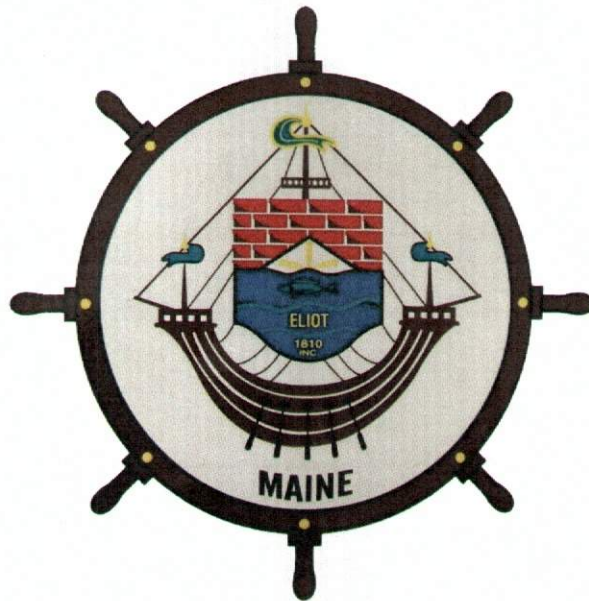


“Amendment to Section 1-2, Definitions and Rules of Construction, and Section 44, Shoreland Zoning, of the Municipal Code of Ordinances of the Town of Eliot, Maine”

Town of Eliot, Maine



Date of Enactment: November 6, 2018

ENACTMENT BE THE LEGISLATIVE BODY

Date of the vote to enact/amend this Ordinance:

November 6, 2018

Per the Charter of the Town of Eliot, Article 2(11) this Ordinance shall become effective on November 6, 2018.

Certified by the Town Clerk:

On the 7th day of November, 2018.

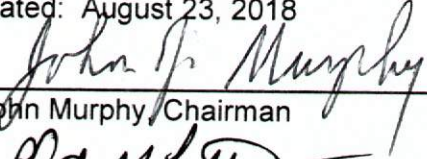
Municipal Officers' Certification of Official Text of Amendments to an Ordinance

To: Wendy J. Rawski, Town Clerk of Eliot, Maine

We hereby certify to you that the document to which we have affixed this certificate is a true copy of the official text of an amendment to the ordinance entitled "Section 1-2, Definitions and Rules of Construction, and Section 44, Shoreland Zoning, of the Municipal Code of Ordinances of the Town of Eliot, Maine", to update the Town's Shoreland Zoning Standards to be consistent with the Maine Department of Environmental Protection 2015 Chapter 1000 Guidelines, which is to be presented to the voters for their consideration on November 6, 2018.

Pursuant to 30-A M.R.S.A. § 3002(2), you will retain this copy of the complete text of the amendments to the ordinance as a public record and make other copies available for distribution to the voters, and you will ensure that copies are available at the town meeting/polling places on the day of the vote.

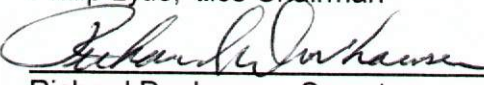
Dated: August 23, 2018



John Murphy, Chairman



Philip Lytle, Vice Chairman



Richard Donhauser, Secretary



Alexandros Orestis, Selectman

Select Board
Town of Eliot, Maine

Chapter 44 - SHORELAND ZONING⁽¹⁾

Footnotes:

-- (1) --

Editor's note—Sections 1—17 of an ordinance adopted at the Town Meeting on Dec. 15, 1993, did not specifically amend this Code; hence, codification of §§ 1—17 of said ordinance as §§ 44-1—44-48 herein was at the editor's discretion.

ARTICLE I. - IN GENERAL

Sec. 44-1. - Purposes.

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

(T.M. of 12-15-93, § 1; T.M. of 6-9-09(1))

Sec. 44-2. - Authority.

This chapter has been prepared in accordance with the provisions of title 38, of the Maine Revised Statutes Annotated (M.R.S.A.) sections 435 through 449.

(T.M. of 12-15-93, § 2)

Sec. 44-3. - Applicability.

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

- ~~Within 250 feet, horizontal distance, of the~~ normal high-water line of any great pond or river ~~or saltwater body, including all areas affected by tidal action;~~
- ~~Within 250 feet, horizontal distance, of the~~ upland edge of a coastal ~~or freshwater~~ wetland, including all areas affected by tidal action and
- Upland edge of a freshwater wetland

And all land areas within 75 feet, horizontal distance, of the normal high-water line of a stream.

This chapter also applies to any structure built on, over or abutting a dock, wharf or pier, or other structure extending or located beyond the normal high-water line of a water body or within a wetland.

~~This ordinance also applies to any structure built on, over or abutting a dock, wharf or pier, or other structure extending or located below the normal high-water line of a water body or within a wetland.~~

(T.M. of 12-15-93, § 3; T.M. of 6-9-09(1))

Sec. 44-4. - Definitions.

(See section 1-2).

Editor's note— A Town Meeting held on Nov. 6, 2001, art. 4, revised § 44-4, which pertained to definitions, and derived from T.M. of 12-15-93, § 17; T.M. of 3-27-99(1), § 2; T.M. of 3-27-99(2). Former provisions of this section can now be found in § 1-2 of this Code.

Sec. 44-5. - Effective date of ordinance and ordinance amendments, repeal of formerly adopted ordinance, and repeal of timber harvesting standards.

This ordinance, which was adopted by Eliot Town Meeting on December 15, 1993, and amended on June 9, 2009, shall not be effective unless approved by the commissioner of the department of environmental protection. A certified copy of the ordinance, attested and signed by the municipal clerk, shall be forwarded to the commissioner for approval. If the commissioner fails to act on this ordinance or ordinance amendment, within 45 days of his/her receipt of the ordinance, or ordinance amendment, it shall be automatically approved. The shoreland zoning ordinance previously adopted on March 19, 1988, was repealed on December 15, 1993.

Any application for a permit submitted to the municipality within the 45-day period shall be governed by the terms of this ordinance, or ordinance amendment, if the ordinance, or ordinance amendment, is approved by the commissioner.

~~Automatic repeal of municipal timber harvesting provisions. The municipal regulation of timber harvesting is repealed on the statutory date established under 38 M.R.S.A. section 438-A(5), at which time the State of Maine Department of Conservation's Bureau of Forestry shall administer timber harvesting standards in the shoreland zone within the Town of Eliot. On the date established under 38 M.R.S.A. 438-A(5), the following provisions of this chapter are repealed or amended as follows:~~

- ~~(1) Section 44-34, Table of Land Uses, delete the symbol "CEO" indicated in each district next to the use "Timber Harvesting", and replace with the symbol "BFP." Amend the table key to indicate that "BFP" means "Permit Required from Maine Bureau of Forestry, with a copy of said permit application required to be submitted to the Code Enforcement Officer."~~
- ~~(2) Subsection (c), Timber harvesting, repeal in its entirety.~~
- ~~(3) Chapter 1, General provisions, section 1-2, repeal definitions of the following terms:~~
 - ~~Harvest area;~~
 - ~~Residual basal area;~~
 - ~~Residual stand.~~

(T.M. of 12-15-93, § 4; T.M. of 6-9-09(1))

Sec. 44-6. - Availability.

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

(T.M. of 12-15-93, § 5)

Sec. 44-7. - Severability.

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

(T.M. of 12-15-93, § 6)

Sec. 44-8. - Conflicts with other provisions.

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

(T.M. of 12-15-93, § 7)

Sec. 44-9. - Amendments.

This chapter may be amended by majority vote of Eliot Town Meeting. Copies of amendments, attested and signed by the municipal clerk, shall be submitted to the commissioner of the department of environmental protection following adoption at Eliot Town Meeting body and shall not be effective unless approved by the commissioner. If the commissioner fails to act on any amendment within 45 days of his/her receipt of the amendment, the amendment is automatically approved. Any application for a permit submitted to the municipality within the 45-day period shall be governed by the terms of the amendment, if such amendment is approved by the commissioner.

(T.M. of 12-15-93, § 8)

Secs. 44-10—44-20. - Reserved.

ARTICLE II. - DISTRICT REGULATIONS

Sec. 44-21. - Districts and zoning map.

- (a) Official zoning map. The areas to which this chapter is applicable are hereby divided into the following districts as shown on the official zoning map(s) which is (are) made a part of this chapter:
 - (1) Resource protection;
 - (2) Limited residential;
 - (3) Limited commercial;
 - (4) General development; and
 - (5) Stream protection.
- (b) Scale of map. The official zoning map shall be drawn at a scale of not less than one inch equals 2,000 feet. District boundaries shall be clearly delineated and a legend indicating the symbols for each district shall be placed on the map.
- (c) Certification of official zoning map. The official zoning map shall be certified by the attested signature of the municipal clerk and shall be located in the municipal office.
- (d) Changes to the official zoning map. If amendments, in accordance with section 44-9, are made in the district boundaries or other matter portrayed on the official zoning map, such changes shall be made on the official zoning map within 30 days after the amendment has been approved by the commissioner of the department of environmental protection.

(T.M. of 12-15-93, § 9; T.M. of 6-9-09(1))

Sec. 44-22. - Interpretation of district boundaries.

Unless otherwise set forth on the official zoning map, district boundary lines are property lines, the centerlines of streets, roads and rights-of-way, and the boundaries of the shoreland area as defined herein. Where uncertainty exists as to the exact location of district boundary lines, the board of appeals shall be the final authority as to location.

Note: Specific written descriptions of district boundaries are incorporated into later sections of the chapter so disputes may be minimized.

(T.M. of 12-15-93, § 10; T.M. of 6-9-09(1))

Secs. 44-23—44-30. - Reserved.

ARTICLE III. - LAND USE REGULATIONS

Sec. 44-31. - Requirements.

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

(T.M. of 12-15-93, § 11)

Sec. 44-32. - Nonconformance.

- (a) Purpose. It is the intent of this chapter to promote land use conformities, except that nonconforming conditions that existed before the effective date of this chapter shall be allowed to continue, subject to the requirements set forth in this section. Except as otherwise provided in this chapter, a nonconforming condition shall not be permitted to become more nonconforming.
- (b) General.
 - (1) Transfer of ownership: Nonconforming structures, lots, and uses may be transferred, and the new owner may continue the nonconforming use or continue to use the nonconforming structure or lot, subject to the provisions of this chapter.
 - (2) Repair and maintenance: This chapter allows, following permitting requirements detailed in the tables of land uses in chapters 44 and 45, without a permit, the normal upkeep and maintenance of nonconforming uses and structures including repairs or renovations which do not involve expansion of the nonconforming use or structure, and such other changes in a nonconforming use or structure as federal, state, or local building and safety codes may require.
- (c) Nonconforming structures.
 - (1) Expansions: All new principal and accessory structures, excluding functionally water-dependent uses, must meet the water body, tributary stream, or wetland setback requirements contained in section 44-35(b)(1). A nonconforming structure may be added to or expanded after obtaining a permit from the same permitting authority as that for a new structure, if such addition or expansion does not increase the nonconformity of the structure and is in accordance with subparagraphs (a) and (b) below.
 - a. Expansion of any portion of a structure within 25 feet of the normal high-water line of a water body, tributary stream, or upland edge of a wetland is prohibited, even if the expansion will not increase nonconformity with the water body, tributary stream or wetland setback requirement. Expansion of an accessory structure that is located

closer to the normal high-water line of a water body, tributary stream, or upland edge of a wetland than the principal structure is prohibited, even if the expansion will not increase nonconformity with the water body, tributary stream, or wetland setback requirement. After January 1, 1989, if any portion of a structure is less than the required setback from the normal high water line of a water body or tributary stream or upland edge of a wetland, that portion of the structure shall not be expanded, as measured in floor area or volume, by 30 percent or more, during the lifetime of the structure. If a replacement structure conforms with the requirements of subsection 44-32(c)(3) and is less than the required setback from a water body, tributary stream or wetland, the replacement structure may not be expanded if the original structure existing on January 1, 1989 had been expanded by 30 percent in floor area and volume since that date.

- b. Notwithstanding paragraph (a), above, if a legally existing nonconforming principal structure is entirely located less than 25 feet from the normal high-water line of a water body, tributary stream, or upland edge of a wetland, that structure may be expanded as follows, as long as all other applicable municipal land use standards are met and the expansion is not prohibited by section 44-32(c)(1). Whenever a new, enlarged, or replacement foundation is constructed under a nonconforming structure, the structure and new foundation must be placed such that the setback requirement is met to the greatest practical extent as determined by the planning board, basing its decision on the criteria specified, in subsection 44-32(c)(2) below. If the completed foundation does not extend beyond the exterior dimensions of the structure; except for expansion in conformity with subsection 44-32(c)(1)(a) above, and the foundation does not cause the structure to be elevated by more than three additional feet, as measured from the uphill side of the structure (from original ground level to the bottom of the first floor sill), it shall not be considered to be an expansion of the structure.
 - i. The maximum total footprint for the principal structure may not be expanded to a size greater than 800 square feet or 30% larger than the footprint that existed on January 1, 1989, whichever is greater. The maximum height of the principal structure may not be made greater than 15 feet or the height of the existing structure, whichever is greater.
- c. All other legally existing nonconforming principal and accessory structures that do not meet the water body, tributary stream, or wetland setback requirements may be expanded or altered as follows, as long as other applicable municipal land use standards are met and the expansion is not prohibited by section 44-32(c)(1) or section 44-32(c)(1)(a), above. No structure which is less than the required setback from the normal high water line of a water body, tributary stream, or upland edge of a wetland shall be expanded toward the water body, tributary stream, or wetland.
 - i. For structures located less than 75 feet from the normal high-water line of a water body, tributary stream, or upland edge of a wetland, the maximum combined total footprint for all structures may not be expanded to a size greater than 1,000 square feet or 30% larger than the footprint that existed on January 1, 1989, whichever is greater. The maximum height of any structure may not be made greater than 20 feet or the height of the existing structure, whichever is greater.
 - ii. For structures located less than 100 feet from the normal high-water line of a great pond classified GPA or a river flowing to a great pond classified as GPA, the maximum combined total footprint for all structures may not be expanded to a size greater than 1,500 square feet or 30% larger than the footprint that existed on January 1, 1989, whichever is greater. The maximum height of any structure may not be made greater than 25 feet or the height of the existing

structure, whichever is greater. Any portion of those structures located less than 75 feet from the normal high-water line of a water body, tributary stream, or upland edge of a wetland must meet the footprint and height limits in section 44-32(c)(1)(b)(i) and section 44-32(c)(1)(c)(i), above.

iii. In addition to the limitations in subparagraphs i and ii above, for structures that are legally nonconforming due to their location within the Resource Protection District when located at less than 250 feet from the normal high-water line of a water body or the upland edge of a wetland, the maximum combined total footprint for all structures may not be expanded to a size greater than 1,500 square feet or 30% larger than the footprint that existed at the time the Resource Protection District was established on the lot, whichever is greater. The maximum height of any structure may not be made greater than 25 feet or the height of the existing structure, whichever is greater, except that any portion of those structures located less than 75 feet from the normal high-water line of a water body, tributary stream, or upland edge of a wetland must meet the footprint and height limits in section 44-32(c)(1)(b)(i) and section 44-32(c)(1)(c)(i), above.

d. An approved plan for expansion of a nonconforming structure must be recorded by the applicant with the York County Registry of Deeds, within 90 days of approval. The recorded plan must show the existing and proposed footprint of the nonconforming structure, the existing and proposed structure height, the footprint of any other structures on the parcel, the shoreland zone boundary and evidence of approval by the Eliot Planning Board.

