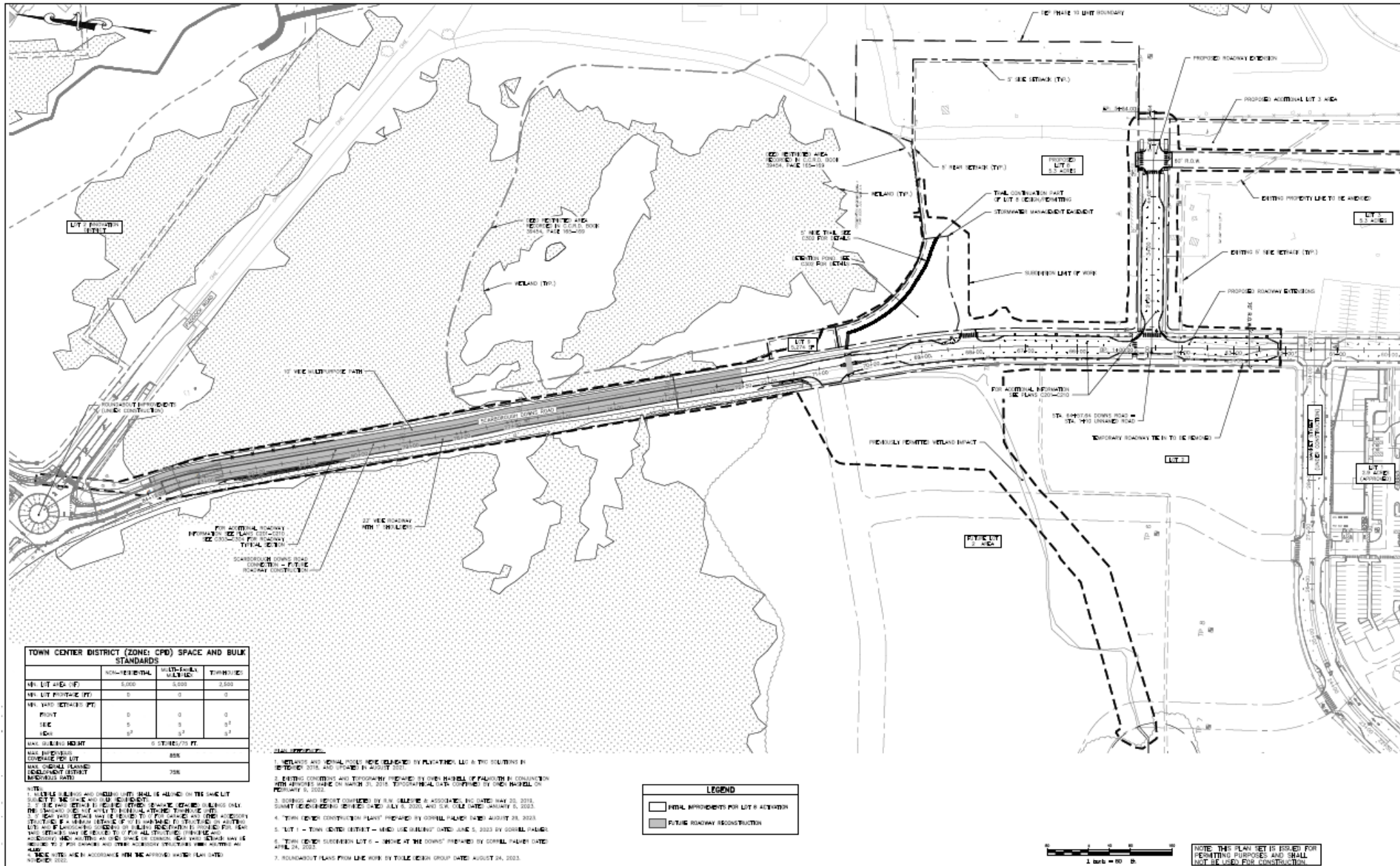


# TC District Phase 2



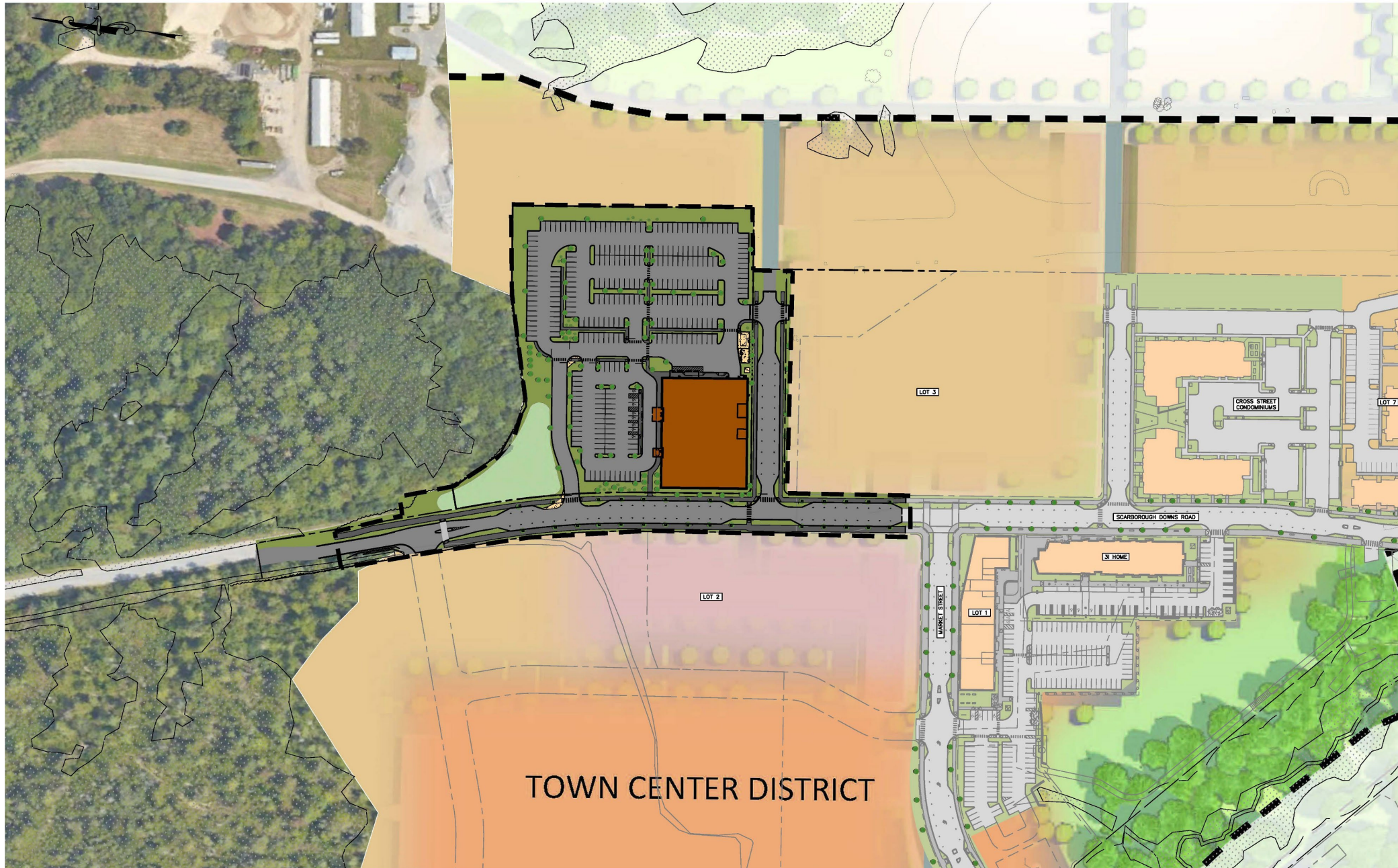


## Phase 2 Layout



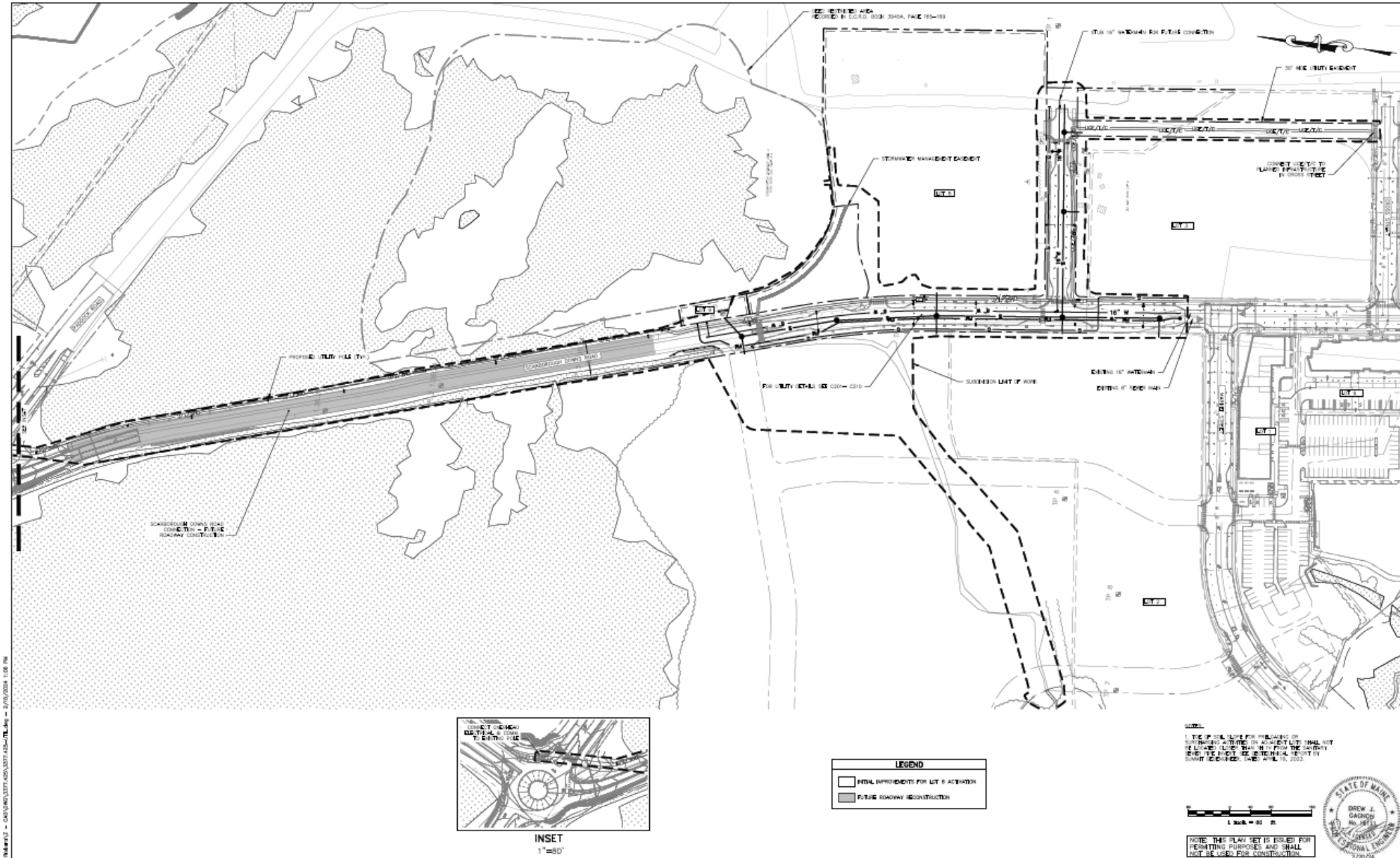


# Phase 2 Layout

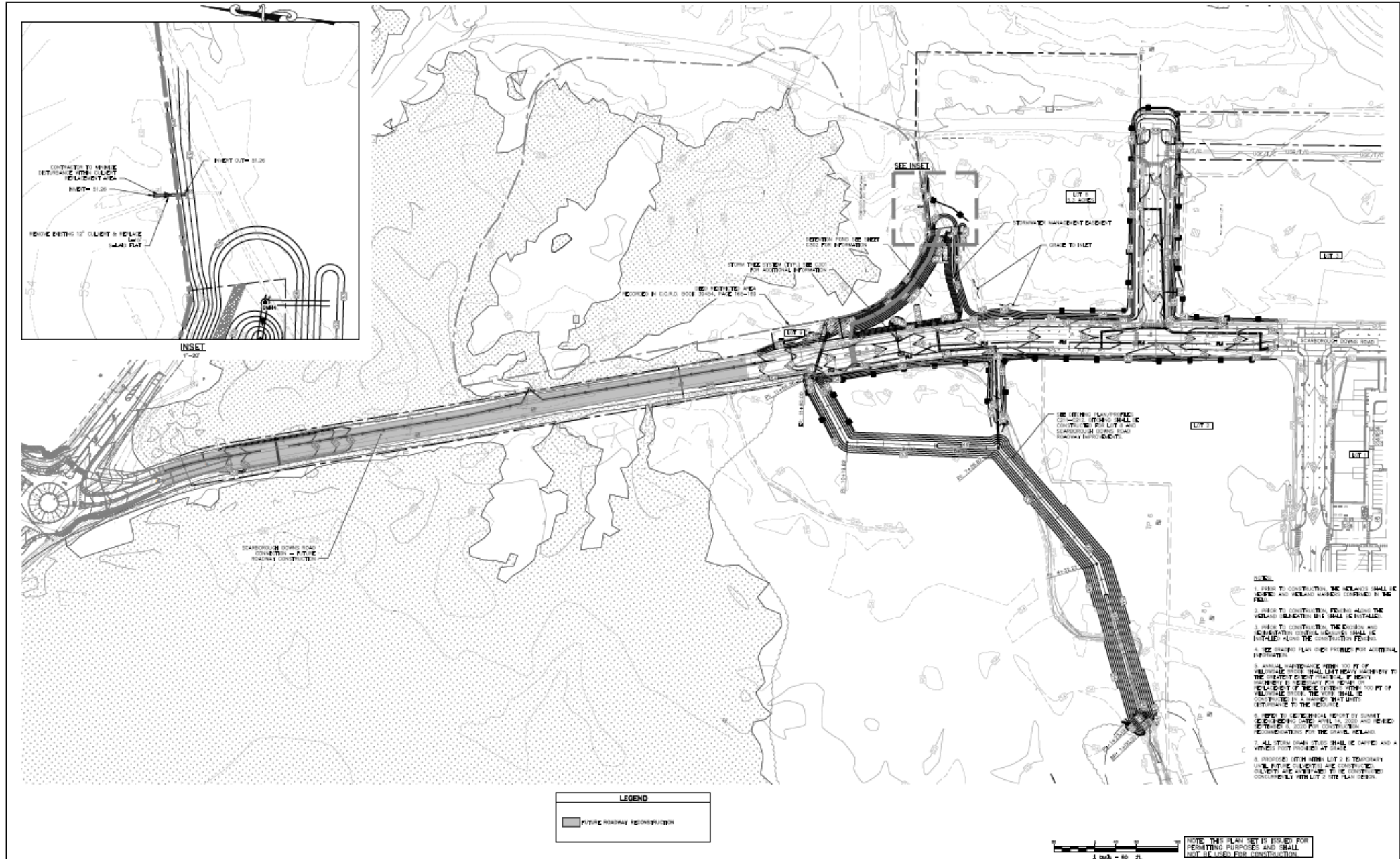




# Utility Plan

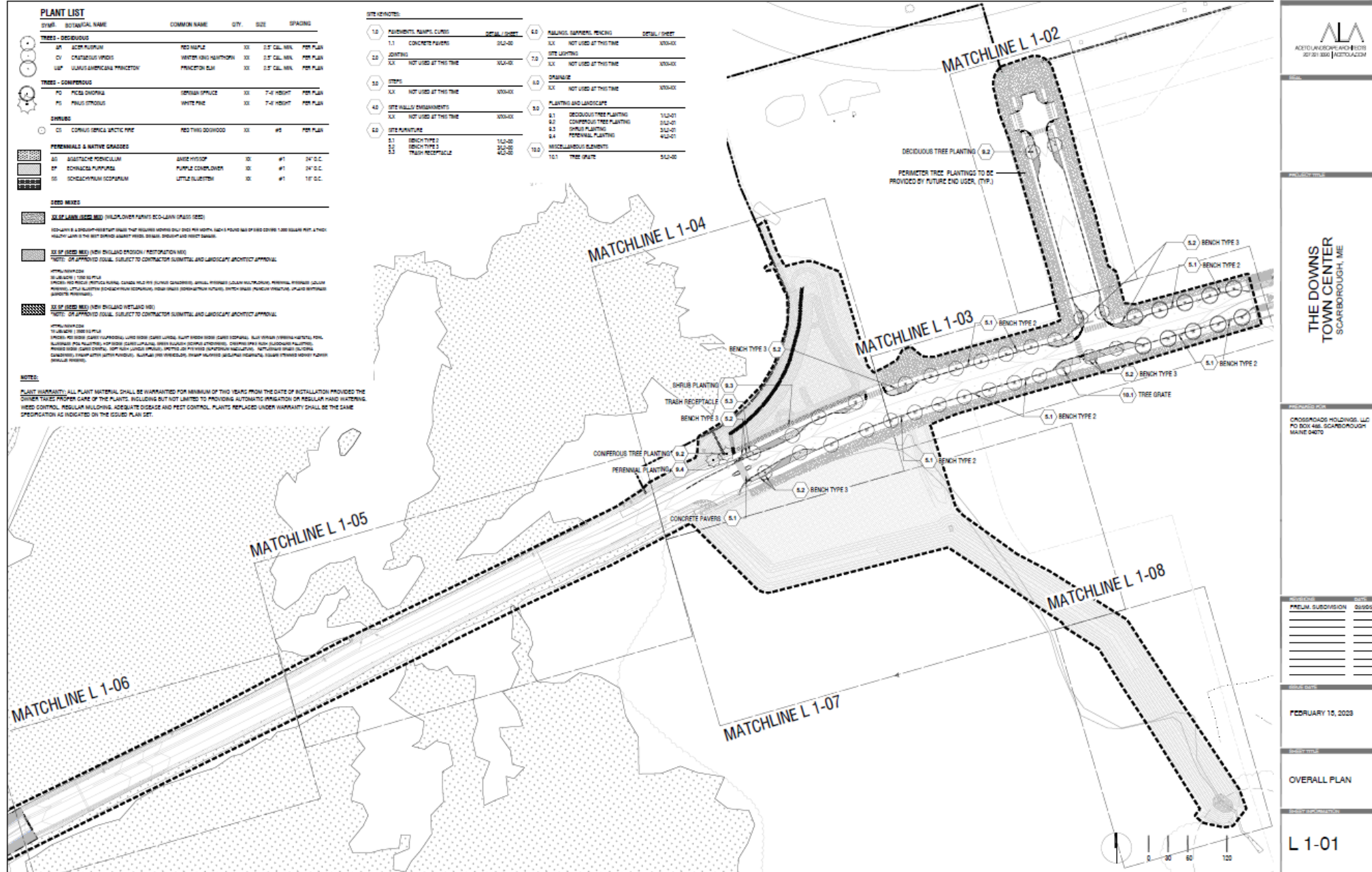