(2) Foundations. Whenever a new, enlarged, or replacement foundation is constructed under a non-conforming structure, the structure and new foundation must be placed such that the setback requirement is met to the greatest practical extent as determined by the Planning Board, basing its decision on the criteria specified in section 44-32(c)(3).

(3) (2) Relocation: A nonconforming structure may be relocated within the boundaries of the parcel on which the structure is located provided that the site of relocation conforms to all setback requirements to the greatest practical extent as determined by the planning board, and provided that the applicant demonstrates that the present subsurface sewage disposal system meets the requirements of state law and the State of Maine Subsurface Wastewater Disposal Rules (rules), or that a new system can be installed in compliance with the law and said rules. In no case shall a structure be relocated in a manner that causes the structure to be more nonconforming.

In determining whether the building relocation meets the setback to the greatest practical extent, the planning board shall consider the size of the lot, the slope of the land, the potential for soil erosion, the location of other structures on the property and on adjacent properties, the location of the septic system and other onsite soils suitable for septic systems, and the type and amount of vegetation to be removed to accomplish the relocation. When it is necessary to remove vegetation within the water or wetland setback area in order to relocate a structure, the planning board shall require replanting of native vegetation to compensate for the destroyed vegetation in accordance with section 44-35(p)(8)(h). In addition, the area from which the relocated structure was removed must be replanted with vegetation. Replanting shall be required as follows:

a. Trees removed in order to relocate a structure must be replanted with at least one native tree, three feet in height, for every tree removed. If more than five trees are planted, no one species of tree shall make up more than 50 percent of the number of trees planted.

Replaced trees must be planted no further from the water or wetland than the trees that were removed.

Other woody and herbaceous vegetation, and ground cover, that are removed or destroyed in order to relocate a structure must be re-established. An area at least the same size as the area where vegetation and/or ground cover was disturbed, damaged, or removed must be reestablished within the setback area. The vegetation and/or ground cover must consist of similar native vegetation and/or ground cover that was disturbed, destroyed or removed.

- b. Where feasible, when a structure is relocated on a parcel the original location of the structure shall be replanted with vegetation which may consist of grasses, shrubs, trees, or a combination thereof.

~~(3)~~ **(4)** Reconstruction or replacement: Any nonconforming structure which is located less than the required setback from ~~the normal high water line of~~ a water body, tributary stream, or upland edge of a wetland and which is removed, or damaged or destroyed, regardless of the cause, by more than 50 percent of the market value of the structure before such damage, destruction or removal, may be reconstructed or replaced provided that a permit is obtained within 18 months of the date of said damage, destruction, or removal, and provided that such reconstruction or replacement is in compliance with the water body, tributary stream or wetland setback requirement to the greatest practical extent as determined by the planning board in accordance with the purposes of this chapter. In no case shall a structure be reconstructed or replaced so as to increase its nonconformity. If the reconstructed or replacement structure is less than the required setback it shall not be any larger than the original structure, except as allowed pursuant to subsection 44-32(c)(1) above, as determined by the nonconforming **footprint** ~~floor area and volume~~ of the reconstructed or replaced structure at its new location. If the total **footprint** ~~amount of floor area and volume~~ of the original structure can be relocated or reconstructed beyond the required setback area, no portion of the relocated or reconstructed structure shall be replaced or constructed at less than the setback requirement for a new structure. When it is necessary to remove vegetation in order to replace or reconstruct a structure, vegetation shall be replanted in accordance with subsection 44-32(c)~~(3)~~ **(2)** above.

Any nonconforming structure which is located less than the required setback from a water body, tributary stream, or wetland and which is removed by 50 percent or less of the market value, or damaged or destroyed by 50 percent or less of the market value of the structure, excluding normal maintenance and repair, may be reconstructed in place **if a permit is obtained from the Code Enforcement Officer within one year of such damage, destruction, or removal.** ~~with a permit, from the code enforcement officer within one year of such damage, destruction, or removal.~~

In determining whether the building reconstruction or replacement meets the water setback to the greatest practical extent the planning board shall consider, in addition to the criteria in paragraph (c)~~(2)~~ **(3)** above, the physical condition and type of foundation present, if any.

~~(4)~~ **(5)** Change of use **of a Nonconforming Structure.** ~~among line entries of table 1, of a nonconforming structure:~~ The use of a nonconforming structure may not be changed to another use unless the planning board, after receiving a written application, determines that the new use will have no greater adverse impact on the water body, tributary stream, or wetland, or on the subject or adjacent properties and resources than the existing use.

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

- (d) Nonconforming uses.

- (1) Expansions: Expansions of nonconforming uses are prohibited, except that nonconforming residential uses may, after obtaining a permit from the planning board, be expanded within existing residential structures or within expansions of such structures as permitted in subsection 44-32(c)(1) ~~a.~~ above.
 - (2) Resumption prohibited: A lot, building or structure in or on which a nonconforming use is discontinued for a period exceeding one year, or which is superseded by a conforming use, may not again be devoted to a nonconforming use, except that the planning board may, for good cause shown by the applicant, grant up to a one year extension to that time period. This provision shall not apply to the resumption of a use of a residential structure provided that the structure has been used or maintained for residential purposes during the preceding five-year period.
 - (3) Change of use: An existing nonconforming use may be changed to another nonconforming use provided that the proposed use has no greater adverse impact on the subject and adjacent properties and resources, than the former use, as determined by the planning board. The determination of no greater adverse impact shall be made according to criteria listed in subsection 44-32(c) ~~(4)~~ (5) above.
- (e) Nonconforming lots.
- (1) Nonconforming lots: A nonconforming lot of record as of the effective date of this chapter or amendment thereto may be built upon, without the need for a variance, provided that such lot is in separate ownership and not contiguous with any other lot in the same ownership, and that all provisions of this chapter except lot area, lot width and shore frontage can be met. Variances relating to setback or other requirements not involving lot area, lot width or shore frontage shall be obtained by action of the board of appeals.
 - (2) Contiguous built lots: If two or more contiguous lots or parcels are in a single or joint ownership of record at the time of adoption of this chapter, if all or part of the lots do not meet the dimensional requirements of this chapter, and if a principal use or structure exists on each lot, the nonconforming lots may be conveyed separately or together, provided that the state minimum lot size law and the State of Maine subsurface wastewater disposal rules are complied with.

If two or more principal uses or structures existed on a single lot of record on the effective date of this chapter, each may be sold on a separate lot provided that the above referenced law and rules are complied with. When such lots are divided each lot thus created must be as conforming as possible to the dimensional requirements of this chapter.
 - (3) Contiguous lots; vacant or partially built: If two or more contiguous lots or parcels are in single or joint ownership of record at the time of or since adoption or amendment of this chapter, if any of these lots do not individually meet the dimensional requirements of this chapter or subsequent amendments, and if one or more of the lots are vacant or contain no principal structure the lots shall be combined to the extent necessary to meet the dimensional requirements.

This provision shall not apply to two or more contiguous lots, at least one of which is nonconforming, owned by the same person or persons on the effective date of this chapter and recorded in the registry of deeds if the lot is served by a public sewer or can accommodate a subsurface sewage disposal system in conformance with the State of Maine Subsurface Wastewater Disposal Rules, and:
 - a. Each lot contains at least 100 feet of shore frontage and at least 20,000 square feet of lot area; or
 - b. Any lots that do not meet the frontage and lot size requirements of subparagraph a. above, are reconfigured or combined so that each new lot contains at least 100 feet of shore frontage and 20,000 square feet of lot area.

(T.M. of 12-15-93, § 12; T.M. of 6-9-09(1))

Sec. 44-33. - Establishment of districts.

- (a) Resource protection district (as identified on zoning map). The resource protection district includes areas in which development would adversely affect water quality, productive habitat, biological ecosystems, or scenic and natural values. This district shall include the following areas when they occur within the limits of the shoreland zone, exclusive of the stream protection district, except that areas which are currently developed and areas which meet the criteria for the limited commercial, or general development districts need not be included within the resource protection district.
 - (1) Floodplains along rivers and floodplains along artificially formed great ponds along rivers, defined by the 100-year floodplain as designated on the Federal Emergency Management Agency's (FEMA) flood insurance rate maps or flood hazard boundary maps, or the flood of record, or in the absence of these, by soil types identified as recent floodplain soils. This district shall also include 100-year floodplains adjacent to tidal waters as shown on FEMA's flood insurance rate maps or flood hazard boundary maps.
 - (2) Areas of two or more contiguous acres with sustained slopes of 20 percent or greater.
 - (3) Areas of two or more contiguous acres supporting wetland vegetation and hydric soils, which are not part of a freshwater or coastal wetland as defined, and which are not surficially connected to a water body during normal high water. Note: These areas usually consist of forested wetlands abutting water bodies and non-forested wetlands.
 - (4) Land areas along rivers subject to severe bank erosion, undercutting, or river bed movement and lands adjacent to tidal waters which are subject to severe erosion or mass movement, such as steep coastal bluffs.
- (b) Limited residential district (as identified on zoning map). The limited residential district includes those areas suitable for residential and recreational development. It includes areas other than those in the resource protection district, or stream protection district, and areas which are used less intensively than those in the limited commercial district, or the general development district.
- (c) Limited commercial district (as identified on zoning map). The limited commercial district includes areas of mixed, light commercial and residential uses, exclusive of the stream protection district, which should not be developed as intensively as the general development district. This district includes areas of two or more contiguous acres in size devoted to a mix of residential and low intensity business and commercial uses. Industrial uses are prohibited.
- (d) General development district (as identified on zoning map). The general development district includes the following types of existing, intensively developed areas:
 - (1) Areas of two or more contiguous acres devoted to commercial, industrial or intensive recreational activities, or a mix of such activities, including but not limited to the following:
 - a. Areas devoted to manufacturing, fabricating or other industrial activities;
 - b. Areas devoted to wholesaling, warehousing, retail trade and service activities, or other commercial activities; and
 - c. Areas devoted to intensive recreational development and activities, such as, but not limited to amusement parks, race tracks and fairgrounds.
 - (2) Areas otherwise discernible as having patterns of intensive commercial, industrial or recreational uses.

Portions of the general development district may also include residential development. However, no area shall be designated as a general development district based solely on residential use.

In areas adjacent to great ponds classified GPA and adjacent to rivers flowing to great ponds classified GPA, the designation of an area as a general development district shall be based upon uses existing at the time of adoption of this chapter. There shall be no newly established general development districts or expansions in area of existing general development districts adjacent to great ponds classified GPA, and adjacent to rivers which flow to great ponds classified GPA.

- (e) Stream protection district (as identified on zoning map). The stream protection district includes all land areas within 75 feet, horizontal distance, of the normal high-water line of a stream, exclusive of those areas within 250 feet, horizontal distance, of the normal high-water line of a great pond, river or within 250 feet, horizontal distance, of the upland edge of a freshwater or coastal wetland saltwater body, or the upland edge of a freshwater or coastal wetland. Where a stream and its associated shoreland area are located within 250 feet, horizontal distance, of the above water bodies or wetlands, that land area shall be regulated under the terms of the shoreland district associated with that water body or wetland.

(T.M. of 12-15-93, § 13; T.M. of 6-10-2014)

Sec. 44-34. - Table of land uses.

All land use activities, as indicated in table 1, Land Uses in the Shoreland Zone, shall conform with all of the applicable land use standards in section 44-33 and other applicable ordinances. The district designated for a particular site shall be determined from the official zoning map.

Key to table 1:

Yes	-	Allowed (no permit required but the use must comply with all applicable land use standards)
No	-	Prohibited
SPR	-	Allowed with site plan review and approval by the planning board
CEO	-	Allowed with permit issued by the code enforcement officer
LPI	-	Allowed with permit issued by the local plumbing inspector
BFP	-	Permit required from Maine Bureau of Forestry, with a copy of said permit application required to be submitted to the code enforcement officer

Abbreviations:

RP	-	Resource protection
LR	-	Limited residential

LC	-	Limited commercial
GD	-	General development
SP	-	Stream protection

The following notes are applicable to the land uses table on the following page:

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

Table 1. Land Uses in the Shoreland Zone

Land Uses		Districts				
		SP	RP	LR	LC	GD
Uses or Activities Without Structures						
(1)	Clearing of vegetation for activities other than timber harvesting	CEO	CEO ¹	CEO	CEO	CEO
(2)	Emergency operations	yes	yes	yes	yes	yes
(3)	Fire prevention activities	yes	yes	yes	yes	yes
(4)	Forest management activities, except for timber harvesting and land management roads	yes	yes	yes	yes	yes
(5)	Mineral exploration	no	no	no	yes ²	yes ²
(6)	Mineral extraction, including sand and gravel extraction	no	no	no	SPR	SPR
(7)	Motorized vehicular traffic on existing roads and trails	yes	yes	yes	yes	yes
(8)	Nonintensive recreational uses not requiring structures such as hunting, fishing and hiking	yes	yes	yes	yes	yes
(9)	Soil and water conservation practices	yes	yes	yes	yes	yes

(10)	Surveying and resource analysis	yes	yes	yes	yes	yes
(11)	Timber harvesting	BFP	BFP	yes	yes	yes
(11)(12)	Wildlife management practices	yes	yes	yes	yes	yes
Principal Structures or Uses						
(12)(13)	Principal structures and uses:					
a.	One- and two-family residential	SPR ⁴	SPR ⁹	CEO	CEO	CEO
b.	Multiunit residential	no	no	SPR	SPR	SPR
c.	Commercial (not listed elsewhere)	no ¹³	no ¹³	no ¹³	SPR	SPR ⁵
d.	Industrial	no	no	no	no	SPR
e.	Governmental and institutional	no	no	no	SPR	SPR
f.	Small nonresidential facilities for educational, scientific or nature interpretation purposes	SPR ⁴	SPR	CEO	CEO	CEO
(13)(14)	Agriculture	CEO	SPR	CEO	CEO	CEO
(14)(15)	Aquaculture	SPR ¹⁰	SPR ¹⁰	SPR ¹⁰	SPR	Yes
(15)(16)	Bed and breakfast	no	no	SPR ¹⁰	SPR ¹⁰	SPR
(16)(17)	Boardinghouse	no	no	SPR ¹⁰	SPR	SPR
(17)(18)	Campgrounds	no	no ⁷	no	no	SPR
(18)(19)	Conversions of seasonal residences to year-round residences	LPI	LPI	LPI	LPI	LPI
(19)(1)	Fireworks sales	no ¹⁷	no ¹⁷	no ¹⁷	no ¹⁷	no ¹⁷
(20)	Gambling Casino	no	no	no	no	no

(21)	Marinas								
	a.	Full service	no	no	no	no	SPR		
	b.	Limited	no	no	no	SPR	SPR		
(22) (21.1)		Nonprofit medical marijuana dispensary	no	no	no	no	no		
(23) (22)		Off-site parking	no	no ⁷	no	no	no		
(24) (23)		Public and private recreational areas involving minimal structural development	SPR	SPR	SPR	SPR	CEO		
Accessory Structures or Uses									
(25) (24)		Structures accessory to allowed uses, not otherwise listed	SPR ⁴	SPR	CEO	CEO	CEO		
(26) (25)		Essential services	SPR ⁶	SPR ⁶	SPR	SPR	SPR		
	a.	Roadside distribution lines (34.5kV and lower)	CEO ⁶	CEO ⁶	yes ¹²	yes ¹²	yes ¹²		
	b.	Non-roadside or cross-country distribution lines involving ten poles or less in the shoreland zone	SPR ⁶	SPR ⁶	CEO	CEO	CEO		
	c.	Non-roadside or cross-country distribution lines involving 11 or more poles in the shoreland zone	SPR ⁶	SPR ⁶	SPR	SPR	SPR		
	d.	Other essential services	SPR ⁶	SPR ⁶	SPR	SPR	SPR		
(27) (26)		Fences	yes ^{11A}	yes ^{11A}	yes ^{11A}	yes ^{11A}	yes ^{11A}		
(28) (27)		Filling and earthmoving of <10 cubic yards	CEO	CEO	yes	yes	yes		
(29) (28)		Filling and earthmoving of >10 cubic yards	SPR	SPR	CEO	CEO	CEO		
(30) (29)		Home business	no ^{12A}	no ^{12A}	SPR ^{10A}	SPR ^{10A}	no		
(31) (30)		Home occupations; regular and water-dependent	no	no	no	no	no		