## Grading and Drainage





# Landscape Plan

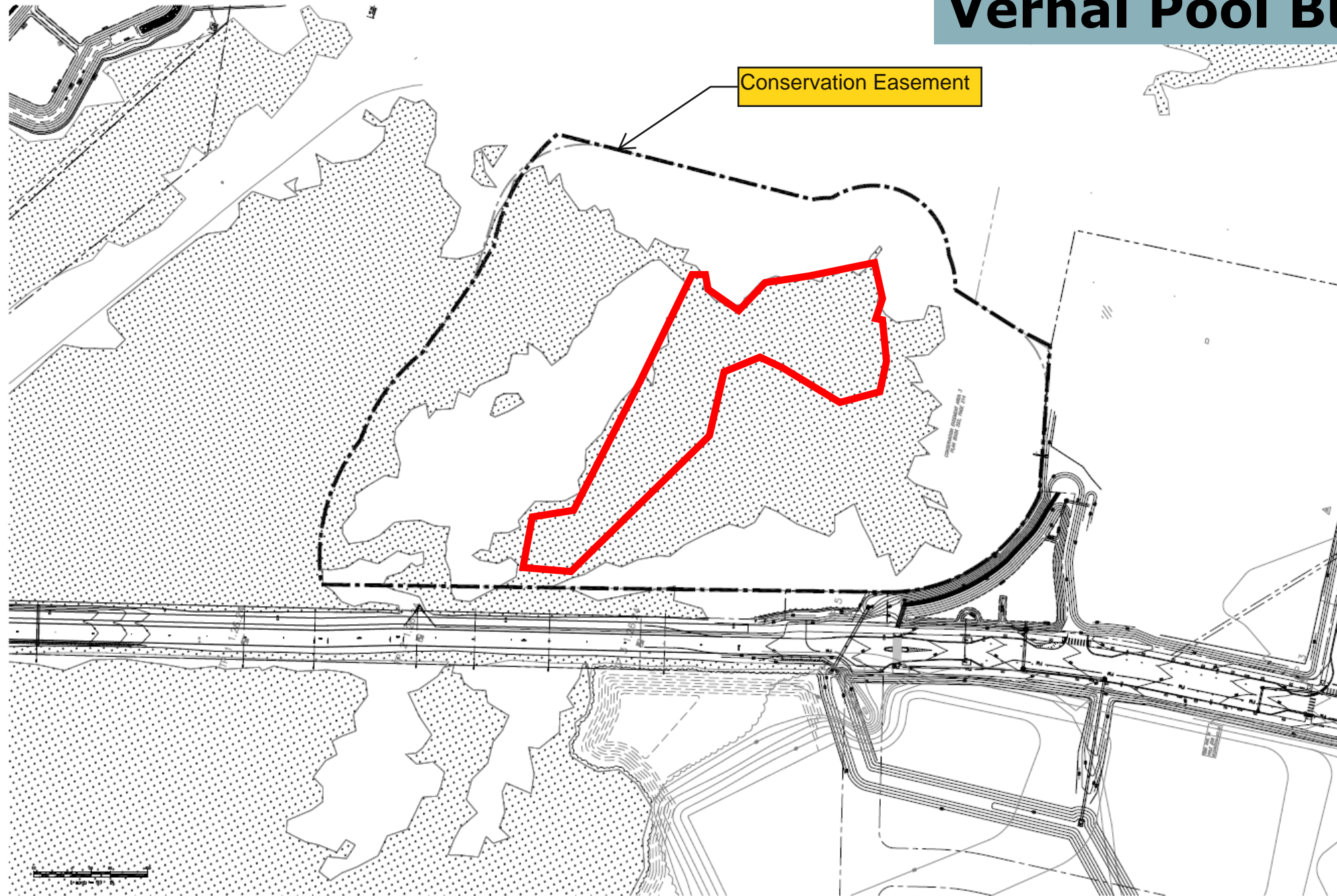


# Application Updates

- Working with Town on Downs Road “north” design – intended to be constructed with Lot 2 and 3 activation but permitted with this Application
- Buffer Zone along Sidewalk in Town Center
- Deed Restricted Area Exhibit

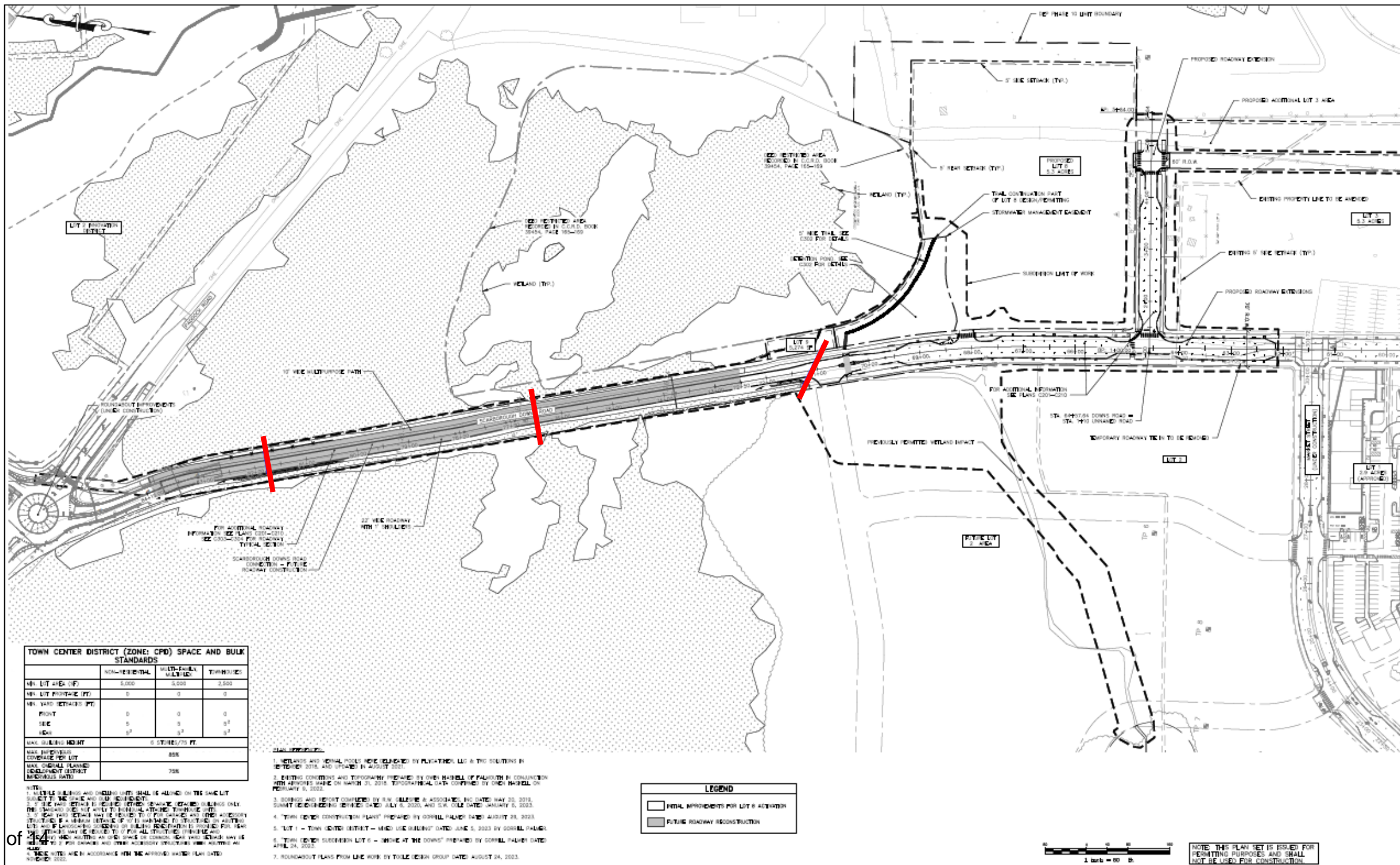


# Vernal Pool Buffer



# Thank You











**Text Amendment Staff Report  
Planning Board Public Hearing April 16, 2024**

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Submittal Type: Repeal and replacement of Chapter 405A Floodplain Management Ordinance as required to maintain standing in the National Flood Insurance Program (NFIP) and to recognize the areas of special flood hazard, Zones A, AE, and VE for the Town of Scarborough, Cumberland County, Maine, identified by the Federal Emergency Management Agency in a report entitled “Flood Insurance Study – Cumberland County, Maine” dated June 20, 2024, with accompanying “Flood Insurance Rate Map” dated June 20, 2024, as amended.

Applicant: FEMA Required

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**ACTION REQUIRED:**

Hold a public hearing for the proposed repeal and replacement of Chapter 405A Floodplain Management Ordinance as required to maintain standing in the National Flood Insurance Program (NFIP) and to recognize the areas of special flood hazard, Zones A, AE, and VE for the Town of Scarborough, Cumberland County, Maine, identified by the Federal Emergency Management Agency in a report entitled “Flood Insurance Study – Cumberland County, Maine” dated June 20, 2024, with accompanying “Flood Insurance Rate Map” dated June 20, 2024, as amended.

**BACKGROUND:**

Flood zone determination for each property in Scarborough is defined by the Federal Emergency Management Agency (FEMA). FEMA uses flood maps as a tool to indicate which areas are most at risk of being flooded in a community. They maintain and update data through their flood maps and risk assessments. The purpose of the flood maps, aside from using them to make informed decisions about how to reduce or manage risk, is to help mortgage lenders determine insurance requirements.

According to FEMA, flooding is one of the most common and costly disasters. Risk can change over time from new development, weather patterns, and other factors. The current FEMA flood maps used by the Town of Scarborough are from 1986. FEMA began a remapping process around 2012, resulting in preliminary updating flood maps in 2017. After a lengthy appeal process and map revisions for some communities, the Town of Scarborough received a Letter of Final Determination (LFD) from FEMA in December 2023, indicating June 20, 2024 as the effective date of the new Digital Flood Insurance Rate Maps (DFIRMs) for Cumberland County.

As a coastal community, Scarborough participates in FEMA’s National Flood Insurance Program. The NFIP works with communities required to adopt and enforce floodplain management regulations. Other benefits include federal flood insurance to those who have federally backed mortgages in the floodplain and eligibility for disaster funding and low interest loans when the county is in a declared disaster area. With the new FEMA flood maps going into effect, Scarborough must adopt an updated Floodplain Management Ordinance which references the new map date on or before June 20, 2024 in order to avoid being suspended from the NFIP.

## Impact in Scarborough

- Current Flood Zone - 1749 Properties Affected
- Pending Flood Zone - 2323 Properties Affected
- Properties that were not in Flood Zone that are now - 679 Newly Affected Properties
- Properties that were in Flood Zone that now are not - 105 Properties Removed from Flood Zone

Some properties will now be within the new special flood hazard areas (SFHA). An SFHA is an area with a 1% annual chance of flood that meets or exceeds that base flood elevation. There are 3 major impacts that property owners that will now be within an SFHA need to be aware of:

- They may now be required to obtain flood insurance if they have a federally secured mortgage on their dwelling.
- They will be subject to floodplain management standards when making improvements to their property, such as additions, remodels, new structures, or even septic system replacements.
- They will be subject to substantial improvement/substantial damage provisions, which involves repairs or improvements to the building with a cost equal to or exceeding 50% of the market value of the building alone. At that point, the entire building will need to be brought into compliance with the floodplain management standards.

For those that were already in a SFHA, but find that their base flood elevation has increased, they may experience a rate change in their flood insurance policy, and will also be subject to floodplain management standards for any new construction or substantial improvement or substantial damage. The same can be said for any properties that were in a SFHA and experience a flood zone change. For any property owners that find they are no longer in a SFHA and wish to or are allowed by their mortgage holder to discontinue their flood insurance, they may be able to receive a prorated refund on their insurance premium for the current year only.

Also affected by the change are property owners who have been in the flood zone but submitted a request for a letter of map change (LOMC) in the past. FEMA reviewed these properties and placed them in 4 different categories for when the updated maps go into effect:

1. LOMCs Incorporated - Will be reflected in the new FIRM and will remain in effect until then.
2. LOMCs Not Incorporated - Will not be reflected in the new FIRM because of scale limitations or being outside the new special flood hazard areas, but will be revalidated upon the effective date of the new FIRM.
3. LOMCs Superseded - Will no longer be effective due to the new flood hazard information.

4. LOMCs To Be Redetermined - Previous LOMC information will be reviewed and, if appropriate, a new determination will be made by FEMA.

There were no LOMCs in category #1 and #4. The Town has issued letters to property owners in category 3 to make them aware that their status has changed and, in most cases, they will now find their property in a special flood hazard area and be subject to the regulatory requirements in the Floodplain Management Ordinance. Properties in category 2 will not be impacted as their LOMC will be revalidated free of charge 1 day after the new FIRM becomes effective. This only involves properties that, in years past, applied for and received a LOMC.

- 2017: FEMA delivers preliminary flood maps
- 2018: Town of Scarborough and neighboring communities submit appeals of the preliminary flood maps
- 2019: FEMA denies Scarborough's appeal as well as all communities in Cumberland and York Counties, except South Portland and Old Orchard Beach
- December 2023: Scarborough receives letter of Final Map Determination from FEMA indicating that flood hazard determinations are now considered final, and that NFIP communities must adopt the new Flood Insurance Study and Flood Insurance Rate Maps by the effective date of June 20, 2024.
- January 2024: Scarborough receives letter from State of Maine regarding rollout requirements for the new Digital Flood Insurance Rate Maps (DFIRMs) for Cumberland County, effective June 20, 2024

#### **COUNCIL REQUEST:**

At the first reading on April 3, 2024, Town Council requested the Planning Board review the idea of increasing the amount of Freeboard required from one foot to two feet.

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

Freeboard is not required by NFIP standards, but communities are encouraged to adopt at least a one-foot freeboard to account for the one-foot rise built into the concept of designating a floodway and the encroachment requirements where floodways have not been designated. Freeboard results in significantly lower flood insurance rates due to lower flood risk. Scarborough currently requires one foot of freeboard.

Scarborough's Shoreland Zoning requirements include requirements that 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.

**PRIOR ACTION AND NEXT STEPS:**

- Town Council Workshop: March 20, 2024
- Town Council First Reading: April 3, 2024
- Planning Board Public Hearing: April 16, 2024
- Town Council Public Hearing: May 1, 2024
- Town Council Second Reading: May 15, 2024

**PUBLIC NOTIFICATION:**

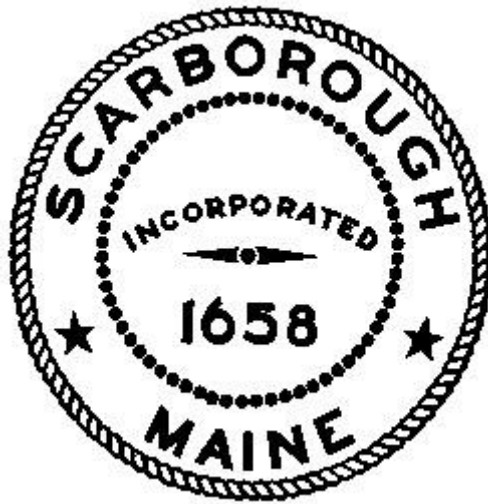
Publication of this text amendment was included in the newspaper on April 3, 2024 and April 9, 2024.