(32) (31)	Home Office	CEO	no	CEO	CEO	CEO
(33) (32)	Individual, private campsites	CEO	CEO	CEO	CEO	CEO
(34) (33)	Land management roads	yes	SPR	yes	yes	yes
(35) (34)	Piers, docks, wharves, bridges and other structures and uses and extending over or below the normal high-water line or within a wetland:					
a.	Temporary	CEO ¹¹	CEO ¹¹	CEO ¹¹	CEO ¹¹	CEO ¹¹
b.	Permanent residential	SPR	SPR	SPR	SPR	SPR
c.	Permanent commercial	SPR ¹⁴	SPR ¹⁴	SPR ¹⁴	SPR	SPR
d.	Limited commercial	SPR ⁵	SPR ⁵	SPR ⁵	SPR	no
(36) (35)	Private sewage disposal systems for allowed uses	LPI	LPI	LPI	LPI	LPI
(37) (36)	Road and driveway construction	SPR	no ⁸	SPR	SPR	SPR
(38) (37)	Service drops, as defined, to allowed uses	yes	yes	yes	yes	yes
(39) (38)	Signs. See zoning ordinance	yes ^{9A}	yes ^{9A}	yes ^{9A}	yes ^{9A}	yes ^{9A}
(40) (39)	Solar energy system	CEO ¹⁵	CEO ¹⁵	CEO ¹⁵	CEO ¹⁵	CEO ¹⁵
(41) (40)	Small wind energy system	SPR ¹⁶	SPR ¹⁶	SPR ¹⁶	SPR ¹⁶	SPR ¹⁶
(42) (41)	Uses similar to allowed uses	CEO	CEO	CEO	CEO	CEO
(43) (42)	Uses similar to uses requiring a CEO permit	CEO	CEO	CEO	CEO	CEO
(44) (43)	Uses similar to uses requiring a SPR permit	SPR	SPR	SPR	SPR	SPR
(45) (44)	Waste containers	CEO ^{5A}	CEO ^{5A}	CEO ^{5A}	CEO ^{5A}	CEO ^{5A}

Footnotes:

- 1 In RP not allowed within 75 feet horizontal distance, of the normal high-water line of great ponds, except to remove safety hazards.
- 2 Requires permit from the code enforcement officer if more than 100 square feet of surface area, in total, is disturbed.
- 3 In RP not allowed in areas so designated because of wildlife value.
- 4 Provided that a variance from the setback requirement is obtained from the board of appeals.
- 5 Functionally water-dependent uses and uses accessory to such water dependent uses only (see note on previous page).
- 5A Only as an accessory use to an allowed principal use on the lot. Must conform to the requirements of [section] 45-422, Waste containers.
- 6 See further restrictions in [sub)section 44-35(l)(2), Essential services.
- 7 Except when area is zoned for resource protection due to floodplain criteria in which case a site plan review is required from the planning board.
- 8 Except as provided in [sub)section 44-35(h).
- 9 Single family residential structures may be allowed by special exception only according to the provisions of [sub)section 44-44(f), Special exceptions. Two-family residential structures are prohibited.
- 9A See sign ordinance section.
- 10 Except for commercial uses otherwise listed in this table, such as marinas and campgrounds, that are allowed in the respective district.
- 10A Must conform to the requirements of section 45-456.1, Home business.
- 11 Excluding bridges and other crossings not involving earthwork, in which case no permit is required.
- 11A Must conform to the requirements of section 45-423, Fences.
- 12 Permit not required, but must file a written "notice of intent to construct" with CEO.
- 12A "No" except in conjunction with aquaculture, small nonresidential facilities for educational, scientific or nature interpretation purposes or limited commercial piers, docks, wharves, bridges and other structures and uses extending over or below the normal high-water line or within a wetland.
- 13 Use is "No" except when permitted under another specific land use entry.
- 14 Only commercial aquaculture allowed on piers in this zone, with no other commercial pier uses. Pier must meet the requirements of a residential pier in these zones.

Note: A person performing any of the following activities shall require a permit from the department of environmental protection, pursuant to title 38, M.R.S.A. section 480-C, if the activity occurs in, on, over or adjacent to any freshwater or coastal wetland, great pond, river, stream or brook and operates in such a manner that material or soil may be washed into them:
 - a. Dredging, bulldozing, removing or displacing soil, sand, vegetation or other materials;
 - b. Draining or otherwise dewatering;
 - c. Filling, including adding sand or other material to a sand dune; or
 - d. Any construction or alteration of any permanent structure.
- 15 Must conform to the requirements of section 45-462.

- 16 Must conform to the requirements of section 45-461.
- 17 See chapter 12 for additional regulations pertaining to the sale and use of fireworks.

(T.M. of 12-15-93, § 14; T.M. of 3-27-99(2); T.M. of 6-19-01, (art. 7); T.M. of 3-16-02, (art. 3, § 3), (art. 4); T.M. of 11-5-02; T.M. of 11-4-03; T.M. of 3-20-04; T.M. of 6-14-08; T.M. of 6-9-09(1); T.M. of 6-12-2010(1); T.M. of 6-12-2010(2); T.M. of 6-12-2010(3); T.M. of 6-18-2011(6); T.M. of 6-16-2012(2); T.M. of 6-11-2013(1))

Sec. 44-35. - Land use standards.

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

(a) Minimum lot standards.

- (1) Lots will be equal to or greater in area than the minimum required for lots located in the nearest adjacent non-shoreland zoning district, as indicated on the Official Zoning Map. See section 45-405 of the Eliot Zoning Ordinance for the minimum lot area requirements for the zoning district.

Minimum shore frontage: The minimum shore frontage shall be equal to or greater than the minimum required street frontage of the nearest adjacent non-shoreland zoning district, as indicated on the Official Zoning Map, and as outlined in section 45-405 of the Eliot Zoning Ordinance.

Setbacks from property lines, streets and rights-of-way: The minimum setbacks from property lines, streets, and rights of way shall be defined as those required in the Eliot Zoning Ordinance (Chapter 45) for the nearest adjacent non-shoreland zoning district.

- (2) Land below the normal high-water line of a water body or upland edge of a wetland and land beneath roads ~~rights-of-way~~ serving more than two lots shall not be included toward calculating minimum lot area.
- (3) Lots located on opposite sides of a public or private road shall be considered each a separate tract or parcel of land unless such road was established by the owner of land on both sides thereof after September 22, 1971.
- (4) The minimum width of any portion of any lot within 100 feet, horizontal distance, of the normal high-water line of a water body or upland edge of a wetland shall be equal to or greater than the shore frontage requirement for a lot with the proposed use.
- (5) If more than one residential dwelling unit or more than one principal governmental, commercial or industrial structure or use, or combination thereof, is constructed or established on a single parcel, all dimensional requirements shall be met for each additional dwelling unit or principal structure, or use.

(b) Principal and accessory structures.

- (1) All new principal and accessory structures shall be set back at least 100 feet, horizontal distance, from the normal high-water line of great ponds classified GPA and rivers that flow to great ponds classified GPA, and 75 feet, horizontal distance, from the normal high-water line of other water bodies, tributary streams, or the upland edge of a wetland, except that in the general development district the setback from the normal high-water line shall be at least 25 feet, horizontal distance. In the resource protection district the setback requirement shall be 250 feet, horizontal distance, except for structures, roads, parking spaces or other regulated objects specifically allowed in that district in which case the setback requirements specified above shall apply. In addition:

- a. The water body, tributary stream, or wetland setback provision shall neither apply to structures which require direct access to the water body or wetland as an operational necessity, such as piers, docks and retaining walls, nor to other functionally water-dependent uses.
 - b. For principal structures, water and wetland setback measurements shall be taken from the top of a coastal bluff that has been identified on coastal bluff maps as being "highly unstable" or "unstable" by the Maine Geological Survey pursuant to its "Classification of Coastal Bluffs" and published on the most recent coastal bluff map. If the applicant and the permitting official(s) are in disagreement as to the specific location of a "highly unstable" or "unstable" bluff, or where the top of the bluff is located, the applicant may at his or her expense, employ a Maine Registered Professional Engineer, a Maine Certified Soil Scientist, a Maine State Geologist, or other qualified individual to make a determination. If agreement is still not reached, the applicant may appeal the matter to the board of appeals.
 - c. On a nonconforming lot of record on which only a residential structure exists, and it is not possible to place an accessory structure meeting the required water body, tributary stream or wetland setbacks, the code enforcement officer may issue a permit to place a single accessory structure, with no utilities, for the storage of yard tools and similar equipment. Such accessory structure shall not exceed 80 square feet in area nor eight feet in height, and shall be located as far from the shoreline or tributary stream as practical and shall meet all other applicable standards, including lot coverage and vegetation clearing limitations. In no case shall the structure be located closer to the shoreline or tributary stream than the principal structure.
- (2) Principal or accessory structures and expansions of existing structures which are permitted in the resource protection, limited residential, limited commercial, and stream protection districts, shall not exceed 35 feet in height. This provision shall not apply to structures such as transmission towers, windmills, antennas, and similar structures having no floor area.
- (3) The lowest floor elevation or openings of all buildings and structures, including basements, shall be elevated at least two feet 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. When the Town of Eliot has adopted the April 2005 version, or later version, of the Floodplain Management Ordinance, accessory structures may be placed in accordance with the standards of that ordinance and need not meet the elevation requirements of this paragraph.
- (4) The total footprint area of all structures, driveways, parking areas, ~~lots~~ and other nonvegetated surfaces, within the shoreland zone shall not exceed 20 percent of the lot or a portion thereof, located within the shoreland zone, including land area previously developed, except in the general development district, adjacent to tidal waters and rivers which do not flow to great ponds classified GPA, where lot coverage shall not exceed 70 percent.
- ~~[Note: The existing Spinney Creek developed aquaculture facility will be rezoned to Shoreland General Development, once the accompanying Official Zoning Map is adopted, negating the need for this sentence.]~~
- (5) Retaining walls that are not necessary for erosion control shall meet the structure setback requirement, except for low retaining walls and associated fill provided all of the following conditions are met:
- a. The site has been previously altered and an effective vegetated buffer does not exist;
 - b. The wall(s) is(are) at least 25 feet, horizontal distance, from the normal high-water line of a water body, tributary stream, or upland edge of a wetland;
 - c. The site where the retaining wall will be constructed is legally existing lawn or is a site eroding from lack of naturally occurring vegetation, and which cannot be stabilized with vegetative plantings;
 - d. The total height of the wall(s), in the aggregate, are no more than 24 inches;

- e. Retaining walls are located outside of the 100-year floodplain on rivers, streams, coastal wetlands, and tributary streams, as designated on the Federal Emergency Management Agency's (FEMA) flood insurance rate maps or flood hazard boundary maps, or the flood of record, or in the absence of these, by soil types identified as recent floodplain soils.
- f. The area behind the wall is revegetated with grass, shrubs, trees, or a combination thereof, and no further structural development will occur within the setback area, including patios and decks; and
- g. A vegetated buffer area is established within 25 feet, horizontal distance, of the normal high-water line of a water body, tributary stream, or upland edge of a wetland when a natural buffer area does not exist. The buffer area must meet the following characteristics:
 - (i) The buffer must include shrubs and other woody and herbaceous vegetation. Where natural ground cover is lacking the area must be supplemented with leaf or bark mulch;
 - (ii) Vegetation plantings must be in quantities sufficient to retard erosion and provide for effective infiltration of stormwater runoff;
 - (iii) Only native species may be used to establish the buffer area;
 - (iv) A minimum buffer width of 15 feet, horizontal distance, is required, measured perpendicularly to the normal high-water line or upland edge of a wetland;
 - (v) A footpath, not to exceed the standards in subsection 44-35(p)(2)a., may traverse the buffer;
- (6) Notwithstanding the requirements stated above, stairways or similar structures may be allowed with a permit from the code enforcement officer, to provide shoreline access in areas of steep slopes or unstable soils, provided that the structure is limited to a maximum of four feet in width, that the structure does not extend below or over the normal high-water line of a water body or upland edge of a wetland, (unless permitted by the department of environmental protection pursuant to the Natural Resources Protection Act, title 38, M.R.S.A. section 480-C), and that the applicant demonstrates that no reasonable access alternative exists on the property.
- (c) Piers, docks, wharves, bridges and other structures and uses extending over or below the normal high water line of a water body or within a wetland. (See note 1 below.)
 - (1) No more than one pier, dock, wharf or similar structure extending or located below the normal high-water line of a water body or within a wetland is allowed on a single lot; except that when a single lot contains at least twice the minimum shore frontage as specified in section 44-35(a), a second structure may be allowed and may remain as long as the lot is not further divided.
 - ~~(2)(1)~~ Access from shore shall be developed on soils appropriate for such use and constructed so as to control erosion.
 - ~~(3)(2)~~ The location shall not interfere with existing developed or natural beach areas.
 - ~~(4)(3)~~ The facility shall be located so as to minimize adverse effects on fisheries.
 - ~~(5)(4)~~ Facilities in nontidal waters shall be no larger in dimension than necessary to carry on the activity and be consistent with the dimensions of the surrounding facilities. A temporary pier, dock or wharf in nontidal waters shall not be wider than six feet for noncommercial uses.
 - ~~(6)(5)~~ No new structure shall be built on, over or abutting a pier, wharf, dock or other structure extending beyond the normal high-water line of a water body or within a wetland unless the structure requires direct access to the water body or wetland as an operational necessity.
 - ~~(7)(6)~~ New permanent piers and docks on nontidal waters shall not be permitted unless it is clearly demonstrated to the planning board that a temporary pier or dock is not feasible, and a permit has been obtained from the Department of Environmental Protection, pursuant to the Natural Resources Protection Act.

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

(9)(8) Except in the general development district, structures built on, over or abutting a pier, wharf, dock or other structure extending beyond the normal high-water line of a water body or within a wetland shall not exceed 20 feet in height above the pier, wharf, dock or other structure.

Note 1: Permanent structures projecting into or over water bodies shall require a permit from the Department of Environmental Protection pursuant to the Natural Resources Protection Act, title 38, M.R.S.A. section 480-C.

(10)(9) In addition to meeting the requirements of paragraph (4) above, all piers in tidal waters shall comply with the following requirements:

- a. Residential piers shall not extend beyond the mean low water mark and are limited to a maximum width of six feet. Commercial piers may extend beyond the low water mark subject to the limits of paragraphs (10) and (11) below and to all dimensional limits imposed by the Maine Department of Environmental Protection under the Natural Resources Protection Act.
- b. All piers or continuous connected lengths of temporary floats in the limited residential (LR) and resource protection (RP) zones shall be restricted to an overall length (including appurtenant temporary ramps and floats and their positioning pilings) of 200 feet, measured from the normal high water line, or a length that will provide six feet of water depth at the outermost float at mean low water, whichever is shorter. In no case shall the structure extend more than halfway to the mean low water deep channel centerline.
- c. All piers or continuous connected lengths of temporary floats in the limited commercial (LC) and general development (GD) zones shall be restricted to an overall length (including appurtenant temporary ramps and floats and their positioning pilings) of 330 feet, measured from the normal high water line, or a length that will provide six feet of water (12 feet for GD) depth at the outermost float at mean low water, whichever is shorter. In no case shall the structure extend more than halfway to the mean low water deep channel centerline.

(11)(10) No structure (including appurtenant temporary ramps and floats and their positioning pilings) shall extend more than halfway to the deep channel centerline [25 percent of the waterway width at mean low water]. (See note 2 below.)

(12)(11) All parts of piers, wharves, floats, and pilings shall have side setbacks of at least 25 feet from riparian lines determined using the procedure described in note 4 below. If abutting property owners reach a mutual agreement regarding structures which have a lesser setback, that lesser setback may be approved if the applicant agrees to record any ensuing permit (having that agreement as a condition), in the York County Registry of Deeds. (See notes 3 and 4 below.)

(13)(12) Temporary or seasonal floats which sit on the bottom at low tide must be constructed in accordance with the most current guidance provided by the Department of Environmental Protection so as to minimize harm to marsh grass or marine life living in the mud.

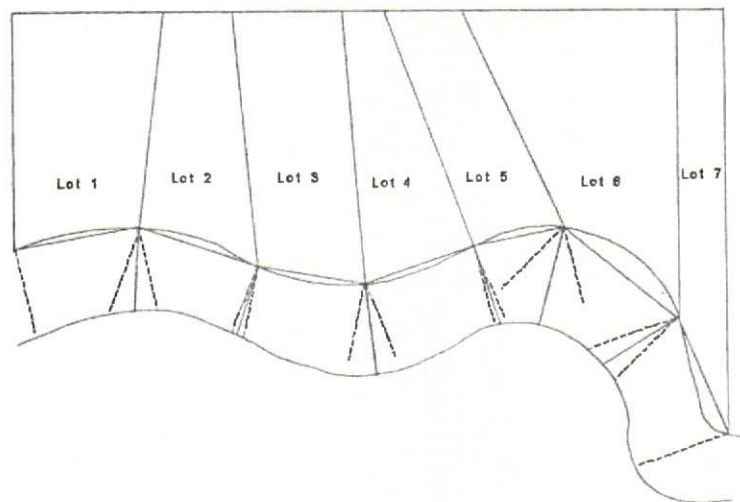
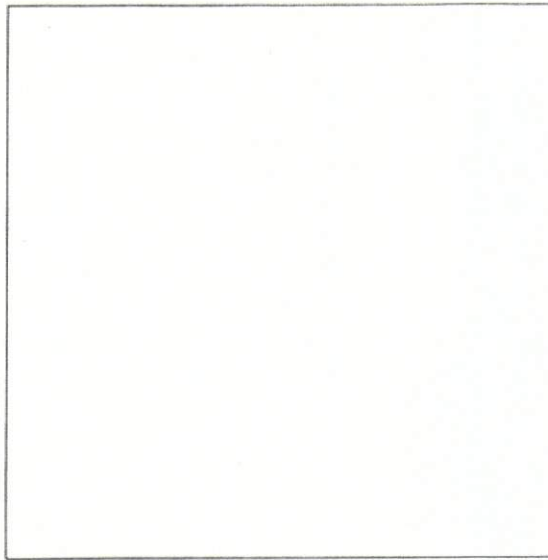
(14)(13) All new and existing piers and floats, temporary or permanent, shall be affixed with a reflector not less than three inches in diameter located not more than 12 inches from each corner. For piers exceeding 40 feet in length reflectors shall also be affixed to each side of the pier at a frequency of one per 20 feet.

Note 2: The purpose of the limit of paragraph (10) is to maintain a reasonable area of open water in the public interest to sustain activities not specifically related to simple transiting of the area in safety. These activities include such things as cruising, fishing, sailboarding, swimming, water-skiing, etc., which require open unobstructed water and should not be eliminated for private interest. Limiting intrusion from either bank to 25 percent of the waterway width at mean

low water or halfway to the deep channel centerline will maintain the central 50 percent of the available width as open water, an even split between public and private interest.

Note 3: The purpose of paragraph **(12)** ~~(11)~~ is to avoid conflicts between neighboring waterfront property owners concerning the spacing of projects relative to "riparian" lines. (Riparian lines refers to the demarcations of rights in the water associated with owning waterfront property.) The United States Army Corps of Engineers reports that these conflicts generally concern access to piers and floats for mooring vessels. To resolve these conflicts the Army Corps of Engineers requires a minimum setback from the riparian boundary of 25 feet. This is based on the fact that a median sized recreational vessel length is in the range of 32 feet. A minimum turning distance for such a vessel is 1.5 times the vessel length, or 48 feet, rounded off to 50 feet. Each adjacent facility then provides one-half the required turning distance which is an equitable distribution of the resource. Applying the standards of paragraph **(12)** ~~(11)~~, the outside dimensions of floats and pilings located across the front of a pier will not usually exceed the effective lot frontage on the water body minus 50 feet.

Note 4: For the purpose of measuring setbacks of piers and appurtenant floats from adjacent lots in this section "riparian lines" are to be determined as follows: Draw a straight line (the baseline) between the two corners of each lot where the edge of the lot meets the high-water line. From these two corners extend parallel lines towards the water at right angles to the baseline. Usually the parallel lines from the lot corners on adjacent lots will not coincide, but will form a pie shape. An imaginary line drawn to bisect this pie shaped area is the riparian or boundary between each adjacent lot. These riparian lines should project on either side of the footprint of the pier and are the line from which the setbacks are to be measured. Where the location of the applicant's riparian lines is unclear due to the geography of the water body, they shall be determined by the planning board as part of the review of the proposed pier.



Method of Establishing Riparian Lines

- (d) Campgrounds. Campgrounds shall conform to the minimum requirements imposed under state licensing procedures and the following:
 - (1) Campgrounds shall contain a minimum of 5,000 square feet of land, not including roads and driveways, for each site. Land supporting wetland vegetation, and land below the normal high-water line of a water body shall not be included in calculating land area per site.
 - (2) The areas intended for placement of a recreational vehicle, tent or shelter, and utility and service buildings shall be set back a minimum of 100 feet, horizontal distance, from the normal high-water line of a great pond classified GPA or a river flowing to a great pond classified GPA, and 75 feet, horizontal distance, from the normal high-water line of other water bodies, tributary streams, or the upland edge of a wetland.
- (e) Individual private campsites.
 - (1) One campsite per lot existing on the effective date of this chapter, or 30,000 square feet of lot area within the shoreland zone, whichever is less, may be permitted. **When an individual**

private campsite is proposed on a lot that contains another principal use and/or structure, the lot must contain the minimum lot dimensional requirements for the principal structure and/or use, and the individual private campsite separately.

- (2) Campsite placement on any lot, including the area intended for a recreational vehicle or tent platform, shall be set back 100 feet, horizontal distance, from the normal high-water line of a great pond classified GPA or river flowing to a great pond classified GPA, and 75 feet, horizontal distance, from the normal high-water line of other water bodies, tributary streams, or the upland edge of a wetland.
 - (3) Only one recreational vehicle shall be allowed on a campsite. The recreational vehicle shall not be located on any type of permanent foundation, except for a gravel pad, and no structure, except a canopy shall be attached to the recreational vehicle.
 - (4) The clearing of vegetation for the siting of the recreational vehicle, tent or similar shelter in a resource protection district shall be limited to 1,000 square feet.
 - (5) A written sewage disposal plan describing the proposed method and location of sewage disposal shall be required for each campsite and shall be approved by the local plumbing inspector. Where disposal is off-site, written authorization from the receiving facility or land owner is required.
 - (6) When a recreational vehicle, tent or similar shelter is placed on-site for more than 120 days per year, all requirements for residential structures shall be met, including the installation of a subsurface sewage disposal system in compliance with the State of Maine Subsurface Wastewater Disposal Rules unless served by public sewage facilities.
- (f) Commercial and industrial uses. The following new commercial and industrial uses are prohibited within the shoreland zone adjacent to great ponds classified GPA, and rivers and streams which flow to great ponds classified GPA:
- a. Auto washing facilities.
 - b. Auto or other vehicle service and/or repair operations, including body shops.
 - c. Chemical and bacteriological laboratories.
 - d. Storage of chemicals, including herbicides, pesticides or fertilizers other than amounts normally associated with individual households or farms.
 - e. Commercial painting, wood preserving, and furniture stripping.
 - f. Dry cleaning establishments.
 - g. Electronic circuit assembly.
 - h. Laundromats, unless connected to a sanitary sewer.
 - i. Metal plating, finishing, or polishing.
 - j. Petroleum or petroleum product storage and/or sale, except storage on same property as use occurs and except for storage and sales associated with marinas.
 - k. Photographic processing.
 - l. Printing.
 - m. Uses similar to above.
- (g) Parking areas.
- (1) Parking areas shall meet the shoreline and tributary stream setback requirements for structures for the district in which such areas are located. The setback requirement for parking areas serving public boat launching facilities, in districts other than the general development and limited commercial districts, may be reduced to no less than 50 feet from the normal high-water

line or upland edge of a wetland if the planning board finds that no other reasonable alternative exists.

- (2) Parking areas shall be adequately sized for the proposed use and shall be designed to prevent stormwater runoff from flowing directly into a water body, tributary stream or wetland and where feasible, to retain all runoff on-site.
- (3) In determining the appropriate size of proposed parking facilities, the following shall apply:
 - a. Typical parking space: Approximately ten feet wide and 20 feet long, except that parking spaces for a vehicle and boat trailer shall be 40 feet long.
 - b. Internal travel aisles: Approximately 20 feet wide.
- (h) Roads and driveways. The following standards shall apply to the construction of roads and/or driveways and drainage systems, culverts and other related features.
 - (1) Roads and driveways shall be set back at least 100 feet, horizontal distance, from the normal high-water line of a great pond classified GPA or a river that flows to a great pond classified GPA, and 75 feet, horizontal distance, from the normal high-water line of other water bodies, tributary streams, or the upland edge of a wetland unless no reasonable alternative exists as determined by the planning board. If no other reasonable alternative exists, the planning board may reduce the road and/or driveway setback requirement to no less than 50 feet, horizontal distance, upon clear showing by the applicant that appropriate techniques will be used to prevent sedimentation of the water body, tributary stream, or wetland. Such techniques may include, but are not limited to, the installation of settling basins, and/or the effective use of additional ditch relief culverts and turnouts placed so as to avoid sedimentation of the water body, tributary stream, or wetland.

On slopes of greater than 20 percent the road and/or driveway setback shall be increased by ten feet for each five-percent increase in slope above 20 percent.

This paragraph shall neither apply to approaches to water crossings nor to roads or driveways that provide access to permitted structures, and facilities located nearer to the shoreline due to an operational necessity, excluding temporary docks for recreational uses. Roads and driveways providing access to permitted structures within the setback area shall comply fully with the requirements of this paragraph except for that portion of the road or driveway necessary for direct access to the structure.

- (2) Existing public roads may be expanded within the legal road right-of-way regardless of their setback from a water body, tributary stream or wetland.
- (3) New roads and driveways are prohibited in a resource protection district, except that the planning board may grant a permit to construct a road or driveway to provide access to permitted uses within the district. A road or driveway may also be approved by the planning board in a resource protection district, upon a finding that no reasonable alternative route or location is available outside the district. When a road or driveway is permitted in a resource protection district, the road and/or driveway shall be set back as far as practicable from the normal high-water line of a water body, tributary stream, or upland edge of a wetland.
- (4) Road and driveway banks shall be no steeper than a slope of two horizontal to one vertical, and shall be graded and stabilized in accordance with the provisions for erosion and sedimentation control contained in subsection (q).
- (5) Road and driveway grades shall be no greater than ten percent, except for segments of less than 200 feet.
- (6) In order to prevent road and driveway surface drainage from directly entering water bodies, tributary streams or wetlands, roads and driveways shall be designed, constructed, and maintained to empty onto an unscarified buffer strip at least 50 feet plus two times the average slope, in width between the outflow point of the ditch or culvert and the normal high-water line of

a water body, tributary stream, or upland edge of a wetland. Surface drainage which is directed to an unscarified buffer strip shall be diffused or spread out to promote infiltration of the runoff and to minimize channelized flow of the drainage through the buffer strip.

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

- a. Ditch relief culverts, drainage dips and associated water turnouts shall be spaced along the road or driveway at intervals no greater than indicated in the following table:

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

- b. Drainage dips may be used in place of ditch relief culverts only where the grade is ten percent or less.
- c. On sections having slopes greater than ten percent, ditch relief culverts shall be placed at approximately a 30-degree angle downslope from a line perpendicular to the centerline of the road or driveway.
- d. Ditch relief culverts shall be sufficiently sized and properly installed in order to allow for effective functioning, and their inlet and outlet ends shall be stabilized with appropriate materials.
- (8) Ditches, culverts, bridges, dips, water turnouts and other stormwater runoff control installations associated with roads and driveways shall be maintained on a regular basis to assure effective functioning.
- (i) Signs. See zoning ordinance.
- (j) Stormwater runoff.
- (1) All new construction and development shall be designed to minimize stormwater runoff from the site in excess of the natural predevelopment conditions. Where possible, existing natural runoff control features, such as berms, swales, terraces and wooded areas shall be retained in order to reduce runoff and encourage infiltration of stormwaters.

- (2) Stormwater runoff control systems shall be maintained as necessary to ensure proper functioning.
- (k) Septic waste disposal.
 - (1) All subsurface sewage disposal systems shall be installed in conformance with the State of Maine Subsurface Wastewater Disposal Rules, and the following:
 - a. Clearing or removal of woody vegetation necessary to site a new system and any associated fill extensions, shall not extend closer than 75 feet, horizontal distance, from the normal high-water line of a water body or the upland edge of a wetland; and
 - b. A holding tank is not allowed for a first-time residential use in the shoreland zone.

Note: The Maine Subsurface Wastewater Disposal Rules require new systems, excluding fill extensions, to be constructed no less than 100 horizontal feet from the normal high-water line of a perennial water body. The minimum setback distances from water bodies for new subsurface sewage disposal systems shall not be reduced by variance.
 - c. Replacement systems shall meet the standards for replacement systems as contained in the rules.
- (l) Essential services.
 - (1) Where feasible, the installation of essential services shall be limited to existing public ways and existing service corridors.
 - (2) The installation of essential services, other than road-side distribution lines, is not allowed in a resource protection or stream protection district, except to provide services to a permitted use within said district, or except where the applicant demonstrates that no reasonable alternative exists. Where allowed, such structures and facilities shall be located so as to minimize any adverse impacts on surrounding uses and resources, including visual impacts.
 - (3) Damaged or destroyed public utility transmission and distribution lines, towers and related equipment may be replaced or reconstructed without a permit.
- (m) Mineral exploration and extraction. Mineral exploration to determine the nature or extent of mineral resources shall be accomplished by hand sampling, test boring, or other methods which create minimal disturbance of less than 100 square feet of ground surface. A permit from the code enforcement officer shall be required for mineral exploration which exceeds the above limitation. All excavations, including test pits and holes shall be immediately capped, filled or secured by other equally effective measures, so as to restore disturbed areas and to protect the public health and safety. Mineral extraction may be permitted under the following conditions:
 - (1) A reclamation plan shall be filed with, and approved by the planning board before a permit is granted. Such plan shall describe in detail procedures to be undertaken to fulfill the requirements of paragraph (m)(3) below.
 - (2) No part of any extraction operation, including drainage and runoff control features shall be permitted within 100 feet, horizontal distance, of the normal high-water line of a great pond classified GPA or a river flowing to a great pond classified GPA, and within 75 feet, horizontal distance, of the normal high-water line of any other water body, tributary stream, or the upland edge of a wetland. Extraction operations shall not be permitted within 50 feet, horizontal distance, of any property line, without written permission of the owner of such adjacent property.
 - (3) Within 12 months following the completion of extraction operations at any extraction site, which operations shall be deemed complete when less than 100 cubic yards of materials are removed in any consecutive 12-month period, ground levels and grades shall be established in accordance with the following:
 - a. All debris, stumps, and similar material shall be removed for disposal in an approved location, or shall be buried on-site. Only materials generated on-site may be buried or covered on-site.