**ATTACHMENTS:**

- Existing Chapter 405A Floodplain Management Ordinance
- Replaced Chapter 405A Floodplain Management Ordinance
- December 20, 2024 Letter from FEMA
- January 8, 2024 Letter from DACF Directing Action

# **CHAPTER 405A**

## **TOWN OF SCARBOROUGH FLOODPLAIN MANAGEMENT ORDINANCE**



**Enacted on March 7, 2007  
Amended October 17, 2007**

## **FLOODPLAIN MANAGEMENT ORDINANCE CONTENTS**

ARTICLE I - PURPOSE AND ESTABLISHMENT .....	1
ARTICLE II - PERMIT REQUIRED .....	1
ARTICLE III - APPLICATION FOR PERMIT .....	2
ARTICLE IV - APPLICATION FEE AND EXPERT'S FEE.....	3
ARTICLE V - REVIEW STANDARDS FOR FLOOD HAZARD DEVELOPMENT PERMIT APPLICATIONS .....	4
ARTICLE VI - DEVELOPMENT STANDARDS .....	5
Article VII - CONDITIONAL USE REVIEW .....	12
ARTICLE VIII - CERTIFICATE OF COMPLIANCE.....	13
ARTICLE IX - REVIEW OF SUBDIVISION AND DEVELOPMENT PROPOSALS .....	13
ARTICLE X - APPEALS AND VARIANCES .....	14
ARTICLE XI - ENFORCEMENT AND PENALTIES .....	16
ARTICLE XII - VALIDITY AND SEVERABILITY .....	16
ARTICLE XIII - CONFLICT WITH OTHER ORDINANCES .....	16
ARTICLE XIV - DEFINITIONS .....	17
Accessory Structure: .....	17
Adjacent Grade: .....	17
Area of Shallow Flooding: .....	17
Area of Special Flood Hazard: .....	17
Base Flood: .....	17
Basement: .....	17
Breakaway Wall: .....	17
Building: .....	17
Certificate of Compliance: .....	17
Code Enforcement Officer: .....	18
Conditional Use: .....	18
Development: .....	18
Elevated Building: .....	18
Elevation Certificate: .....	18
Flood or Flooding: .....	18
Flood Elevation Study: .....	19
Flood Insurance Rate Map (FIRM): .....	19
Flood Insurance Study: .....	19
Floodplain or Flood-prone Area: .....	19
Floodplain Management: .....	19
Floodplain Management Regulations: .....	19
Floodproofing: .....	19
Floodway: .....	19
Floodway Encroachment Lines: .....	19
Freeboard: .....	19
Functionally Dependent Use: .....	20
Historic Structure: .....	20

Locally Established Datum: .....	20
Lowest Floor: .....	20
Manufactured Home: .....	20
Manufactured Home Park or Subdivision: .....	21
Mean Sea Level: .....	21
Minor Development: .....	21
National Geodetic Vertical Datum (NGVD): .....	21
New Construction: .....	21
100-year flood: .....	21
Recreational Vehicle: .....	21
Regulatory Floodway: .....	21
Riverine: .....	22
Special Flood Hazard Area: .....	22
Start of Construction: .....	22
Structure: .....	22
Substantial Damage: .....	22
Substantial Improvement: .....	22
Variance: .....	23
Violation: .....	23
ARTICLE XV - ABROGATION .....	23



**CHAPTER 405A**  
**TOWN OF SCARBOROUGH**  
**FLOODPLAIN MANAGEMENT ORDINANCE**

**ARTICLE I - PURPOSE AND ESTABLISHMENT**

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

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

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

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

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

The areas of special flood hazard, Zones A, A1-30, AO, and V1-30, are identified by the Federal Emergency Management Agency in a report entitled "Flood Insurance Study - Town of Scarborough, Maine, Cumberland County," dated December 19, 1984 with accompanying "Flood Insurance Rate Map" dated April 2, 1992, which are hereby adopted by reference and declared to be a part of this Ordinance.

**ARTICLE II - PERMIT REQUIRED**

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

## ARTICLE III - APPLICATION FOR PERMIT

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

- A. The name, address and phone number of the applicant, owner, and contractor;
- B. An address and a map indicating the location of the construction site;
- C. A site plan showing location of existing and/or proposed development, including but not limited to structures, sewage disposal facilities, water supply facilities, areas to be cut and filled, and lot dimensions;
- D. A statement of the intended use of the structure and/or development;
- E. A statement of the cost of the development including all materials and labor;
- F. A statement as to the type of sewage system proposed;
- G. Specification of dimensions of the proposed structure and/or development;  
[Items H-K.3. apply only to new construction and substantial improvements.]
- H. The elevation in relation to the National Geodetic Vertical Datum (NGVD), or to a locally established datum in Zone A only, of the:
  - 1. base flood at the proposed site of all new or substantially improved structures, which is determined:
    - a. in Zones A1-30, AO, and V1-30, from data contained in the "Flood Insurance Study - Town of Scarborough, Maine," as described in Article I; or,
    - b. in Zone A:
      - (1) from any base flood elevation data from federal, state, or other technical sources (such as FEMA's Quick-2 model, FEMA 265/July 1995), including information obtained pursuant to Article VI.K. and IX.D.;
      - (2) from the contour elevation extrapolated from a best fit analysis of the floodplain boundary when overlaid onto a USGS Quadrangle Map or other topographic map prepared by a Professional Land Surveyor or registered professional engineer, if the floodplain boundary has a significant correlation to the elevation contour line(s); or, in the absence of all other data,
      - (3) to be the elevation of the ground at the intersection of the floodplain boundary and a line perpendicular to the shoreline which passes along the ground through the site of the proposed building.
  - 2. highest and lowest grades at the site adjacent to the walls of the proposed building;
  - 3. lowest floor, including basement; and whether or not such structures contain a basement; and,
  - 4. level, in the case of non-residential structures only, to which the structure will be floodproofed;

- I. A description of an elevation reference point established on the site of all developments for which elevation standards apply as required in Article VI;
- J. A written certification by a Professional Land Surveyor, registered professional engineer or architect, that the base flood elevation and grade elevations shown on the application are accurate;
- K. The following certifications as required in Article VI by a registered professional engineer or architect:
  - 1. a Floodproofing Certificate (FEMA Form 81-65, 02/06, as amended), to verify that the floodproofing methods for any non-residential structures will meet the floodproofing criteria of Article III.H.4.; Article VI.G.; and other applicable standards in Article VI; (amended 10/17/2007)
  - 2. a V-Zone Certificate to verify that the construction in coastal high hazard areas, Zones V1-30, will meet the criteria of Article VI.P.; and other applicable standards in Article VI;
  - 3. a Hydraulic Openings Certificate to verify that engineered hydraulic openings in foundation walls will meet the standards of Article VI.L.2.a.;
  - 4. a certified statement that bridges will meet the standards of Article VI.M.;
  - 5. a certified statement that containment walls will meet the standards of Article VI.N.;
- L. A description of the extent to which any water course will be altered or relocated as a result of the proposed development; and,
- M. A statement of construction plans describing in detail how each applicable development standard in Article VI will be met.

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

A non-refundable application fee for all minor development and for all new construction or substantial improvements as set forth in the Schedule of Fees shall be paid to the Town Clerk or Code Enforcement Officer and a copy of a receipt for the same shall accompany the application. (amended 10/17/2007)

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

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

The Code Enforcement Officer shall:

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

elevation requirements of Article VI, paragraphs F, G, H, or P. Following review of the Elevation Certificate data, which shall take place within 72 hours of receipt of the application, the Code Enforcement Officer shall issue Part II of the Flood Hazard Development Permit. Part II shall authorize the applicant to complete the construction project; or,

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

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

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

## **ARTICLE VI - DEVELOPMENT STANDARDS**

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

- A. All Development - All development shall:

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

- B. Water Supply - All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems.
- C. Sanitary Sewage Systems - All new and replacement sanitary sewage systems shall be designed and located to minimize or eliminate infiltration of floodwaters into the system and discharges from the system into floodwaters.
- D. On Site Waste Disposal Systems - On site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during floods.
- E. Watercourse Carrying Capacity - All development associated with altered or relocated portions of a watercourse shall be constructed and maintained in such a manner that no reduction occurs in the flood carrying capacity of the watercourse.
- F. Residential - New construction or substantial improvement of any residential structure located within:
  - 1. Zones A1-30 shall have the lowest floor (including basement) elevated to at least one foot above the base flood elevation.
  - 2. Zone AO shall have adequate drainage paths around structures on slopes, to guide floodwater away from the proposed structures.
  - 3. Zone AO shall have the lowest floor (including basement) elevated above the highest adjacent grade:
    - a. at least one foot higher than the depth specified in feet on the community's Flood Insurance Rate Map; or,
    - b. at least three feet if no depth number is specified.
  - 4. Zone A shall have the lowest floor (including basement) elevated to at least one foot above the base flood elevation utilizing information obtained pursuant to Article III.H.1.b.; Article V.B.; or Article IX.D.
  - 5. Zones V1-30 shall meet the requirements of Article VI.P.
- G. Non Residential - New construction or substantial improvement of any non-residential structure located within:
  - 1. Zones A1-30 shall have the lowest floor (including basement) elevated to at least one foot above the base flood elevation, or together with attendant utility and sanitary facilities shall:
    - a. be floodproofed to at least one foot above the base flood elevation so that below that elevation the structure is watertight with walls substantially impermeable to the passage of water;
    - b. have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and,
    - c. be certified by a registered professional engineer or architect that the floodproofing design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this section. Such certification shall be provided with the application for a Flood

Hazard Development Permit, as required by Article III.K. and shall include a record of the elevation above mean sea level to which the structure is floodproofed.

2. Zone AO shall have adequate drainage paths around structures on slopes, to guide floodwater away from the proposed structures.
3. Zone AO shall have the lowest floor (including basement) elevated above the highest adjacent grade:
  - a. at least one foot higher than the depth specified in feet on the community's Flood Insurance Rate Map; or,
  - b. at least three feet if no depth number is specified; or,
  - c. together with attendant utility and sanitary facilities be floodproofed to meet the elevation requirements of this section and floodproofing standards of Article VI.G.1.
4. Zone A shall have the lowest floor (including basement) elevated to at least one foot above the base flood elevation utilizing information obtained pursuant to Article III.H.1.b.; Article V.B.; or Article IX.D., or
  - a. together with attendant utility and sanitary facilities meet the floodproofing standards of Article VI.G.1.
5. Zones V1-30 shall meet the requirements of Article VI.P.

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

1. Zones A1-30 shall:
  - a. be elevated such that the lowest floor (including basement) of the manufactured home is at least one foot above the base flood elevation;
  - b. be on a permanent foundation, which may be poured masonry slab or foundation walls, with hydraulic openings, or may be reinforced piers or block supports, any of which support the manufactured home so that no weight is supported by its wheels and axles; and,
  - c. be securely anchored to an adequately anchored foundation system to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to:
    - (1) over-the-top ties anchored to the ground at the four corners of the manufactured home, plus two additional ties per side at intermediate points (manufactured homes less than 50 feet long require one additional tie per side); or by,
    - (2) frame ties at each corner of the home, plus five additional ties along each side at intermediate points (manufactured homes less than 50 feet long require four additional ties per side).
    - (3) all components of the anchoring system described in Article VI.H.1.c.(1)&(2) shall be capable of carrying a force of 4800 pounds.
2. Zone AO shall have adequate drainage paths around structures on slopes, to guide floodwater away from the proposed structures.

3. Zone AO shall have the lowest floor (including basement) of the manufactured home elevated above the highest adjacent grade:
  - a. at least one foot higher than the depth specified in feet on the community's Flood Insurance Rate Map; or,
  - b. at least three feet if no depth number is specified; and,
  - c. meet the anchoring requirements of Article VI.H.1.c.
4. Zone A shall:
  - a. be elevated on a permanent foundation, as described in Article VI.H.1.b., such that the lowest floor (including basement) of the manufactured home is at least one foot above the base flood elevation utilizing information obtained pursuant to Article III.H.1.b.; Article V.B; or Article IX.D.; and
  - b. meet the anchoring requirements of Article VI.H.1.c.
5. Zones V1-30 shall meet the requirements of Article VI.P.

I. Recreational Vehicles - Recreational Vehicles located within:

1. Zones A1-30 shall either:
  - a. be on the site for fewer than 180 consecutive days,
  - b. be fully licensed and ready for highway use. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions; or,
  - c. be permitted in accordance with the elevation and anchoring requirements for "manufactured homes" in Article VI.H.1.
2. Zones V1-30 shall meet the requirements of either Article VII.1.a. or b., or Article VI.P.

J. Accessory Structures - Accessory Structures, as defined in Article XIV, located within Zones A1-30, AO, and A, shall be exempt from the elevation criteria required in Article VI.F. & G. above, if all other requirements of Article VI and all the following requirements are met. Accessory Structures shall:

1. be 500 square feet or less and have a value less than \$3000;
2. have unfinished interiors and not be used for human habitation;
3. have hydraulic openings, as specified in Article VI.L.2., in at least two different walls of the accessory structure;
4. be located outside the floodway;
5. when possible be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters and be placed further from the source of flooding than is the primary structure; and,
6. have only ground fault interrupt electrical outlets. The electric service disconnect shall be located above the base flood elevation and when possible outside the Special Flood Hazard Area.

K. Floodways -



1. In Zones A1-30 riverine areas, encroachments, including fill, new construction, substantial improvement, and other development shall not be permitted within a regulatory floodway which is designated on the community's Flood Insurance Rate Map, unless a technical evaluation certified by a registered professional engineer is provided demonstrating that such encroachments will not result in any increase in flood levels within the community during the occurrence of the base flood discharge.
  2. In Zones A1-30 and A riverine areas, for which no regulatory floodway is designated, encroachments, including fill, new construction, substantial improvement, and other development shall not be permitted in the floodway as determined in Article VI.K.3. unless a technical evaluation certified by a registered professional engineer is provided demonstrating that the cumulative effect of the proposed development, when combined with all other existing development and anticipated development:
    - a. will not increase the water surface elevation of the base flood more than one foot at any point within the community; and,
    - b. is consistent with the technical criteria contained in Chapter 5 entitled "Hydraulic Analyses," Flood Insurance Study - Guidelines and Specifications for Study Contractors, (FEMA 37/ January 1995, as amended).
  3. In Zones A1-30 and A riverine areas for which no regulatory floodway is designated, the regulatory floodway is determined to be the channel of the river or other water course and the adjacent land areas to a distance of one-half the width of the floodplain as measured from the normal high water mark to the upland limit of the floodplain.
- L. Enclosed Areas Below the Lowest Floor - New construction or substantial improvement of any structure in Zones A1-30, AO, and A that meets the development standards of Article VI, including the elevation requirements of Article VI, paragraphs F, G, or H and is elevated on posts, columns, piers, piles, "stilts," or crawl spaces may be enclosed below the base flood elevation requirements provided all the following criteria are met or exceeded:
1. Enclosed areas are not "basements" as defined in Article XIV;
  2. Enclosed areas shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of flood water. Designs for meeting this requirement must either:
    - a. be engineered and certified by a registered professional engineer or architect; or,
    - b. meet or exceed the following minimum criteria:
      - (1) a minimum of two openings having a total net area of not less than one square inch for every square foot of the enclosed area;
      - (2) the bottom of all openings shall be below the base flood elevation and no higher than one foot above the lowest grade; and,
      - (3) openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the entry and exit of

flood waters automatically without any external influence or control such as human intervention, including the use of electrical and other non-automatic mechanical means;

3. The enclosed area shall not be used for human habitation; and,
  4. The enclosed areas are usable solely for building access, parking of vehicles, or storage.
- M. Bridges - New construction or substantial improvement of any bridge in Zones A1-30, AO, A, and V1-30 shall be designed such that:
1. when possible, the lowest horizontal member (excluding the pilings, or columns) is elevated to at least one foot above the base flood elevation; and
  2. a registered professional engineer shall certify that:
    - a. the structural design and methods of construction shall meet the elevation requirements of this section and the floodway standards of Article VI.K.; and
    - b. the foundation and superstructure attached thereto are designed to resist flotation, collapse and lateral movement due to the effects of wind and water loads acting simultaneously on all structural components. Water loading values used shall be those associated with the base flood.
- N. Containment Walls - New construction or substantial improvement of any containment wall located within:
1. Zones A1-30, A, and V1-30 shall:
    - a. have the containment wall elevated to at least one foot above the base flood elevation;
    - b. have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and,
    - c. be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this section. Such certification shall be provided with the application for a Flood Hazard Development Permit, as required by Article III.K.
  2. Zone AO shall have adequate drainage paths around containment walls on slopes, to guide floodwater away from the proposed walls.
  3. Zone AO shall have the top of the containment wall elevated above the highest adjacent grade:
    - a. at least one foot higher than the depth specified in feet on the community's Flood Insurance Rate Map; or,
    - b. at least three feet if no depth number is specified; and,
    - c. shall meet the requirements of Article VI.N.1.b. & c.
- O. Wharves, Piers and Docks - New construction or substantial improvement of wharves, piers, and docks are permitted in Zones A1-30, AO, A, and V1-30, in and over water and seaward of the mean high tide if the following requirements are met:

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

P. Coastal Floodplains -

1. All new construction located within Zones A1-30, A, and V1-30 shall be located landward of the reach of mean high tide except as provided in Article VI.P.6.
2. New construction or substantial improvement of any structure located within Zones V1-30 shall:
  - a. be elevated on posts or columns such that:
    - (1) the bottom of the lowest horizontal structural member of the lowest floor (excluding the pilings or columns) is elevated to one foot above the base flood elevation;
    - (2) the pile or column foundation and the elevated portion of the structure attached thereto is anchored to resist flotation, collapse, and lateral movement due to the effects of wind and water loads acting simultaneously on all building components; and,
    - (3) water loading values used shall be those associated with the base flood. Wind loading values used shall be those required by applicable state and local building standards.
  - b. have the space below the lowest floor:
    - (1) free of obstructions; or,
    - (2) constructed with open wood lattice-work, or insect screening intended to collapse under wind and water without causing collapse, displacement, or other structural damage to the elevated portion of the building or supporting piles or columns; or,
    - (3) constructed with non-supporting breakaway walls, which have a design safe loading resistance of not less than 10 or more than 20 pounds per square foot.
  - c. require a registered professional engineer or architect to: (amended 10/17/2007)
    - (1) develop or review the structural design, specifications, and plans for the construction, which must meet or exceed the technical criteria contained in the *Coastal Construction Manual*, (FEMA-55/June, 2000); and,
    - (2) certify that the design and methods of construction to be used are in accordance with accepted standards of practice for meeting the criteria of Article VI.P.2.
3. The use of fill for structural support in Zones V1-30 is prohibited.
4. Human alteration of sand dunes within Zones V1-30 is prohibited unless it can be demonstrated that such alterations will not increase potential flood damage.
5. The area below the lowest floor shall be used solely for parking vehicles, building access, and storage.

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

## **Article VII - CONDITIONAL USE REVIEW**

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

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

1. The Flood Hazard Development Permit Application with additional information attached addressing how each of the conditional use criteria specified in the Ordinance will be satisfied, may serve as the permit application for the Conditional Use Permit.
2. Before deciding any application, the Planning Board shall hold a public hearing on the application within thirty days of their receipt of the application.
3. If the Planning Board finds that the application satisfies all relevant requirements of the ordinance, the Planning Board must approve the application or approve with conditions within 45 days of the date of the public hearing.
4. A Conditional Use Permit issued under the provisions of this Ordinance shall expire if the work or change involved is not commenced within 180 days of the issuance of the permit by the Planning Board.

5. The applicant shall be notified by the Planning Board in writing over the signature of the Chairman of the Planning Board that flood insurance is not available for structures located entirely over water or seaward of mean high tide.
- B. Expansion of Conditional Uses
1. No existing building or use of premises may be expanded or enlarged without a permit issued under this section if that building or use was established or constructed under a previously issued Conditional Use Permit or if it is a building or use which would require a Conditional Use Permit if being newly-established or constructed under this Ordinance.

## **ARTICLE VIII - CERTIFICATE OF COMPLIANCE**

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

- A. For New Construction or Substantial Improvement of any elevated structure the applicant shall submit to the Code Enforcement Officer:
1. an Elevation Certificate completed by a Professional Land Surveyor, registered professional engineer, or architect, for compliance with Article VI, paragraphs F, G, H, or P and,
  2. for structures in Zones V1-30, certification by a registered professional engineer or architect that the design and methods of construction used are in compliance with Article VI.P.2.
- B. The applicant shall submit written notification to the Code Enforcement Officer that the development is complete and complies with the provisions of this ordinance.
- C. Within 10 working days, the Code Enforcement Officer shall:
1. review the required certificate(s) and the applicant's written notification; and,
  2. upon determination that the development conforms with the provisions of this ordinance, shall issue a Certificate of Compliance.

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

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

- A. All such proposals are consistent with the need to minimize flood damage.
- B. All public utilities and facilities, such as sewer, gas, electrical and water systems are located and constructed to minimize or eliminate flood damages.
- C. Adequate drainage is provided so as to reduce exposure to flood hazards.

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

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

The Board of Appeals of the Town of Scarborough may, upon written application of an aggrieved party, hear and decide appeals where it is alleged that there is an error in any order, requirement, decision, or determination made by, or failure to act by, the Code Enforcement Officer or Planning Board in the administration or enforcement of the provisions of this Ordinance.

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

- A. Variances shall not be granted within any designated regulatory floodway if any increase in flood levels during the base flood discharge would result.
- B. Variances shall be granted only upon:
  - 1. a showing of good and sufficient cause; and,
  - 2. a determination that should a flood comparable to the base flood occur, the granting of a variance will not result in increased flood heights, additional threats to public safety, public expense, or create nuisances, cause fraud or victimization of the public or conflict with existing local laws or ordinances; and,
  - 3. a showing that the issuance of the variance will not conflict with other state, federal or local laws or ordinances; and,
  - 4. a determination that failure to grant the variance would result in "undue hardship," which in this sub-section means:
    - a. that the land in question cannot yield a reasonable return unless a variance is granted; and,
    - b. that the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood; and,
    - c. that the granting of a variance will not alter the essential character of the locality; and,

- d. that the hardship is not the result of action taken by the applicant or a prior owner.
- C. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief, and the Board of Appeals may impose such conditions to a variance as it deems necessary.
- D. Variances may be issued for new construction, substantial improvements, or other development for the conduct of a functionally dependent use provided that:
  - 1. other criteria of Article X and Article VI.K. are met; and,
  - 2. the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.
- E. Variances may be issued for the repair, reconstruction, rehabilitation, or restoration of Historic Structures upon the determination that:
  - 1. the development meets the criteria of Article X, paragraphs A. through D. above; and,
  - 2. the proposed repair, reconstruction, rehabilitation, or restoration will not preclude the structure's continued designation as a Historic Structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
- F. Any applicant who meets the criteria of Article X, paragraphs A. through E. shall be notified by the Board of Appeals in writing over the signature of the Chairman of the Board of Appeals that:
  - 1. the issuance of a variance to construct a structure below the base flood level will result in greatly increased premium rates for flood insurance up to amounts as high as \$25 per \$100 of insurance coverage;
  - 2. such construction below the base flood level increases risks to life and property; and,
  - 3. the applicant agrees in writing that the applicant is fully aware of all the risks inherent in the use of land subject to flooding, assumes those risks and agrees to indemnify and defend the municipality against any claims filed against it that are related to the applicant's decision to use land located in a floodplain and that the applicant individually releases the municipality from any claims the applicant may have against the municipality that are related to the use of land located in a floodplain.
- G. Appeal Procedure for Administrative and Variance Appeals
  - 1. An administrative or variance appeal may be taken to the Board of Appeals by an aggrieved party within thirty days after receipt of a written decision of the Code Enforcement Officer or Planning Board.
  - 2. Upon being notified of an appeal, the Code Enforcement Officer or Planning Board, as appropriate, shall transmit to the Board of Appeals all of the papers constituting the record of the decision appealed from.
  - 3. The Board of Appeals shall hold a public hearing on the appeal within thirty-five days of its receipt of an appeal request.