Note: The State of Maine Solid Waste Laws, title 38, M.R.S.A. section 1310 and chapter 404 of the Department of Environmental Protection's regulations may contain other applicable provisions regarding disposal of such materials.

- b. The final grade slope shall be two and one-half to one slope or flatter.
 - c. Top soil or loam shall be retained to cover all disturbed land areas, which shall be reseeded and stabilized with vegetation native to the area. Additional topsoil or loam shall be obtained from offsite sources if necessary to complete the stabilization project.
- (4) In keeping with the purposes of this chapter, the planning board may impose such conditions as are necessary to minimize the adverse impacts associated with mineral extraction operations on surrounding uses and resources.
- (n) Agriculture.
 - (1) All spreading or disposal of manure shall be accomplished in conformance with the Manure Utilization Guidelines published by the former Maine Department of Agriculture on November 1, 2001, and the Nutrient Management Law (7 M.R.S.A. sections 4201-4209).
 - (2) Manure shall not be stored or stockpiled within 100 feet, horizontal distance, of a great pond classified GPA or a river flowing to a great pond, classified GPA, or within 75 feet horizontal distance, of other water bodies, tributary streams, or wetlands. All manure storage areas within the shoreland zone must be constructed or modified such that the facility produces no discharge of effluent or contaminated stormwater.
 - (3) Agricultural activities involving tillage of soil greater than 40,000 square feet in surface area, within the shoreland zone shall require a conservation plan to be filed with the planning board. Nonconformance with the provisions of said plan shall be considered to be a violation of this chapter.

Note: Assistance in preparing a soil and water conservation plan may be available through the local soil and water conservation district office.

 - (4) There shall be no new tilling of soil within 100 feet, horizontal distance, of the normal high-water line of a great pond classified GPA; within 75 feet, horizontal distance, from other water bodies; nor within 25 feet, horizontal distance, of tributary streams, and freshwater wetlands. Operations in existence on the effective date of this chapter and not in conformance with this provision may be maintained.
 - (5) Newly established livestock grazing areas shall not be permitted within 100 feet, horizontal distance, of the normal high-water line of a great pond classified GPA; within 75 feet, horizontal distance of other water bodies and coastal wetlands, nor; within 25 feet, horizontal distance, of tributary streams, and freshwater wetlands. Livestock grazing associated with ongoing farm activities, and which are not in conformance with the above setback provisions may continue, provided that such grazing is conducted in accordance with a soil and water conservation plan.
- (o) [Reserved.]
- (p) Clearing or removal of vegetation for activities other than timber harvesting.
 - (1) In a resource protection district abutting a great pond, there shall be no cutting of vegetation within the strip of land extending 75 feet, horizontal distance, inland from the normal high-water line, except to remove hazard trees as described in section 44-35(p)(6), below. ~~safety hazards.~~

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

 - (2) Except in areas as described in paragraph (1) above, and except to allow for the development of permitted uses, within a strip of land extending 100 feet, horizontal distance, inland from the normal high-water line of a great pond classified GPA or a river flowing to a great pond

classified GPA, or within a strip extending and 75 feet, horizontal distance, from any other water body, tributary stream, or the upland edge of a wetland, a buffer strip of vegetation shall be preserved as follows:

- a. There shall be no cleared opening greater than 250 feet in the forest canopy (or other existing woody vegetation if a forested canopy is not present) as measured from the outer limits of the tree or shrub crown. However, a single footpath not to exceed six feet in width as measured between tree trunks and/or shrub stems is allowed for accessing the shoreline provided that a cleared line of sight to the water through the buffer strip is not created. ~~Adjacent to a great pond classified GPA, or stream or river flowing to a great pond classified GPA, the width of the foot path shall be limited to six feet.~~
- b. Selective cutting of trees within the buffer strip is allowed provided that a well-distributed stand of trees and other natural vegetation is maintained. For the purposes of this section a "well-distributed stand of trees" adjacent to a great pond classified GPA or a river or stream flowing to a great pond classified GPA, shall be defined as maintaining a rating score of 24 or more in any 25-foot by 50-foot rectangular (1,250 square feet) area as determined by the following rating system.

Diameter of Tree at 4½ Feet Above Ground Level (inches)	Points
2 to < 4 inches	1
4 to < 8 inches	2
8 to < 12 inches	4
12 inches or greater	8

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

Note: As an example, adjacent to a great pond, if a 25-foot by 50-foot plot contains four trees between two and four inches in diameter, two trees between four and eight inches in diameter, three trees between eight and 12 inches in diameter, and two trees over 12 inches in diameter, the rating score is:

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

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

The following shall govern in applying this point system:

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

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

Notwithstanding the above provisions, no more than 40 percent of the total volume of trees four inches or more in diameter, measured at four and one-half feet above ground level may be removed in any ten-year period.

- c. In order to protect water quality and wildlife habitat, adjacent to great ponds classified GPA, and streams and rivers which flow to great ponds classified GPA, existing vegetation under three feet in height and other ground cover, including leaf litter and the forest duff layer, shall not be cut, covered, or removed, except to provide for a footpath or other permitted uses as described in paragraphs (2) and (2)a. above.
- d. Pruning of tree branches, on the bottom one-third of the tree is allowed.
- e. In order to maintain a buffer strip of vegetation, when the removal of storm damaged, diseased, unsafe, or dead trees results in the creation of cleared openings, these openings shall be replanted with native tree species unless existing new tree growth is present.

The provisions contained in paragraph (2) above, shall not apply to those portions of public recreational facilities adjacent to public swimming areas as long as cleared areas are limited to the minimum area necessary.

- (3) At distances greater than 100 feet, horizontal distance, from a great pond classified GPA or a river flowing to a great pond classified GPA, and 75 feet, horizontal distance, from the normal high-water line of any other water body, tributary stream, or the upland edge of a wetland, there shall be allowed on any lot, in any ten-year period, selective cutting of not more than 40 percent of the volume of trees four inches or more in diameter, measured four and one-half feet above ground level. Tree removal in conjunction with the development of permitted uses shall be included in the 40 percent calculation. For the purposes of these standards volume may be considered to be equivalent to basal area.

In no event shall cleared openings for any purpose, including but not limited to, principal and accessory structures, driveways, lawns and sewage disposal areas, exceed in the aggregate, 25 percent of the lot area or 10,000 square feet, whichever is greater, including land previously developed. This provision shall not apply to the general development district.

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

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

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

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

- a. Within the shoreline buffer, when the removal of storm-damaged trees results in a cleared opening in the tree canopy greater than two hundred and fifty square feet, replanting is not required, but the area shall be required to naturally revegetate, and the following requirements must be met:
 - i. The area from which a storm-damaged tree is removed does not result in new lawn areas, or other permanently cleared areas
 - ii. Stumps from the storm-damaged trees may not be removed
 - iii. Limbs damaged from a storm event may be pruned even if they extend beyond the bottom one third of the tree; and

- iv. If after one growing season, no natural regeneration or regrowth is present, replanting of native tree seedlings or saplings is required at a density of one seedling per every eighty square feet of lost canopy.
 - b. Outside of the shoreline buffer, if the removal of storm damaged trees exceeds forty percent of the volume of trees four inches or more in diameter, measured at four and one half feet above the ground level in any ten year period, or results, in the aggregate, in cleared openings exceeding 25% of the lot area within the shoreland zone or ten thousand square feet, whichever is greater, and no natural regeneration occurs within one growing season, then native tree seedlings shall be replanted on a one-for-one basis.
- (8) The following activities are exempt from the clearing and vegetation removal standards set forth in section 44-35(p)(1-5) provided that all other applicable requirements of this chapter are complied with, and the removal of vegetation is limited to that which is necessary:
- a. The removal of vegetation that occurs at least once every two years for the maintenance of legally existing areas that do not comply with the vegetation standards in this chapter, such as but not limited to cleared openings in the canopy or fields. Such areas shall not be enlarged, except as allowed by this section. If any of these areas, due to lack of removal of vegetation every two years, reverts back to primarily woody vegetation, the requirements of section 44-35(p) apply.
 - b. The removal of vegetation from the location of allowed structures or allowed uses, when the shoreline setback requirements of section 44-35(b) are not applicable.
 - c. The removal of vegetation from the location of public swimming areas associated with an allowed public recreational facility.
 - d. The removal of vegetation associated with allowed agricultural uses, provided best management practices are utilized, and provided all requirements of section 44-35(n) are complied with.
 - e. The removal of vegetation associated with brownfields or voluntary response action program (VRAP) projects provided that the removal of vegetation is necessary for remediation activities to clean up contamination on a site in the General Development District, or other equivalent zoning district approved by the Commissioner that is part of a state or federal brownfields program or a voluntary response action program pursuant to 38 M.R.S.A. section 343-E, and that is located along:
 - i. A coastal wetland, or
 - ii. A river that does not flow to a great pond classified as GPA pursuant to 38 M.R.S.A. section 465-A.
 - f. The removal of non-native invasive vegetation species, provided the following minimum requirements are met:
 - i. If removal of vegetation occurs via wheeled or tracked motorized equipment, the wheeled or tracked motorized equipment is operated and stored at least twenty-five feet, horizontal distance, from the shoreline, except that wheeled or tracked equipment may be operated or stored on existing structural surfaces, such as pavement or gravel

- ii. Removal of vegetation within twenty-five feet, horizontal distance, from the shoreline occurs via hand tools; and
 - iii. If applicable clearing and vegetation removal standards are exceeded due to the removal of non-native species vegetation, the area shall be vegetated with native species to achieve compliance.
- g. The removal of vegetation associated with emergency response activities conducted by the Department, the U.S. Environmental Protection Agency, the U.S. Coast Guard, and their agents.
- h. When revegetation is required in response to violations of the vegetation standards set forth in section 44-35(p)(1-5), to address the removal of non-native invasive species of vegetation, or as a mechanism to allow for development that may otherwise not be permissible due to the vegetation standards, including removal of vegetation in conjunction with a shoreline stabilization project, the revegetation must comply with the following requirements:
 - i. The property owner must submit a revegetation plan, prepared with and signed by a qualified professional, that describes activities and maintenance. The plan must include a scaled site plan, depicting where vegetation was, or is to be removed, where existing vegetation is to remain and where vegetation is to be planted, including a list of all vegetation to be planted.
 - ii. Revegetation must occur along the same segment of shoreline and in the same area where vegetation was removed and at a density comparable to the pre-existing vegetation, except where a shoreline stabilization activity does not allow revegetation to occur in the same area and at a density comparable to the pre-existing vegetation, in which case revegetation must occur along the same segment or shoreline and as close as possible to the area where vegetation was removed.
 - iii. If part of a permitted activity, revegetation shall occur before the expiration of the permit. If the activity or revegetation is not completed before the expiration of the permit, a new revegetation plan shall be submitted with any renewal or new permit application.
 - iv. Revegetation activities must meet the following requirements for trees and saplings:
 - i. All trees and saplings removed must be replaced with native noninvasive species
 - ii. Replacement vegetation must at a minimum consist of saplings
 - iii. If more than three trees or saplings are planted, then at least three different species shall be used.
 - iv. No one species shall make up 50% or more of the number of trees and saplings planted.
 - v. If revegetation is required for a shoreline stabilization project, and it is not possible to plant trees and saplings in the same area where trees or saplings were removed, then trees or saplings must be planted in a

location that effectively reestablishes the screening between the shoreline and structures.

- vi. A survival rate of at least eighty percent of planted trees or saplings is required for a minimum of five years.

v. Revegetation activities must meet the following requirements for woody vegetation and other vegetation under three feet in height:

- i. All woody vegetation and vegetation under three feet in height must be replaced with native noninvasive species of woody vegetation and vegetation under three feet in height as applicable.
- ii. Woody vegetation and vegetation under three feet in height shall be planted in quantities and variety sufficient to prevent erosion and provide for effective infiltration of stormwater.
- iii. If more than three woody vegetation plants are to be planted, then at least three different species shall be planted.
- iv. No one species shall make up 50% or more of the number of planted woody vegetation plants.
- v. Survival of planted woody vegetation and vegetation under three feet in height must be sufficient to remain in compliance with the standards contained within this chapter for a minimum of five years.

vi. Revegetation activities must meet the following requirements for ground vegetation and ground cover:

- i. All ground vegetation and ground cover removed must be replaced with native herbaceous vegetation, in quantities and variety sufficient to prevent erosion and provide for effective infiltration of stormwater
- ii. Where necessary due to a lack of sufficient ground cover, an area must be supplemented with a minimum of four inch depth of leaf mulch and/or bark mulch to prevent erosion and provide for effective infiltration of stormwater.
- iii. Survival and functionality of ground vegetation and ground cover must be sufficient to remain in compliance with the standards contained within this chapter for a minimum of five years.

(q) Erosion and sedimentation control.

- (1) All activities which involve filling, grading, excavation or other similar activities which result in unstabilized soil conditions and which require a permit shall also require a written soil erosion and sedimentation control plan. The plan shall be submitted to the permitting authority for approval and shall include, where applicable, provisions for:

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

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

(T.M. of 12-15-93, § 15; T.M. of 3-23-96; T.M. of 3-27-99(2); T.M. of 3-24-01, (art. 48); T.M. of 11-7-06; T.M. of 6-9-09(1); T.M. of 6-11-2013(1))

Secs. 44-36—44-40. - Reserved.

ARTICLE IV. - ADMINISTRATION

Sec. 44-41. - Administering bodies and agents.

- (a) Code enforcement officer. A code enforcement officer shall be appointed or reappointed annually by July 1st.
- (b) Board of appeals. A board of appeals shall be created in accordance with the provisions of title 30-A, M.R.S.A. section 2691.
- (c) Planning board. A planning board shall be created in accordance with the provisions of state law.

(T.M. of 12-15-93, § 16A)

Sec. 44-42. - Permits required.

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

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

(T.M. of 12-15-93, § 16B; T.M. of 6-9-09(1))

Sec. 44-43. - Permit application.

- (a) Every applicant for a permit shall submit a written application, including a scaled site plan, on a form provided by the municipality, to the appropriate official as indicated in section 44-34. A fee in the amount established by the fee schedule in section 1-25 shall be submitted with the application.
- (b) All applications shall be signed by an owner or individual who can show evidence of right, title or interest in the property or by an agent, representative, tenant, or contractor of the owner with authorization from the owner to apply for a permit hereunder, certifying that the information in the application is complete and correct.
- (c) All applications shall be dated, and the code enforcement officer or planning board, as appropriate, shall note upon each application the date and time of its receipt.
- (d) If the property is not served by a public sewer, a valid plumbing permit or a completed application for a plumbing permit, including the site evaluation approved by the plumbing inspector, shall be submitted whenever the nature of the proposed structure would require the installation of a subsurface sewage disposal system.