4. The person filing the appeal shall have the burden of proof.
5. The Board of Appeals shall decide all appeals within thirty-five days after the close of the hearing, and shall issue a written decision on all appeals.
6. The Board of Appeals shall submit to the Code Enforcement Officer a report of all variance actions, including justification for the granting of the variance and an authorization for the Code Enforcement Officer to issue a Flood Hazard Development Permit, which includes any conditions to be attached to said permit.
7. Any aggrieved party who participated as a party during the proceedings before the Board of Appeals may take an appeal to Superior Court in accordance with State laws within forty-five days from the date of any decision of the Board of Appeals.

## **ARTICLE XI - ENFORCEMENT AND PENALTIES**

- A. It shall be the duty of the Code Enforcement Officer to enforce the provisions of this Ordinance pursuant to Title 30-A MRSA § 4452.
- B. The penalties contained in Title 30-A MRSA § 4452 shall apply to any violation of this Ordinance.
- C. In addition to any other actions, the Code Enforcement Officer, upon determination that a violation exists, shall submit a declaration to the Administrator of the Federal Insurance Administration requesting a denial of flood insurance. The valid declaration shall consist of;
  1. the name of the property owner and address or legal description of the property sufficient to confirm its identity or location;
  2. a clear and unequivocal declaration that the property is in violation of a cited State or local law, regulation, or ordinance;
  3. a clear statement that the public body making the declaration has authority to do so and a citation to that authority;
  4. evidence that the property owner has been provided notice of the violation and the prospective denial of insurance; and,
  5. a clear statement that the declaration is being submitted pursuant to Section 1316 of the National Flood Insurance Act of 1968, as amended.

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

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

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

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



## **ARTICLE XIV - DEFINITIONS**

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

### **Accessory Structure:**

Means a small detached structure that is incidental and subordinate to the principal structure.

### **Adjacent Grade:**

Means the natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

### **Area of Shallow Flooding:**

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

### **Area of Special Flood Hazard:**

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

### **Base Flood:**

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

### **Basement:**

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

### **Breakaway Wall:**

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

### **Building:**

See Structure.

### **Certificate of Compliance:**

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

**Code Enforcement Officer:**

A person certified under Title 30-A MRSA, Section 4451 (including exceptions in Section 4451, paragraph 1) and employed by a municipality to enforce all applicable comprehensive planning and land use laws and ordinances. (amended 10/17/2007)

**Conditional Use:**

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

**Development:**

Means any man made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation, drilling operations or storage of equipment or materials. (*The new wording of this definition is directly from the FEMA regulations at 44 CFR 59.1*) (amended 10/17/2007)

**Elevated Building:**

Means a non-basement building:

- a. built, in the case of a building in Zones A1-30, A, or AO, to have the top of the elevated floor, or in the case of a building in Zones V1-30 to have the bottom of the lowest horizontal structural member of the elevated floor, elevated above the ground level by means of pilings, columns, post, piers, or "stilts;" and
- b. adequately anchored so as not to impair the structural integrity of the building during a flood of up to one foot above the magnitude of the base flood.

In the case of Zones A1-30, A, or AO, Elevated Building also includes a building elevated by means of fill or solid foundation perimeter walls with hydraulic openings sufficient to facilitate the unimpeded movement of flood waters, as required in Article VI.L. In the case of Zones V1-30, Elevated Building also includes a building otherwise meeting the definition of elevated building, even though the lower area is enclosed by means of breakaway walls, if the breakaway walls meet the standards of Article VI.P.2.b.(3).

**Elevation Certificate:**

An official form (FEMA Form 81-31, 02/06, as amended) that:

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

**Flood or Flooding:**

Means:

- a. A general and temporary condition of partial or complete inundation of normally dry land areas from:
  1. The overflow of inland or tidal waters.
  2. The unusual and rapid accumulation or runoff of surface waters from any source.
- b. The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding

anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in paragraph a.1. of this definition.

**Flood Elevation Study:**

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

**Flood Insurance Rate Map (FIRM):**

Means an official map of a community, on which the Federal Insurance Administrator has delineated both the special hazard areas and the risk premium zones applicable to the community.

**Flood Insurance Study:**

See Flood Elevation Study.

**Floodplain or Flood-prone Area:**

Means any land area susceptible to being inundated by water from any source (see flooding).

**Floodplain Management:**

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

**Floodplain Management Regulations:**

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

**Floodproofing:**

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

**Floodway:**

See Regulatory Floodway.

**Floodway Encroachment Lines:**

Mean the lines marking the limits of floodways on federal, state, and local floodplain maps.

**Freeboard:**

Means a factor of safety usually expressed in feet above a flood level for purposes of floodplain management. Freeboard tends to compensate for the many unknown factors, such as wave action, bridge openings, and the hydrological effect of urbanization of the watershed that could

contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions.

**Functionally Dependent Use:**

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

**Historic Structure:**

Means any structure that is:

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

**Locally Established Datum:**

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

**Lowest Floor:**

Means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements described in Article VI.L. of this Ordinance.

**Manufactured Home:**

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

**Manufactured Home Park or Subdivision:**

Means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

**Mean Sea Level:**

Means, for purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929, or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.

**Minor Development:**

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

**National Geodetic Vertical Datum (NGVD):**

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

**New Construction:**

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

**100-year flood:**

See Base Flood.

**Recreational Vehicle:**

Means a vehicle which is:

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

**Regulatory Floodway:**

- a. means the channel of a river or other water course and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot, and

- b. when not designated on the community's Flood Insurance Rate Map, it is considered to be the channel of a river or other water course and the adjacent land areas to a distance of one-half the width of the floodplain, as measured from the normal high water mark to the upland limit of the floodplain.

**Riverine:**

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

**Special Flood Hazard Area:**

See Area of Special Flood Hazard.

**Start of Construction:**

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

**Structure:**

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

**Substantial Damage:**

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

**Substantial Improvement:**

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

- a. Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the

local code enforcement official and which are the minimum necessary to assure safe living conditions; or

- b. Any alteration of a Historic Structure, provided that the alteration will not preclude the structure's continued designation as a historic structure, and a variance is obtained from the Board of Appeals.

**Variance:**

Means a grant of relief by a community from the terms of a floodplain management regulation.

**Violation:**

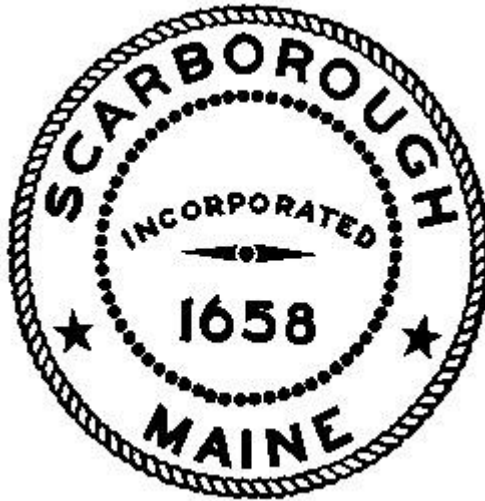
Means the failure of a structure or development to comply with a community's floodplain management regulations.

## **ARTICLE XV - ABROGATION**

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

**CHAPTER 405A**

**TOWN OF SCARBOROUGH  
FLOODPLAIN MANAGEMENT  
ORDINANCE**



ENACTED: May 15, 2024

EFFECTIVE: June 20, 2024

CERTIFIED BY: \_\_\_\_\_  
Signature

CERTIFIED BY: \_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title



# **FLOODPLAIN MANAGEMENT ORDINANCE**

## **CONTENTS**

<b>ARTICLE</b>	<b>PAGE</b>
I. PURPOSE AND ESTABLISHMENT .....	2
II. PERMIT REQUIRED .....	2
III. APPLICATION FOR PERMIT .....	2
IV. APPLICATION FEE AND EXPERT'S FEE .....	4
V. REVIEW STANDARDS FOR FLOOD HAZARD DEVELOPMENT PERMIT APPLICATIONS .....	5
VI. DEVELOPMENT STANDARDS .....	6
VII. CONDITIONAL USE REVIEW .....	15
VIII. CERTIFICATE OF COMPLIANCE .....	15
IX. REVIEW OF SUBDIVISIONS AND DEVELOPMENT PROPOSALS .....	16
X. APPEALS AND VARIANCES .....	17
XI. ENFORCEMENT AND PENALTIES .....	19
XII. VALIDITY AND SEVERABILITY .....	19
XIII. CONFLICT WITH OTHER ORDINANCES .....	20
XIV. DEFINITIONS .....	20
XV. ABROGATION .....	26
XVI. DISCLAIMER OF LIABILITY .....	26

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

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

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

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

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

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

The areas of special flood hazard, Zones A, AE, and VE for the Town of Scarborough, Cumberland County, Maine, identified by the Federal Emergency Management Agency in a report entitled "Flood Insurance Study – Cumberland County, Maine" dated June 20, 2024, with accompanying "Flood Insurance Rate Map" dated June 20, 2024, as amended, are hereby adopted by reference and declared to be a part of this Ordinance.

## **ARTICLE II - PERMIT REQUIRED**

The Code Enforcement Officer shall be designated as the local Floodplain Administrator. The Floodplain Administrator shall have the authority to implement the commitment made to administer and enforce the requirements for participation in the National Flood Insurance Program.

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

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

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

- A. The name, address, and phone number of the applicant, owner, and contractor;
- B. An address and a map indicating the location of the construction site;
- C. A site plan showing locations of existing and/or proposed development, including but not limited to structures, sewage disposal facilities, water supply facilities, areas to be cut and filled, and lot dimensions;
- D. A statement of the intended use of the structure and/or development;
- E. A statement of the cost of the development including all materials and labor;
- F. A statement as to the type of sewage system proposed;
- G. Specification of dimensions of the proposed structure and/or development;

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

- H. The elevation in relation to the National Geodetic Vertical Datum (NGVD), North American Vertical Datum (NAVD), or to a locally established datum in Zone A only, of the:
  - 1. base flood at the proposed site of all new or substantially improved structures, which is determined:
    - a. in Zones AE and VE from data contained in the "Flood Insurance Study - Cumberland County, Maine," as described in Article I; or,
    - b. in Zone A:
      - (1) from any base flood elevation data from federal, state, or other technical sources (such as FEMA's Quick-2 model, FEMA 265), including information obtained pursuant to Article VI.M. and IX.D.; or,
      - (2) in the absence of all data described in Article III.H.1.b.(1), information to demonstrate that the structure shall meet the elevation requirement in Article VI.H.2.b., Article VI.I.2.b., or Article VI.J.2.b.
  - 2. highest and lowest grades at the site adjacent to the walls of the proposed building;
  - 3. lowest floor, including basement; and whether or not such structures contain a basement;
  - 4. lowest machinery and equipment servicing the building; and,
  - 5. level, in the case of non-residential structures only, to which the structure will be floodproofed.

- I. A description of an elevation reference point established on the site of all developments for which elevation standards apply as required in Article VI;
- J. A written certification by:
  - 1. a Professional Land Surveyor that the grade elevations shown on the application are accurate; and,
  - 2. a Professional Land Surveyor, registered professional engineer or architect that the base flood elevation shown on the application is accurate.
- K. The following certifications as required in Article VI by a registered professional engineer or architect:
  - 1. a Floodproofing Certificate (FEMA Form FF-206-FY-22-153, as amended), to verify that the floodproofing methods for any non-residential structures will meet the floodproofing criteria of Article VI.I., and other applicable standards in Article VI;
  - 2. a V-Zone Certificate to verify that the construction in coastal high hazard areas, Zone VE and Coastal AE Zone, will meet the criteria of Article VI.R.; and other applicable standards in Article VI;
  - 3. a Hydraulic Openings Certificate to verify that engineered hydraulic openings in foundation walls will meet the standards of Article VI.N.2.a.;
  - 4. a certified statement that bridges will meet the standards of Article VI.O.;
  - 5. a certified statement that containment walls will meet the standards of Article VI.P.
- L. A description of the extent to which any water course will be altered or relocated as a result of the proposed development; and,
- M. A statement of construction plans describing in detail how each applicable development standard in Article VI will be met.

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

A non-refundable application fee for all minor development and for all new construction or substantial improvements as set forth in the Schedule of Fees shall be paid to the Town Clerk or Code Enforcement Officer and a copy of a receipt for the same shall accompany the application.

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

applicant who is dissatisfied with a decision to hire expert assistance may appeal that decision to the Board of Appeals.

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

The Code Enforcement Officer shall:

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

on the Part I permit construction for verifying compliance with the elevation requirements of Article VI, paragraphs H., I., J., or R. Following review of the Elevation Certificate data, which shall take place within 72 hours of receipt of the application, the Code Enforcement Officer shall issue Part II of the Flood Hazard Development Permit. Part II shall authorize the applicant to complete the construction project; or,

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

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

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

## **ARTICLE VI - DEVELOPMENT STANDARDS**

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

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

1. be designed or modified and adequately anchored to prevent flotation (excluding piers and docks), collapse, or lateral movement of the development resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;
2. use construction materials that are resistant to flood damage;
3. use construction methods and practices that will minimize flood damage; and,

4. use electrical, heating, ventilation, plumbing, and air conditioning equipment, and other service facilities that are designed and/or located to prevent water from entering or accumulating within the components during flooding conditions.
- B. **Water Supply** - All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the systems.
- C. **Sanitary Sewage Systems** - All new and replacement sanitary sewage systems shall be designed and located to minimize or eliminate infiltration of flood waters into the system and discharges from the system into flood waters.
- D. **On Site Waste Disposal Systems** - On site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during floods.
- E. **Watercourse Carrying Capacity** - All development associated with altered or relocated portions of a watercourse shall be constructed and maintained in such a manner that no reduction occurs in the flood carrying capacity of the watercourse.
- F. **Utilities** - New construction or substantial improvement of any structure (including manufactured homes) located within:
  1. Zones A and AE shall have the bottom of all electrical, heating, plumbing, ventilation and air conditioning equipment, permanent fixtures and components, HVAC ductwork and duct systems, and any other utility service equipment, facilities, machinery, or connections servicing a structure, elevated to at least one foot above the base flood elevation.
  2. Zone VE shall meet the requirements of Article VI.R.2.
- G. **Physical Changes to the Natural Landscape** - Certain development projects, including but not limited to, retaining walls, sea walls, levees, berms, and rip rap, can cause physical changes that affect flooding conditions.
  1. All development projects in Zones AE and VE that cause physical changes to the natural landscape shall be reviewed by a Professional Engineer to determine whether or not the project changes the base flood elevation, zone, and/or the flood hazard boundary line.
    - a. If the Professional Engineer determines, through the use of engineering judgement, that the project would not necessitate a Letter of Map Revision (LOMR), a certified statement shall be provided.
    - b. If the Professional Engineer determines that the project may cause a change, a hydrologic and hydraulic analysis that meets current FEMA standards shall be performed.
  2. If the hydrologic and hydraulic analysis performed indicates a change to the base flood elevation, zone, and/or the flood hazard boundary line, the applicant may submit a Conditional

Letter of Map Revision (C-LOMR) request to the Federal Emergency Management Agency for assurance that the as-built project will result in a change to the Flood Insurance Rate Map. Once the development is completed, a request for a Letter of Map Revision (LOMR) shall be initiated.

3. If the hydrologic and hydraulic analysis performed show a change to the base flood elevation, zone, and/or the flood hazard boundary line, as soon as practicable, but no later than 6 months after the completion of the project, the applicant shall submit the technical data to FEMA in the form of a Letter of Map Revision request.

**H. Residential** - New construction or substantial improvement of any residential structure located within:

1. Zone AE shall have the lowest floor (including basement) elevated to at least one foot above the base flood elevation.
2. Zone A shall have the lowest floor (including basement) elevated:
  - a. to at least one foot above the base flood elevation utilizing information obtained pursuant to Article III.H.1.b.(1); Article V.B.; or Article IX.D., or;
  - b. in the absence of all data described in Article VI.H.2.a., to at least two feet above the highest adjacent grade to the structure.
3. Zone VE and Coastal AE Zone (as defined) shall meet the requirements of Article VI.R.

**I. Non-Residential** - New construction or substantial improvement of any non-residential structure located within:

1. Zone AE shall have the lowest floor (including basement) elevated to at least one foot above the base flood elevation, or together with attendant utility and sanitary facilities shall:
  - a. be floodproofed to at least one foot above the base flood elevation so that below that elevation the structure is watertight with walls substantially impermeable to the passage of water;
  - b. have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and,
  - c. be certified by a registered professional engineer or architect that the floodproofing design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this section. Such certification shall be provided with the application for a Flood Hazard Development Permit, as required by Article III.K., and shall include a record of the elevation above mean sea level to which the structure is floodproofed.



2. Zone A shall have the lowest floor (including basement) elevated:
  - a. to at least one foot above the base flood elevation utilizing information obtained pursuant to Article III.H.1.b.(1); Article V.B.; or Article IX.D., or;
  - b. in the absence of all data described in Article VI.I.2.a., to at least two feet above the highest adjacent grade to the structure; or,
  - c. together with attendant utility and sanitary facilities, be floodproofed to one foot above the elevation established in Article VI.I.2.a. or b. and meet the floodproofing standards of Article VI.I.1.a., b., and c.
3. Zone VE and Coastal AE Zone (as defined) shall meet the requirements of Article VI.R.

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

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

- b. in the absence of all data described in Article VI.J.2.a., to at least two feet above the highest adjacent grade to the structure; and,
  - c. meet the anchoring requirements of VI.J.1.c.
5. Zone VE and Coastal AE Zone (as defined) shall meet the requirements of Article VI.R.

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

- 1. Zones A and AE shall either:
  - a. be on the site for fewer than 180 consecutive days; and,
  - b. be fully licensed and ready for highway use. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions; or,
  - c. be permitted in accordance with the elevation and anchoring requirements for "manufactured homes" in Article VI.J.1.
- 2. Zone VE and Coastal AE Zone (as defined) shall meet the requirements of either Article VI.K.1.a. and b., or Article VI.R.

**L. Accessory Structures** - New construction or substantial improvement of Accessory Structures, as defined in Article XIV, shall be exempt from the elevation criteria required in Article VI.H. & I. above, if all other requirements of Article VI and all the following requirements are met.

- 1. Accessory Structures located in Zone A and AE shall:
  - a. meet the requirements of Article VI.A.1. through 4., as applicable;
  - b. be limited in size to a one-story two car garage;
  - c. have unfinished interiors and not be used for human habitation;
  - d. have only ground fault interrupt electrical outlets. The electric service disconnect shall be located above the base flood elevation and, when possible, outside the Special Flood Hazard Area;
  - e. be located outside the floodway;
  - f. when possible be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters and be placed further from the source of flooding than is the primary structure;

- g. have hydraulic openings, as specified in Article VI.N.2., in at least two different walls of the accessory structure; and
  - h. be located outside the Coastal AE Zone.
2. Accessory Structures in Zone VE and Coastal A Zones shall meet the requirements of Article VI.R.

**M. Floodways -**

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

**N. Hydraulic Openings/Flood Vents -** New construction or substantial improvement of any structure in Zones A and AE that meets the development standards of Article VI, including the elevation requirements of Article VI, paragraphs H., I., or J. and is elevated on posts, columns, piers, piles, or crawl spaces may be enclosed below the base flood elevation requirements provided all the following criteria are met or exceeded:

- 1. Enclosed areas are not "basements" as defined in Article XIV;
- 2. Enclosed areas shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of flood water. Designs for meeting this requirement must either:

- a. be engineered and certified by a registered professional engineer or architect; or,
  - b. meet or exceed the following minimum criteria:
    - (1) a minimum of two openings having a total net area of not less than one square inch for every square foot of the enclosed area;
    - (2) the bottom of all openings shall be below the base flood elevation and no higher than one foot above the lowest grade; and,
    - (3) openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the entry and exit of flood waters automatically without any external influence or control such as human intervention, including the use of electrical and other non-automatic mechanical means;
  - 3. The enclosed area shall not be used for human habitation; and,
  - 4. The enclosed areas are usable solely for building access, parking of vehicles, or storage.
- O. **Bridges** - New construction or substantial improvement of any bridge in Zones A, AE, and VE shall be designed such that:
- 1. when possible, the lowest horizontal member (excluding the pilings or columns) is elevated to at least one foot above the base flood elevation; and,
  - 2. a registered professional engineer shall certify that:
    - a. the structural design and methods of construction shall meet the elevation requirements of this section and the floodway standards of Article VI.M.; and,
    - b. the foundation and superstructure attached thereto are designed to resist flotation, collapse, and lateral movement due to the effects of wind and water loads acting simultaneously on all structural components. Water loading values used shall be those associated with the base flood.
- P. **Containment Walls** - New construction or substantial improvement of any containment wall located within:
- 1. Zones A, AE, and VE shall:
    - a. have the containment wall elevated to at least one foot above the base flood elevation;
    - b. have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and,

- c. be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this section. Such certification shall be provided with the application for a Flood Hazard Development Permit, as required by Article III.K.

**Q. Wharves, Piers, and Docks** - New construction or substantial improvement of wharves, piers, and docks are permitted in and over water and seaward of the mean high tide if the following requirements are met:

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

**R. Coastal Floodplains** -

1. New construction located within Zones AE and VE shall be located landward of the reach of mean high tide except as provided in Article VI.R.7.
2. New construction or substantial improvement of any structure located within Zone VE or Coastal AE Zone shall have the bottom of all electrical, heating, plumbing, ventilation and air conditioning equipment, permanent fixtures and components, HVAC ductwork and duct systems, and any other utility service equipment, facilities, machinery, or connections servicing a structure, elevated to at least one foot above the base flood elevation. Systems, fixtures, equipment, and components shall not be mounted on or penetrate through walls intended to break away under flood loads.
3. New construction or substantial improvement of any structure located within Zone VE and Coastal AE Zones (as defined) shall:
  - a. be elevated on posts or columns such that:
    - (1) the bottom of the lowest horizontal structural member of the lowest floor (excluding the pilings or columns) is elevated to at least one foot above the base flood elevation;
    - (2) the pile or column foundation and the elevated portion of the structure attached thereto is anchored to resist flotation, collapse, and lateral movement due to the effects of wind and water loads acting simultaneously on all building components; and,
    - (3) water loading values used shall be those associated with the base flood. Wind loading values used shall be those required by applicable state and local building standards.
  - b. have the space below the lowest floor:

- (1) free of obstructions; or,
  - (2) constructed with open wood lattice-work, or insect screening intended to collapse under wind and water without causing collapse, displacement, or other structural damage to the elevated portion of the building or supporting piles or columns; or,
  - (3) constructed with non-supporting breakaway walls that have a design safe loading resistance of not less than 10 or more than 20 pounds per square foot.
- c. require a registered professional engineer or architect to:
- (1) develop or review the structural design, specifications, and plans for the construction, which must meet or exceed the technical criteria contained in the *Coastal Construction Manual*, (FEMA-55); and,
  - (2) certify that the design and methods of construction to be used are in accordance with accepted standards of practice for meeting the criteria of Article VI.R.3.
4. The use of fill for structural support in Zone VE and Coastal AE Zones is prohibited.
  5. Human alteration of sand dunes within Zone VE and Coastal AE Zones is prohibited unless it can be demonstrated that such alterations will not increase potential flood damage.
  6. The area below the lowest floor shall be used solely for parking vehicles, building access, and storage.
  7. Conditional Use - Lobster sheds and fishing sheds may be located seaward of mean high tide and shall be exempt from the elevation requirement in Article VI.I. only if permitted as a Conditional Use following review and approval by the Planning Board, as provided in Article VII, and if all the following requirements and those of Article VI.A., VI.M., and VI.N. are met:
    - a. The conditional use shall be limited to low value structures such as metal or wood sheds 200 square feet or less and shall not exceed more than one story.
    - b. The structure shall be securely anchored to the wharf or pier to resist flotation, collapse, and lateral movement due to the effect of wind and water loads acting simultaneously on all building components.
    - c. The structure will not adversely increase wave or debris impact forces affecting nearby buildings.
    - d. The structure shall have unfinished interiors and shall not be used for human habitation.