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

(T.M. of 12-15-93, § 16C; T.M. of 6-9-09(1); T.M. of 6-11-2013(3))

Sec. 44-44. - Procedure for administering permits.

- (a) Within 35 days of the date of receiving a written application, the planning board or code enforcement officer, as indicated in section 44-34, shall notify the applicant in writing either that the application is a complete application, or, if the application is incomplete, that specified additional material is needed to make the application complete.
- (b) The planning board or code enforcement officer, as appropriate, shall approve, approve with conditions, or deny all permit applications in writing within 35 days of receiving a completed application. However, if the planning board has a waiting list of applications, a decision on the application shall occur within 35 days after the first available date on the planning board's agenda following receipt of a completed application, or within 35 days of the public hearing, if one is held, if the proposed use or structure is found to be in conformance with the purposes and provisions of this chapter.
- (c) The applicant shall have the burden of proving that the proposed land use activity is in conformity with the purposes and provisions of this chapter.
- (d) After the submission of a complete application to the planning board, the board shall approve an application or approve it with conditions if it makes a positive finding based on the information presented that the proposed use:
 - (1) Will maintain safe and healthful conditions;
 - (2) Will not result in water pollution, erosion, or sedimentation to surface waters;
 - (3) Will adequately provide for the disposal of all wastewater;
 - (4) Will not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat;
 - (5) Will conserve shore cover and visual, as well as actual, points of access to inland and coastal waters;
 - (6) Will protect archaeological and historic resources as designated in the comprehensive plan;
 - (7) Will avoid problems associated with floodplain development and use; and
 - (8) Is in conformance with the provisions of section 44-35, land use standards.

- (e) If a permit is either denied or approved with conditions, the reasons as well as conditions shall be stated in writing. No approval shall be granted for an application involving a structure if the structure would be located in an unapproved subdivision or would violate any other local ordinance or regulation or statute administered by the municipality.
- (f) Special exceptions. In addition to the criteria specified in this section, excepting structure setback requirements, the planning board may approve a permit for a single family residential structure in a resource protection district provided that the applicant demonstrates that all of the following conditions are met:
 - (1) There is no location on the property, other than a location within the resource protection district, where the structure can be built.
 - (2) The lot on which the structure is proposed is undeveloped and was established and recorded in the registry of deeds of the county in which the lot is located before the adoption of the resource protection district.
 - (3) All proposed buildings, sewage disposal systems and other improvements are:
 - a. Located on natural ground slopes of less than 20 percent; and
 - b. Located outside the floodway of the 100-year floodplain along rivers and artificially formed great ponds along rivers and outside the velocity zone in areas subject to tides, based on detailed flood insurance studies and as delineated on the Federal Emergency Management Agency's flood boundary and floodway maps and flood insurance rate maps; all buildings, including basements, are elevated at least one foot above the 100-year floodplain elevation; and the development is otherwise in compliance with any applicable municipal flood-plain ordinance.

If the floodway is not shown on the Federal Emergency Management Agency maps, it is deemed to be one-half the width of the 100-year floodplain.
 - (4) The total ~~footprint~~ ~~ground floor area~~, including cantilevered or similar overhanging extensions, of all principal and accessory structures is limited to a maximum of 1,500 square feet. This limitation shall not be altered by variance.
 - (5) All structures, except functionally water-dependent structures, are set back from the normal high-water line of a water body, tributary stream or upland edge of a wetland to the greatest practical extent, but not less than 75 feet, horizontal distance. In determining the greatest practical extent, the planning board shall consider the depth of the lot, the slope of the land, the potential for soil erosion, the type and amount of vegetation to be removed, the proposed building site's elevation in regard to the floodplain, and its proximity to moderate-value and high-value wetlands.

(T.M. of 12-15-93, § 16D; T.M. of 6-9-09(1))

Sec. 44-45. - Expiration of permit.

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

(T.M. of 12-15-93, § 16E; T.M. of 6-8-04; T.M. of 6-9-09(1))

Sec. 44-46. - Installation of public utility service.

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

(T.M. of 12-15-93, § 16F; T.M. of 6-9-09(1))

Sec. 44-47. - Appeals.

(a) Powers and duties of the board of appeals. The board of appeals shall have the following powers:

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

(b) Variance appeals. Variances may be granted only under the following conditions:

- (1) Variances may be granted only from dimensional requirements including, but not limited to, lot width, structure height, percent of lot coverage, and setback requirements.
- (2) Variances shall not be granted for establishment of any uses otherwise prohibited by this ordinance.
- (3) The board shall not grant a variance unless it finds that:
 - a. The proposed structure or use would meet the provisions of section 44-35, except for the specific provision which has created the nonconformity and from which relief is sought; and
 - b. The strict application of the terms of this ordinance would result in undue hardship. The term "undue hardship" shall mean:
 - (i) That the land in question cannot yield a reasonable return unless a variance is granted;
 - (ii) That the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;
 - (iii) That the granting of a variance will not alter the essential character of the locality; and
 - (iv) That the hardship is not the result of action taken by the applicant or a prior owner.
- (4) Notwithstanding the section above, the board of appeals may grant a variance to an owner of a residential dwelling for the purpose of making that dwelling accessible to a person with a disability who resides in or regularly uses the dwelling. The board shall restrict any variance granted under this subsection solely to the installation of equipment or the construction of structures necessary for access to or egress from the dwelling by the person with the disability. The board may impose conditions on the variance, including limiting the variance to the duration of the disability or to the time that the person with the disability lives in the dwelling. The term "structures necessary for access to or egress from the property" shall include railing, wall or roof systems necessary for the safety or effectiveness of the structure.

- (5) The board of appeals shall limit any variances granted as strictly as possible in order to ensure conformance with the purposes and provisions of this chapter to the greatest extent possible, and in doing so may impose such conditions to a variance as it deems necessary. The party receiving the variance shall comply with any conditions imposed.
- (6) A copy of each variance request, including the application and all supporting information supplied by the applicant, shall be forwarded by the municipal officials to the Commissioner of the Department of Environmental Protection at least 20 days prior to action by the board of appeals. Any comments received from the Commissioner prior to the action by the board of appeals shall be made part of the record and shall be taken into consideration by the board of appeals.
- (c) Administrative appeals. When the board of appeals reviews a decision of the code enforcement officer the board of appeals shall hold a "de novo" hearing. At this time the board may receive and consider new evidence and testimony, be it oral or written. When acting in a "de novo" capacity the board of appeals shall hear and decide the matter afresh, undertaking its own independent analysis of evidence and the law, and reaching its own decision.

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

(d) Appeal procedure.

(1) Making an appeal.

- (i) An administrative or variance appeal may be taken to the board of appeals by an aggrieved party from any decision of the code enforcement officer or the planning board, except for enforcement-related matters as described in section 44-48. Such an appeal shall be taken within 30 days of the date of the official, written decision appealed from, and not otherwise, except that the board, upon a showing of good cause, may waive the 30-day requirement.
- (ii) Applications for appeals shall be made by filing with the board of appeals a written notice of appeal which includes:
 - a. A concise written statement indicating what relief is requested and why the appeal or variance should be granted.
 - b. A sketch drawn to scale showing lot lines, location of existing buildings and structures and other physical features of the lot pertinent to the relief sought.
- (iii) Upon receiving an application for an administrative appeal or a variance, the code enforcement officer or planning board, as appropriate, shall transmit to the board of appeals all of the papers constituting the record of the decision appealed from.
- (iv) The board of appeals shall hold a public hearing on an administrative appeal or a request for a variance within 35 days of its receipt of a complete written application, unless this time period is extended by the parties.

(2) Decision by board of appeals:

- a. A majority of the full voting membership of the board shall constitute a quorum for the purpose of deciding an appeal.
- b. The person filing the appeal shall have the burden of proof.

- c. The board shall decide all administrative appeals and variance appeals within 35 days after the close of the hearing, and shall issue a written decision on all appeals.
- d. The board of appeals shall state the reasons and basis for its decision, including a statement of the facts found and conclusions reached by the board. The board shall cause written notice of its decision to be mailed or hand-delivered to the applicant and to the Department of Environmental Protection within seven days of the board's decision. Copies of written decisions of the board of appeals shall be given to the planning board, code enforcement officer, and the municipal officers.
- (e) Appeal to superior court. Except as provided by 30-A M.R.S.A. section 2691(3)(F), any aggrieved party who participated as a party during the proceedings before the board of appeals may take an appeal to superior court in accordance with state laws within 45 days from the date of any decision of the board of appeals.
- (f) Reconsideration. In accordance with 30-A M.R.S.A. section 2691(3)(F), the board of appeals may reconsider any decision within 45 days of its prior decision. A request to the board to reconsider a decision must be filed within ten days of the decision that is being reconsidered. A vote to reconsider and the action taken on that reconsideration must occur and be completed within 45 days of the date of the vote on the original decision. Reconsideration of a decision shall require a positive vote of the majority of the board members originally voting on the decision, and proper notification to the landowner, petitioner, planning board, code enforcement officer, and other parties of interest, including abutters and those who testified at the original hearing(s). The board may conduct additional hearings and receive additional evidence and testimony.

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

(T.M. of 12-15-93, § 16G; T.M. of 11-8-05; T.M. of 6-9-09(1))

Sec. 44-48. - Enforcement.

- (a) Nuisances. Any violation of this chapter shall be deemed to be a nuisance.
- (b) Code enforcement officer:
 - (1) It shall be the duty of the code enforcement officer to enforce the provisions of this chapter. If the code enforcement officer shall find that any provision of this chapter is being violated, he or she shall notify in writing the person responsible for such violation, indicating the nature of the violation and ordering the action necessary to correct it, including discontinuance of illegal use of land, buildings or structures, or work being done, removal of illegal buildings or structures, and abatement of nuisance conditions. A copy of such notices shall be submitted to the municipal officers and be maintained as a permanent record.
 - (2) The code enforcement officer shall conduct onsite inspections to ensure compliance with all applicable laws and conditions attached to permit approvals. The code enforcement officer shall also investigate all complaints of alleged violations of this chapter.
 - (3) The code enforcement officer shall keep a complete record of all essential transactions of the office, including applications submitted, permits granted or denied, variances granted or denied, revocation actions, revocation of permits, appeals, court actions, violations investigated, violations found, and fees collected. ~~On a biennial basis, a summary of this record shall be submitted to the director of the bureau of land quality within the department of environmental protection.~~
- (c) Legal actions. When the above action does not result in the correction or abatement of the violation or nuisance condition, the municipal officers, upon notice from the code enforcement officer, are hereby directed to institute any and all actions and proceedings, either legal or equitable, including seeking injunctions of violations and the imposition of fines, that may be appropriate or necessary to

enforce the provisions of this chapter in the name of the municipality. The municipal officers, or their authorized agent, are hereby authorized to enter into administrative consent agreements for the purpose of eliminating violations of this chapter and recovering fines without court action. Such agreements shall not allow an illegal structure or use to continue unless there is clear and convincing evidence that the illegal structure or use was constructed or conducted as a direct result of erroneous advice given by an authorized municipal official and there is no evidence that the owner acted in bad faith, or unless the removal of the structure or use will result in a threat or hazard to public health and safety or will result in substantial environmental damage.

- (d) Fines. Any person, including but not limited to a landowner, a landowner's agent or a contractor, who orders or conducts any activity in violation of this chapter shall be penalized in accordance with title 30-A, M.R.S.A. subsection 4452.

Note: Current penalties include fines of not less than \$100.00 nor more than \$2,500.00 per violation for each day that the violation continues. However, in a resource protection district the maximum penalty is increased to \$5,000.00.

(T.M. of 12-15-93, § 16H; T.M. of 6-9-09(1))

Cross reference— Code enforcement officer, 2-51 et seq.

Sec. 1-2. - Definitions and rules of construction.

In the construction of this Code, and of all ordinances, the following rules shall be observed:

100-year flood. See Base flood.

Abutters means owners of adjacent property, including property separated by a street, road, or stream, from the property under review.

Acceptable waste means waste materials that will be accepted at the ERDF. Includes: domestic trash, special handling items and recyclable and compostable materials.

Access way means an easement or a strip of land giving access to one or more back lots.

Accessory dwelling unit means a separated living area which is part of an existing or new single family owner occupied residence, and which is clearly secondary to the existing single family use of the home and that meets the requirements of section 45-459. Accessory structure or use means a use or detached structure that is incidental and subordinate to the principal use or structure. Accessory uses, when aggregated shall not subordinate the principal use of the lot. A deck or similar extension of the principal structure or a garage attached to the principal structure by a roof or a common wall is considered part of the principal structure.

Definition of Accessory use and accessory structure have been added through a previous ordinance revision, pending codification.

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

Affordable housing means decent, safe and sanitary dwelling units that can be afforded by households with annual incomes no greater than 80 percent of the median household income in non-metropolitan York County, as established by the U.S. Department of Housing and Urban Development (median household income shall be published in the Annual Report of the Municipal Officers of the Town of Eliot, Maine). A renter-occupied unit is affordable to such households if the unit's monthly housing costs, including rent and basic utility costs (the costs of heating and of supplying electricity to the unit plus the cost, if any, of supplying public water and public wastewater disposal service to the unit), do not exceed 30 percent of gross monthly income. An owner-occupied unit is affordable to such households if its price results in monthly housing costs that do not exceed 28 percent of gross monthly income for principal, interest, insurance and real estate taxes. Estimates of mortgage payments are to be based on down payments and rates of interest generally available in the area to low and moderate income households.

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

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

Allocation (or sewer capacity allocation) means the commitment of a specified amount of wastewater treatment capacity (measured in gallons per day or GPD) as approved by the Eliot Sewer Committee and/or Board of Selectmen for a specified development or land use.

Alteration means any change, addition, or modification in construction, or any change in the structural members of a building such as bearing walls, columns, beams, or girders.

Alternate tower structure means manmade or natural objects, clock towers, bell steeples, light poles, water towers, and similar alternative-design antenna mounting structures.

Antenna means any exterior apparatus designed for telephonic, radio, television, personal communications service (PCS), pager network, or any other communications through the sending and/or receiving of electromagnetic waves of any bandwidth.

Applicant (chapter 35) means a person with requisite right, title or interest or an agent for such person who has filed an application for development that requires a post-construction stormwater management plan under this chapter.

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

Area of shallow flooding means a designated AO and AH zone on 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 chapter 25.

Arterial street means a major thoroughfare which serves as major trafficways for travel between and through town.

ASCE means the American Society of Civil Engineers.

Assisted living facility means a housing facility, licensed by the state, which provides care in residential settings for elderly persons and persons with disabilities. This includes state licensed housing facilities known as congregate housing and residential care facilities.

Assisted living facility dwelling unit means a dwelling unit licensed by the state for assisted living facilities.

Auto graveyard means a yard, field, or other open area used as a place of storage for three or more unregistered or unserviceable, discarded, worn-out, or junked motor vehicles, including all vehicles which cannot pass the state inspection test in their existing condition or are otherwise inoperable.

Auto recycling business means the business office of a person who performs auto recycling.

Auto recycling operation means the dismantling of motor vehicles for the purpose of reselling the component parts of the vehicles or rebuilding or repairing salvage vehicles for the purpose of resale or for selling the basic materials in the salvage vehicles.

Auto recycling operation, limited means the incidental dismantling of motor vehicles for the purpose of reselling the component parts of the vehicles or rebuilding or repairing salvage vehicles for the purpose of resale or for selling the basic materials in the salvage vehicles subject to the following limitations:

- (1) Meets all state requirements for an auto recycling operation.
- (2) Conducted incidental to an approved (state and/or local) auto repair garage or auto service station.
- (3) No more than ten unregistered, unserviceable, discarded or worn-out automobiles (or parts which take up the same area as ten assembled automobiles) per acre allowed on lot.
- (4) All recycling operations must take place within the boundaries of the recycling enclosure or inside buildings on the lot.
- (5) Recycling enclosure must be a solid visual screen (fence, wall, etc.) at least six feet high which completely surrounds all outside recycling operations.
- (6) No vehicles or parts of vehicles are to be stored outside the recycling enclosure except those within buildings on the lot.
- (7) Size of the recycling enclosure is to be no larger than 25 percent of the lot size or 10,000 square feet, whichever is less.

- (8) The perimeter of the recycling enclosure should be located as far from the lot lines as practical and shall comply with setback requirements specified for front yard, side yard and rear yard dimensions from principle structures in section 45-405, dimensional standards (see information below for setbacks).
- (9) The recycling enclosure must be fitted with a visual screen gate, which is kept closed at all times except when entering or exiting with vehicles.
- (10) No portable or fixed crushing machinery is allowed on lot.
- (11) Application must identify how all fluids, batteries, tires and lubricants are going to be removed and/or stored in compliance with DEP requirements where applicable.
- (12) Hours of operation shall be limited to 8:00 a.m. through 5:00 p.m., five days a week, Monday through Friday.
- (13) Noise shall not exceed 50 dbA during hours of operation. Noise shall be measured at the property line, four feet above ground. Exemptions of section 45-407 of the Eliot Zoning Ordinance shall apply.
- (14) Minimum lot size shall be two acres in those districts where allowed.

Auto repair garage means a place where, with or without the attendant sale of engine fuels, the following services may be carried out: general repair, engine rebuilding, rebuilding or reconditioning of motor vehicles, collision service, such as body, frame, or fender straightening and repair, and overall painting and undercoating of automobiles.

Auto service station means a place where gasoline, or any other automobile engine fuel (stored only in underground tanks), kerosene, or motor oil and lubricants or grease (for operation of motor vehicles) are retailed directly to the public on the premises, including the sale of minor accessories and the servicing and minor repair of automobiles, not including storage of unlicensed vehicles and not including body, frame, or fender straightening and repair.

Average daily flow (ADF) means the total annual flow divided by the number of days in the calendar year, expressed as gallons per day (GPD).

Back lot means a lot which does not have the minimum street frontage required in the zoning district but which is accessed by an access way which either passes over or has been divided out of one or more other lots separating all or part of the back lot from the nearest qualifying street.

Back lot, first generation means a back lot separated from the nearest qualifying street by only one lot.

Back lot, later generation means a back lot separated from the nearest qualifying street by three or more lots.

Back lot, new means a back lot created after June 14, 2005.

Back lot, second generation means a back lot separated from the nearest qualifying street by two lots.

Basal area means the area of cross-section of a tree stem at four and one half feet above ground level and inclusive of bark.

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

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

Best management practices or "BMPs" (chapter 35) means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the state. BMPs also include treatment requirements, operating procedures, and practices to

Canopy means the more or less continuous cover formed by tree crowns in a wooded area.

Cementitious means having the property of or acting like cement.

Certificate of compliance means a document signed by the code enforcement officer stating that a structure is in compliance with all of the provisions of this chapter.

Certified perimeter survey means the process of determining boundaries and areas of tracts of land. The perimeter survey shall be certified by a person licensed in the State of Maine as a professional land surveyor.

Clean Water Act (chapters 31 and 35) means the federal Water Pollution Control Act (33 U.S.C. § 1251 et seq., also known as the "Clean Water Act"), and any subsequent amendments thereto.

Coastal wetland means all tidal and subtidal lands; all lands with vegetation present that is tolerant of salt water and occurs primarily in a salt water or estuarine habitat; and any swamp, marsh, bog, beach, flat or other contiguous low land which is subject to tidal action during the highest annual tide ~~highest tide level for the year~~ in which an activity is proposed as identified in tide tables published by the National Ocean Service. Coastal wetlands may include portions of coastal sand dunes. NOTE: All areas below the highest annual tide ~~maximum spring tide level~~ are coastal wetlands. These areas may consist of rocky ledges, sand and cobble beaches, mud flats, etc., in addition to salt marshes and salt meadows. Coastal wetlands, by definition, include all areas affected by tidal action, not just those areas where salt marshes and salt meadows exist. Cobble and sand beaches, mudflats, and rocky ledges, below the highest annual tide ~~maximum spring tide~~ are all considered to be coastal wetlands.

COD (chemical oxygen demand) means a measure of the oxygen required to oxidize all compounds, both organic and inorganic, in water.

Code. The word Code shall mean the Municipal Code of Ordinances, Town of Eliot, Maine.

Code enforcement officer means a person certified under 30-A MRSA, Section 4451 (including exceptions in subsection 4451, paragraph 1) and employed by a municipality to enforce all applicable comprehensive planning and land use laws and ordinances.

Collector street means a street providing access to 15 or more units of residential development, or to more than 2,500 square feet of retail commercial or industrial floorspace. It also includes streets which serve as connectors or feeders to arterial or other collector streets, or which collect traffic from a minor street or streets.

Combined sewer means a sewer receiving both surface water runoff and wastewater.

Commercial adult enterprise means any business a substantial or significant portion of which consists of selling, renting, leasing, exhibiting, displaying, or otherwise dealing in materials, of any kind which depict or describe any of the following:

- (1) Human genitals in a state of sexual stimulation or arousal;
- (2) Acts of human masturbation, sexual intercourse, or sodomy;
- (3) Fondling or other erotic touching of human genitals, pubic region, buttock or female breast;
- (4) Less than completely and opaquely covered:
 - a. Human genitals;
 - b. Pubic region;
 - c. Buttock;
 - d. Female breast below a point immediately above the top of the areola; or
- (5) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

Any business which devotes more than 20 percent of its floor space to exhibiting or displaying materials described in subparagraphs (a) through (e) above or derives more than 20 percent of its revenue from dealing in such materials shall be presumed to be a commercial adult enterprise unless the

control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

Biomedical waste means waste that may contain human pathogens of sufficient virulence and in sufficient concentrations that exposure to it by a susceptible human host could result in disease or that may contain cytotoxic chemicals used in medical treatment.

Board of selectmen. The term board of selectmen shall mean the Board of Selectmen of the Town of Eliot, Maine.

Boarding home or boardinghouse means a building, having a common entrance, in which rooms are offered for accommodation, with or without meals, for compensation. The number of rooms allowed is to be limited by building size, adequacy of water, sewer, parking space and fire safety.

Note: 22 M.R.S.A. § 2501 states, in part, "Private homes shall not be deemed or considered lodging places and subject to a license where not more than three rooms are let.... Cottages [for summer occupancy] shall not be deemed or considered lodging places and subject to a license where not more than three cottages are let."

Boarding house. See Boarding home or boardinghouse.

Boarding kennel or kennel means facilities for five or more dogs kept under care of one owner or one or more dogs kept for breeding or compensation.

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

Boats registered in landowners name means the burden of proof of boat ownership rests with the landowner (or person to whom water-dependent home occupation right has been transferred) and shall consist of either state registration or federal documentation in the landowner's (or person to whom water-dependent home occupation right has been transferred) name.

BOD (biochemical oxygen demand) means the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five days at 20°C, expressed in milligrams per liter or as prescribed in the current edition of Standard Methods for the Examination of Water and Wastewater published by the American Public Health Association.

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.

Building drain means that part of the lowest horizontal piping of a drainage system which receives the discharge from soil, waste, and other drainage pipes inside the walls of the building and conveys it to the building sewer, beginning five feet (1.5 meters) outside the inner face of the building wall.

Building inspector. See Code enforcement officer.

Building sewer means the extension from the building drain to the public sewer or other place of disposal.

Bureau means, within chapter 44, Shoreland Zoning, the State of Maine Department of **Agriculture, Conservation, and Forestry**. ~~Conservation's~~ Bureau of Forestry.

Camper means a single tent, tent trailer, camper body (for mounting upon an automobile or light truck), camper trailer, camper mobile home, or similar recreational vehicle, provided the same is used for temporary camping and not for permanent living or sleeping quarters.

Campground. See Campground or camper park.

Campground or camper park means any area or tract of land to accommodate two or more parties in temporary living quarters, including, but not limited to tents, recreational vehicles or other shelters.

Camping, temporary means any camping use not exceeding six months out of a one-year period.

applicant presents clear and convincing evidence that dealing in such materials does not constitute a substantial or significant portion of the overall business enterprise being conducted on the premises.

Commercial establishment means any structure or land or combination used for the sale, purchase, or lease of any goods such as gas stations, restaurants, or grocery stores and services, but not home occupations.

Commercial hauler means any person, party, company, or corporation who as a business handles and hauls solid waste for compensation.

Commercial/industrial street means a street servicing uses in the commercial/industrial zone. (Does not include Sunrise Street.)

Commercial pier means a permanent structure extending over the water the principal use of which is the production of income from a water dependent business use such as supporting the buying or selling of goods and/or services to vessels, providing continuous access to commercial vessels used to generate income, the berthing and/or repair of transient vessels, access to rental slips and moorings, fishing, or harvesting of shellfish, conducting tours or sightseeing trips, or the operation of a limited or full service marina. A pier shall be treated as a commercial pier for all purposes and shall be subject to the requirements and limitations applicable to commercial piers under this section if it is designated as a commercial pier on the application for approval first filed with the town, is more than six feet in width, or has pilings that extend below mean low water. A pier, which meets the criteria of this definition, is a commercial pier even if it is not associated with or does not support a land based commercial use.

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

Compostable materials means the product of decomposition. A humus-like material, usable as a soil amendment or fertilizer. Examples include yard waste (leaves, grass clippings and herbaceous plants) and kitchen food waste.

Comprehensive plan or policy statement means any part or element of the overall plan or policy for development of the town as defined in 30-A M.R.S.A. § 4326.

Computation of time. In computing any period of time prescribed or allowed by this Code, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday or legal holiday, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday or legal holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation.

State Law reference— Similar provisions, 1 M.R.S.A. § 71(12).

Conforming use means a use of buildings, structures, or land which complies with all applicable provisions of this chapter.

Construction or construction activities means any and all activity incidental to the erection, demolition, assembling, altering, installing or equipping of buildings, structures, roads or appurtenances, including land clearing, grading, excavating and filling.

Construction drawings means drawings showing the location, profile, grades, size and type of drains, sewers, water mains, underground fire alarm ducts, underground power ducts and underground telephone ducts, pavements, cross sections of streets, miscellaneous structures, etc.

Contour lines and elevations means contour lines, spaced at intervals of not more than five feet or at such intervals as the planning board may require, and elevations shall be based upon U.S. Geological Survey topographical map datum of existing grades.

Contractor means any entity that agrees to furnish goods, materials, equipment, personnel, and/or services that meet or exceed stated requirements or specifications, at a mutually agreed upon price and

within a specified timeframe to another independent entity, principal, or project owner. The term shall include the contractor's agents, employees, and/or subcontractors. Contractor may also mean "owner" if the work is to be performed by the owner.

Convey means to sell, lease, rent, give, or allow occupancy of a dwelling unit. Dwelling unit means a room or group of rooms designed and equipped exclusively for use as living quarters for only one family, including provisions for living, sleeping, cooking and eating. The term shall include mobile homes and apartments, but shall not include trailers or recreational vehicles.

County means the County of York, Maine.

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

Day nurseries means a house or other place in which a person maintains or otherwise carries out, for consideration, a regular program which provides care for three or more children. This term includes day care centers.

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

Dead-end street means a street or sections of a street that has only one connection to a nondead-end street and is closed at the other end.

Delegation of authority. Whenever a provision appears requiring the head of a department or some other town officer or employee to do some act or perform some duty, it shall be construed to authorize the head of the department or other officer or employee to designate, delegate and authorize subordinates to perform the required act or perform the duty unless the terms of the provision or section specify otherwise.

Development means any manmade change to improved or unimproved real estate, including but not limited to buildings or other structures; the construction of additions or substantial improvements to buildings or other structures; mining, dredging, filling, grading, paving, excavation or drilling operations; or of equipment or materials. Within chapter 44, Shoreland Zoning, "development" means a change in land use involving alteration of the land, water or vegetation, or the addition or alteration of structures or other construction not naturally occurring.

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

Dinghy means a vessel associated with a specific larger vessel and principally used for transportation from the larger vessel to a landing or other vessel. The intent is that unregistered, nonpowered boats such as canoes and kayaks that are not associated with the operation of the marina shall not be counted when determining the allowable number of permitted boats.

Direct discharge or point source (chapter 31) means any discernible, confined and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation or vessel or other floating craft, from which pollutants are or may be discharged.

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

Discharge (chapters 31 and 35) means any spilling, leaking, pumping, pouring, emptying, dumping, disposing or other addition of pollutants to "waters of the state."

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

Disturbed area means clearing, grading and excavation. Mere cutting of trees, without grubbing, stump removal, disturbance or exposure of soil is not considered "disturbed area." "Disturbed area" does not include routine maintenance but does include redevelopment.

Domestic wastewater means wastewater essentially free of industrial wastes or toxic materials and which originates from domestic conveniences such as toilets, urinals, sinks, showers, drinking fountains, home laundries, kitchens, school cafeterias, and floor drains, and similar sources as approved under the Maine State Plumbing Codes.

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

Dwelling means a fixed structure, containing one or more dwelling units.

Dwelling, multifamily. See Multifamily dwelling.

Dwelling unit means a room or group of rooms designed and equipped exclusively for use as living quarters for only one family, including provisions for living, sleeping, cooking and eating. The term shall include mobile homes and apartments, but shall not include trailers, recreational vehicles, or accessory dwelling units. An accessory dwelling unit is not considered an apartment for purposes of this [Code]. The provisions of this definition relating to accessory dwelling units are retroactive to January 1, 2003.

Earth material removal means operations whereby topsoil, sand, gravel, clay, peat, rock, or other materials are removed for sale or for use on another lot.

Easement means the authorization of a property owner for the use by another, and for a specified purpose, of any designated part of his property.

Elderly housing means housing units constructed or operated as part of a life care facility or housing units constructed, operated or financed wholly or partially with state or federal funds. Elderly persons or handicapped persons shall occupy the housing units. The state or federal funding program must have received the approval of the United States Department of Housing and Urban Development as one designed and operated to assist elderly persons.

Elderly housing dwelling unit means a dwelling unit specifically designed for elderly persons.

Elderly person means a person 55 years of age or older or a couple that constitutes a household and at least one of whom is 55 years or older at the time of entry into the facility.

Electrical inspector. See Code enforcement officer.

Elevated building means a nonbasement building:

- (1) Built, in the case of a building in zones AE and A to have the top of the elevated floor elevated above the ground level by means of pilings, columns, post, piers, or stilts, and
- (2) Adequately anchored so as not to impair the structural integrity of the building during a flood of up to two feet above the magnitude of the base flood.

In the case of zones AE and A, "elevated building" also includes a building elevated by means of fill or solid foundation perimeter walls with hydraulic openings sufficient to facilitate the unimpeded movement of floodwaters, as required in section 25-17.

Elevation certificate means an official form (FEMA Form 81-31, 02/06, as amended) that is used to verify compliance with the floodplain management regulations of the National Flood Insurance Program; and is required for purchasing flood insurance.

Eliot Recycling and Disposal Facility (ERDF) means the facility maintained by the town for the purpose of recycling, composting and disposing of solid waste.