- e. Any mechanical, utility equipment, and fuel storage tanks must be anchored and either elevated or floodproofed to at least one foot above the base flood elevation.
- f. All electrical outlets shall be ground fault interrupt type. The electrical service disconnect shall be located on shore above the base flood elevation and, when possible, outside the Special Flood Hazard Area.

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

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

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

- 1. The Flood Hazard Development Permit Application with additional information attached addressing how each of the conditional use criteria specified in the Ordinance will be satisfied may serve as the permit application for the Conditional Use Permit.
- 2. Before deciding any application, the Planning Board shall hold a public hearing on the application within thirty days of their receipt of the application.
- 3. If the Planning Board finds that the application satisfies all relevant requirements of the ordinance, the Planning Board must approve the application or approve with conditions within 45 days of the date of the public hearing.
- 4. A Conditional Use Permit issued under the provisions of this Ordinance shall expire if the work or change involved is not commenced within 180 days of the issuance of the permit by the Planning Board.
- 5. The applicant shall be notified by the Planning Board in writing over the signature of the Chairman of the Planning Board that flood insurance is not available for structures located entirely over water or seaward of mean high tide.

### **B. Expansion of Conditional Uses**

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

## **ARTICLE VIII - CERTIFICATE OF COMPLIANCE**

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

- A. For New Construction or Substantial Improvement of any elevated structure the applicant shall submit to the Code Enforcement Officer:
  - 1. an Elevation Certificate completed by a Professional Land Surveyor for compliance with Article VI, paragraphs H., I., J., or R.; and,
  - 2. for structures in Zone VE and Coastal AE Zone (as defined), certification by a registered professional engineer or architect that the design and methods of construction used are in compliance with Article VI.R.3.
- B. The applicant shall submit written notification to the Code Enforcement Officer that the development is complete and complies with the provisions of this ordinance.
- C. Within 10 working days, the Code Enforcement Officer shall:
  - 1. review the required certificate(s) and the applicant's written notification; and,
  - 2. upon determination that the development conforms to the provisions of this ordinance, shall issue a Certificate of Compliance.

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

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

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



interest. The condition shall clearly articulate that the municipality may enforce any violation of the construction requirement and that fact shall also be included in the deed or any other document previously described. The construction requirement shall also be clearly stated on any map, plat, or plan to be signed by the Planning Board or local reviewing authority as part of the approval process.

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

The Board of Appeals of the Town of Scarborough may, upon written application of an aggrieved party, hear and decide appeals where it is alleged that there is an error in any order, requirement, decision, or determination made by, or failure to act by, the Code Enforcement Officer or Planning Board in the administration or enforcement of the provisions of this Ordinance.

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

- A. Variances shall not be granted within any designated regulatory floodway if any increase in flood levels during the base flood discharge would result.
- B. Variances shall be granted only upon:
  - 1. a showing of good and sufficient cause; and,
  - 2. a determination that should a flood comparable to the base flood occur, the granting of a variance will not result in increased flood heights, additional threats to public safety, public expense, or create nuisances, cause fraud or victimization of the public, or conflict with existing local laws or ordinances; and,
  - 3. a showing that the issuance of the variance will not conflict with other state, federal, or local laws or ordinances; and,
  - 4. a determination that failure to grant the variance would result in "undue hardship," which in this sub-section means:
    - a. that the land in question cannot yield a reasonable return unless a variance is granted; and,
    - b. that the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood; and,
    - c. that the granting of a variance will not alter the essential character of the locality; and,
    - d. that the hardship is not the result of action taken by the applicant or a prior owner.
- C. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief, and the Board of Appeals may impose such conditions to a variance as is deemed necessary.

- D. Variances may be issued for new construction, substantial improvements, or other development for the conduct of a functionally dependent use provided that:
1. the criteria of Article X.A. through C. and Article VI.M. are met; and,
  2. the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.
- E. Variances may be issued for the repair, reconstruction, rehabilitation, or restoration of Historic Structures upon the determination that:
1. the development meets the criteria of Article X.A. through C.; and,
  2. the proposed repair, reconstruction, rehabilitation, or restoration will not preclude the structure's continued designation as a Historic Structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
- F. Variances may be issued for new construction and substantial improvement of Agricultural Structures being used for the conduct of agricultural uses provided that:
1. the development meets the criteria of Article X.A. through C.; and,
  2. the development meets the criteria of Article VI.M. and Article VI.N.
- G. Any applicant who meets the criteria of Article X.A. through C. and Article X.D., E., or F. shall be notified by the Board of Appeals in writing over the signature of the Chairman of the Board of Appeals that:
1. the issuance of a variance to construct a structure below the base flood level will result in greatly increased premium rates for flood insurance up to amounts as high as \$25 per \$100 of insurance coverage; and,
  2. such construction below the base flood level increases risks to life and property; and,
  3. the applicant agrees in writing that the applicant is fully aware of all the risks inherent in the use of land subject to flooding, assumes those risks, and agrees to indemnify and defend the municipality against any claims filed against it that are related to the applicant's decision to use land located in a floodplain and that the applicant individually releases the municipality from any claims the applicant may have against the municipality that are related to the use of land located in a floodplain.
- H. Appeal Procedure for Administrative and Variance Appeals

1. An administrative or variance appeal may be taken to the Board of Appeals by an aggrieved party within thirty days after receipt of a written decision of the Code Enforcement Officer or Planning Board.
2. Upon being notified of an appeal, the Code Enforcement Officer or Planning Board, as appropriate, shall transmit to the Board of Appeals all of the documents constituting the record of the decision appealed from.
3. The Board of Appeals shall hold a public hearing on the appeal within thirty-five days of its receipt of an appeal request.
4. The person filing the appeal shall have the burden of proof.
5. The Board of Appeals shall decide all appeals within thirty-five days after the close of the hearing and shall issue a written decision on all appeals.
6. The Board of Appeals shall submit to the Code Enforcement Officer a report of all variance actions, including justification for the granting of the variance and an authorization for the Code Enforcement Officer to issue a Flood Hazard Development Permit, which includes any conditions to be attached to said permit.
7. Any aggrieved party who participated as a party during the proceedings before the Board of Appeals may take an appeal to Superior Court in accordance with State laws within forty-five days from the date of any decision of the Board of Appeals.

## **ARTICLE XI - ENFORCEMENT AND PENALTIES**

- A. It shall be the duty of the Code Enforcement Officer to enforce the provisions of this Ordinance pursuant to Title 30-A MRSA § 4452.
- B. The penalties contained in Title 30-A MRSA § 4452 shall apply to any violation of this Ordinance.
- C. In addition to other actions, the Code Enforcement Officer, upon identifying a violation, may submit a declaration to the Administrator of the Federal Insurance Administration requesting a flood insurance denial. The valid declaration shall consist of:
  1. the name of the property owner and address or legal description of the property sufficient to confirm its identity or location;
  2. a clear and unequivocal declaration that the property is in violation of a cited State or local law, regulation, or ordinance;
  3. a clear statement that the public body making the declaration has authority to do so and a citation to that authority;

4. evidence that the property owner has been provided notice of the violation and the prospective denial of insurance; and,
5. a clear statement that the declaration is being submitted pursuant to Section 1316 of the National Flood Insurance Act of 1968, as amended.

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

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

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

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

## **ARTICLE XIV - DEFINITIONS**

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

**Accessory Structure** - a structure which is on the same parcel of property as a principal structure and the use of which is incidental to the use of the principal structure.

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

**Agricultural Structure** - structures that are used exclusively for agricultural purposes or uses in connection with the production, harvesting, storage, raising, or drying of agricultural commodities and livestock. Structures that house tools or equipment used in connection with these purposes or uses are also considered to have agricultural purposes or uses.

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

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

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

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

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

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

**Coastal AE Zone** - The portion of the Coastal High Hazard Area with wave heights between 1.5 feet and 3.0 feet and bounded by a line labeled the “Limit of Moderate Wave Action” (LiMWA) on a Flood Insurance Rate Map (FIRM). VE Zone floodplain construction standards are applied to development, new construction, and substantial improvements in the Coastal AE Zone.

**Coastal High Hazard Area** - An area of special flood hazard extending from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources. Coastal High Hazard Areas are designated as Zone VE and Zone AE bounded by a line labeled “Limit of Moderate Wave Action” (LiMWA) on a Flood Insurance Rate Map (FIRM).

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

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

**Containment Wall** - a wall surrounding all sides of an above ground tank to contain any spills or leaks.

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

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

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

In the case of Zones A or AE, **Elevated Building** also includes a building elevated by means of fill or solid foundation perimeter walls with hydraulic openings sufficient to facilitate the unimpeded

movement of flood waters, as required in Article VI.N. In the case of Zone VE and Coastal AE Zone, **Elevated Building** also includes a building otherwise meeting the definition of elevated building, even though the lower area is enclosed by means of breakaway walls, if the breakaway walls meet the standards of Article VI.R.3.b.(3).

**Elevation Certificate** - an official form (FEMA Form FF-206-FY-22-152, as amended) that is used to verify compliance with the floodplain management regulations of the National Flood Insurance Program.

**Existing Manufactured Home Park or Subdivision** - a manufactured home park or subdivision that was recorded in the deed registry prior to the adoption date of the community's first floodplain management regulations.

**Flood or Flooding -**

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

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

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

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

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

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

**Floodplain Management Regulations** - zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as a floodplain ordinance, grading ordinance, and

erosion control ordinance), and other applications of police power. The term describes such state or local regulations, in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.

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

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

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

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

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

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

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

**Limit of Moderate Wave Action (LiMWA)** - The landward limit of the 1.5 foot breaking wave within a Coastal AE Zone. These areas are bounded by a line labeled "Limit of Moderate Wave Action" (LiMWA) on a Flood Insurance Rate Map (FIRM). The LiMWA line delineates that portion of the

Special Flood Hazard Area (SFHA) landward of a VE zone in which the principal sources of flooding are astronomical high tides, storm surges, or tsunamis, not riverine sources. These areas may be subject to wave effects, velocity flows, erosion, scour, or combinations of these forces. The floodplain development and construction standards for VE Zones will be applied in the Coastal AE Zone.

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

**Lowest Floor** - the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access, or storage in an area other than a basement area is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements described in Article VI.N. of this Ordinance.

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

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

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

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

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

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



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

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

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

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

**Regulatory Floodway** -

- a. the channel of a river or other water course and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height, and,
- b. when not designated on the community's Flood Insurance Rate Map, it is considered to be the channel of a river or other water course and the adjacent land areas to a distance of one-half the width of the floodplain, as measured from the normal high water mark to the upland limit of the floodplain.

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

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

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

other structural part of a building, or modification of any construction element, whether or not that alteration affects the external dimensions of the building.

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

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

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

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

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

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

## **ARTICLE XV - ABROGATION**

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

## **ARTICLE XVI - DISCLAIMER OF LIABILITY**

The degree of flood protection required by the ordinance is considered reasonable but does not imply total flood protection.