Emergency operations means work made necessary to restore property to a safe condition or work required to protect persons or property from an imminent exposure to danger or potential danger. Within chapter 44, Shoreland Zoning, "emergency operations" means operations conducted for the public health, safety or general welfare, such as protection of resources from immediate destruction or loss, law enforcement, and operations to rescue human beings, property and livestock from the threat of destruction or injury.

Enforcement authority (chapter 31) means the person(s) or department authorized under section 31-4 to administer and enforce the chapter.

Engineer (or P.E.) means a registered professional engineer licensed by the State of Maine.

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

Excavation means any breaking of the ground except agriculture or common household gardening and ground care.

Excavation contractor means an individual or firm engaged in a business that causes the disturbance of soil, including grading, filling and removal, or in a business in which the disturbance of soil results from an activity that the individual or firm is retained to perform.

Excessive (chapter 18) means amounts or concentrations of any constituent of a wastewater which, in the judgment of the superintendent or Town of Kittery Wastewater Treatment Department, will cause damage to any portion of the wastewater collection system; will be harmful to a wastewater treatment process; cannot be removed in the wastewater treatment process to the degree required to meet the Town of Kittery or Town of Eliot discharge permit; will otherwise endanger life, limb, or public property.

Exempt person or discharge (chapter 31) means any person who is subject to a multi-sector general permit for industrial activities, a general permit for construction activity, a general permit for the discharge of stormwater from the Maine Department of Transportation and the Maine Turnpike Authority Municipal Separate Storm Sewer Systems, or a general permit for the discharge of stormwater from state or federally owned authority municipal separate storm sewer system facilities; and any non-stormwater discharge permitted under a NPDES permit, waiver, or waste discharge license or order issued to the discharger and administered under the authority of the U.S. Environmental Protection Agency ("EPA") or the Maine Department of Environmental Protection ("DEP").

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

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

Family means one or more persons occupying premises and living as a single housekeeping unit, as distinguished from a group occupying a boardinghouse or motel.

Filling means depositing or dumping any matter on or into the ground or water.

Flood or flooding means:

- (1) A general and temporary condition of partial or complete inundation of normally dry land areas from:
 - a. The overflow of inland or tidal waters.
 - b. The unusual and rapid accumulation or runoff of surface waters from any source.
- (2) The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves 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 subsection (1)a. 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 administrator of the Federal Insurance Administration 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 means 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 floodplain, grading, or erosion control ordinances) 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 nonstructural 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 means the lines marking the limits of floodways on federal, state and local floodplain maps.

Floor area (within chapter 44, Shoreland Zoning) means the sum of the horizontal areas of the floor(s) of a structure enclosed by exterior walls, ~~plus the horizontal area of any unenclosed portions of a structure such as porches and decks.~~

Floor area, gross means the sum, in square feet, of the floor areas of all roofed portions of a building, as measured from the interior faces of the exterior walls.

Definition of footprint had been added through a previous ordinance revision, pending codification.

Force main means a line without access from individual properties providing access from pumping station to trunk and sewer main.

Forest management activities means timber cruising and other forest resource evaluation activities, pesticide or fertilizer application, management planning activities, timber stand improvement, pruning,

regeneration of forest stands, and other similar or associated activities, exclusive of timber harvesting and the construction, creation or maintenance of roads.

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

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

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

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.

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

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

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

Front lot means a lot with frontage on a qualifying street.

Frontage, street means the horizontal distance between the intersections of the side lot lines with the front lot line that abuts a town way or a private way meeting the minimum standards of a town street.

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

Gambling means that process in which one stakes or risks something of value upon the outcome of a contest of chance or a future contingent event not under his or her control or influence, upon an agreement or understanding that he, she or someone else will receive something of value in the event of a certain outcome. Gambling does not include bona fide business transactions valid under the law of contracts, including but not limited to contracts for the purchase or sale at a future date of securities or commodities, and agreements to compensate for loss caused by the happening of chance, including but not limited to contracts of indemnity or guaranty and life, health or accident insurance.

Gambling casino means a building, structure or other facility used to allow, conduct, hold, maintain, or operate a game of chance, game of skill, electronic video machine, roulette, high stakes beano or bingo, slot machines or any other type of gambling activity. A gambling casino shall not be construed to include a building structure or other facility when used incidentally by any bona fide nonprofit charitable,

educational, political, civic, recreational, paternal, patriotic or religious organizations, or a volunteer fire department or other public safety nonprofit organization when used for the conduct, of any beano, bingo, raffles, games of chance or other activities specifically permitted by Maine State Statute provided that such nonprofit organizations do not exist primarily to operate such activities and that all requirements of State Statute including all requirements for licensing by the Chief of the Maine State Police are strictly met.

Gambling device means any device, machine, paraphernalia or equipment that is used or usable in the playing phases of any gambling activity, whether that activity consists of gambling between persons or gambling by a person involving the playing of a machine. However, lottery tickets and other items used in the playing phases of lottery schemes are not gambling devices within this definition.

Game of chance means any game, contest, scheme or device in which: (A) a person stakes or risks something of value for the opportunity to win something of value; (B) the rules of operation or play require an event the result of which is determined by chance, outside the control of the contestant or participant; and (C) chance enters as an element that influences the outcome in manner that cannot be eliminated through the application of skill.

As used in this definition, "an event the result of which is determined by chance" includes but is not limited to a shuffle of a deck or decks of cards, a roll of a die or dice or a random drawing or generation of an object or objects that may include, but are not limited to, a card or cards, a die or dice, a number or numbers or regulations of any of these. A shuffle of a deck or decks of cards, a roll of a die or dice, a random drawing or generation of an object or objects or some other event the result of which is determined by chance that is employed to determine impartially the initial order of play in a game, contest, scheme or device does not alone make a game, contest, scheme or device a game of chance.

Game of skill means any game, contest, scheme or device in which a person stakes or risks something of value for the opportunity to win something of value and that is not a game of chance.

Garbage (chapter 18) means solid wastes from the domestic and commercial preparation, cooking, and dispensing of food, and from the handling, storage, and sale of produce.

Gender means either the masculine or feminine gender shall extend and be applied to both the masculine and feminine genders, and to firms, partnerships and corporations.

State Law reference— Similar provisions, 1 M.R.S.A. § 71(7).

Grade means, in relation to buildings, the average of the finished ground level at the center of each wall of a building.

Grade plane means a reference plane representing the average of finished ground levels adjoining the building at all exterior walls. When the finished ground level slopes away from exterior walls, the reference plane shall be established by the lowest points within the area between the building and the lot line or, when the lot line is more than six feet from the building, between the building and a point six feet from the building.

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

Great pond classified GPA means any great pond classified GPA, pursuant to title 38, article 4-A, M.R.S.A. § 465-A. This classification includes some, but not all impoundments of rivers that are defined as great ponds.

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

Growth permit means a permit issued in accordance with the provisions of this chapter, which allows the issuance of a building permit within 90 days of approval for the construction or placement of one new dwelling unit within the Town of Eliot.

Growth permit application means an application designed to collect information about proposed residences, to be used as a basis for rating them for approval.

Hazard tree means a tree with a structural defect, combination of defects, or disease resulting in a structural defect that under the normal range of environmental conditions at the site exhibits a high probability of failure and loss of a major structural component of the tree in a manner that will strike a target. A normal range of environmental conditions does not include meteorological anomalies, such as, but not limited to: hurricanes; hurricane-force winds; tornados; microbursts; or significant ice storm events. Hazard trees also include those trees that pose a serious and imminent risk to bank stability. A target is the area where personal injury or property damage could occur if the tree or a portion of the tree fails. Targets include roads, driveways, parking areas, structures, campsites, and any other developed area where people frequently gather and linger.

Hazardous wastes means a waste substance or material, in any physical state, designated as hazardous by the board of environmental protection under 38 M.R.S.A. § 1319-O. It does not include waste resulting from normal household or agricultural activities. Examples are radioactive material, explosives, biomedical wastes, contaminated soils, dredge spoils, and poisons.

Height of a structure means the greatest vertical measurement between two reference points defined as follows:

- (1) The lower reference point shall be the grade plane as defined herein.
- (2) The upper reference point shall be the highest point of the roof surface.
- (3) A parapet wall, fence, railing or similar structure that extends more than two feet above the roof surface shall be included in the determination of building height, but shall not be included if it does not extend more than two feet above the roof surface.
- (4) To determine building height, measurements shall be taken at least every five feet around the entire perimeter of a building. An average is calculated from these figures and that figure shall be the building's height for the purposes of this ordinance.
- (5) When referring to a telecommunication structure, the distance is measured from ground level to the highest point on the structure, even if said highest point is an antenna or other appurtenance.

Height of a structure (within chapter 44, Shoreland Zoning) means the vertical distance between the mean original (prior to construction) grade at the downhill side of the structure and the highest point of the structure, excluding chimneys, steeples, antennas, and similar appurtenances which have no floor area.

High intensity soil survey means a survey that shall contrast soils down to one-tenth acre or less. The mapping units shall be the soil series. Single test pits and their analysis shall not be considered a high intensity soils survey.

Historic structure means any structure that is:

- (1) 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.
- (2) Certified or preliminarily determined by the secretary of the interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the secretary of the interior to qualify as a registered historic district.
- (3) Individually listed on a state inventory of historic places in states with historic preservation programs that have been approved by the secretary of the interior; or

- (4) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either by an approved state program as determined by the secretary of the interior, or directly by the secretary of the interior in states without approved programs.

Holding tank means a closed, watertight structure designed and used to receive and store wastewater or septic tank effluent. A holding tank does not discharge wastewater or septic tank effluent to surface or groundwater or onto the surface of the ground. Holding tanks are designed and constructed to facilitate ultimate disposal of wastewater at another site.

Home business, water-dependent means home businesses as defined in section 45-1 that require location on submerged lands or that require direct access to, or location in, coastal and inland waters and which cannot be located away from these waters. A water dependent home business shall meet the requirements of home businesses, section 45-456.1. The following uses are allowed as water dependent home businesses:

- (1) Rental of offshore moorings or docking facilities (excluding dinghies) for boats, limited to a maximum of two rental spaces above and beyond that needed by landowner for boats registered in landowner's name.

Note: Authorization and location of rental moorings is the responsibility of the harbormaster and appropriate state and federal agencies. This ordinance establishes the maximum number of offshore rental moorings a waterfront landowner or lot can have to qualify for a water-dependent home business.

- (2) Outdoor winter storage of boats (September through May) shall be limited to a maximum of two rental spaces above and beyond that needed by landowner for boats registered in landowner's name. Rental spaces shall meet minimum yard and property line setback requirements for principal structures.

Note: In cases where landowner is not a municipal resident on a property seeking a home business, water-dependent, the landowner may transfer (via a letter to the code enforcement officer) their home business, water-dependent rights to a person who is a municipal resident on their property. In no case, shall there be more than a total of two rental offshore moorings or docking facilities, or outdoor boat storage facilities allowed per lot.

Home businesses means uses that provide space for commercial activity that is in scale and character with neighborhoods and areas that are primarily residential. Home businesses must comply with the requirements of home businesses, section 45-456.1.

Home occupation (regular and water-dependent) means an occupation or profession customarily carried on within a dwelling unit or accessory structure and clearly incidental to the use of the dwelling unit for residential purposes. It may include hairdressing, millinery, laundering, preserving and home cooking, or the office of a doctor, dentist, lawyer, musician, teacher, architect, real estate broker, computer programmer, or member of any recognized profession. It shall also include any occupation or trade carried on or away from the premises and not requiring outside storage of an inventory, stock in trade, or other equipment. This definition does not apply to farming and agriculture. A structure, use or activity not otherwise permitted within a district by this chapter shall not be permitted as a home occupation. A lodging business shall not be considered a home occupation.

- (1) Except for signs as permitted by this chapter, there shall be no external evidence of the occupation. Outside storage of motor vehicle is limited to one business related van, pickup truck, or passenger car.
- (2) At least one member of a family occupying the premise must be engaged in the occupation.
- (3) There shall be no more than five employees engaged in the occupation, including family members. Within any shoreland zone governed by chapter 44 of this Code, such an occupation shall employ no more than two persons other than family members residing in the home.

- (4) No more than 25 percent of the total area of the principal residential and other structures shall be used for the occupation.
- (5) Retail or other sales of merchandise on the premises shall not be considered a home occupation.
- (6) Except for residential requirements, parking for a home occupation shall not exceed ten spaces.
- (7) Home occupations occupying separate buildings shall meet the minimum yard dimensions for principal buildings.
- (8) Providing for rental of offshore moorings or docking facilities (excluding dinghies) for boats shall be limited to a maximum of two rental spaces above and beyond that needed by landowner for boats registered in landowner's name.

Note: Authorization and location of rental moorings is the responsibility of the harbormaster and appropriate state and federal agencies. The intent is to establish the maximum number of offshore rental moorings a waterfront landowner or lot can have to qualify for a water-dependent home occupation use.

- (9) Providing for rental indoor or outdoor winter (September through May) storage of boats shall be limited to a maximum of two rental spaces above and beyond that needed by landowner for boats registered in landowner's name. Rental spaces shall meet setback requirements for principle structure.

Note: In cases where landowner is not a municipal resident on property seeking water-dependent home occupation, the landowner may transfer (via a letter to the code enforcement officer) his/her water-dependent home occupation rights to a person(s) who is/are municipal resident(s) on his/her property. In no case shall there be more than a total of two rental offshore moorings or docking facilities or boat storage facilities allowed per lot.

Home office means a place within a dwelling unit or within a structure accessory to a dwelling unit where office activities take place. A home office may include desks, chairs, tables, telephones, file cabinets, computers, printers, facsimile machines, copy machines, and other equipment customarily found in an office environment.

Household hazardous waste means leftover or unwanted product used in the household that has the same hazardous properties as the regulated industrial waste. This means that they can ignite or catch fire; react or explode when mixed with other substances; corrode; and/or are toxic. These materials have the potential to pollute the air or water when land filled or flushed down the drain. Examples include oil based paints, pesticides, solvents, caustics, etc.

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

Indirect discharge means the introduction of pollutants into the Town of Kittery or Town of Eliot wastewater collection systems from any non-domestic, non-governmental source regulated under section 307(b), (c) or (d) of the Federal Water Pollution Control Act (also known as the Clean Water Act).

Individual private campsite means an area of land which is not associated with a campground, but which is developed for repeated camping by only one group not to exceed ten individuals and which

involves site improvements which may include but not be limited to gravel pads, parking areas, fire places, or tent platforms.

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

Industrial activity (chapter 31) means activity or activities subject to NPDES industrial permits as defined in 40 CFR, section 122.26(b)(14).

Industrial establishment means any structure or land or combination used for the manufacturing, processing, or fabrication of any article, substance, or commodity.

Industrial user (chapter 18) means any non-governmental source of indirect discharge or any source that discharges industrial wastes to the Town of Kittery wastewater treatment facility.

Industrial wastes means solid and liquid wastes, not including hazardous wastes, generated by industry. Often this is in the form of slag, sludge, cake, and dust.

Institutional buildings and uses means educational, religious, philanthropic, fraternal or social activities primarily conducted indoors and not including residential occupancy.

Institutional use (within chapter 44, Shoreland Zoning) means a nonprofit or quasi-public use, or institution such as a church, library, public or private school, hospital, or municipally owned or operated building, structure or land used for public purposes.

Interference means a discharge which, alone or in conjunction with a discharge or discharges from other sources, both:

- (1) Inhibits or disrupts the wastewater pollution control facility, its treatment processes or operations, or its sludge processes, use or disposal; and
- (2) Therefore is a cause of a violation of any requirement of the Town of Kittery or Town of Eliot's NPDES permit (including an increase in the magnitude or duration of a violation) or of the prevention of sewage sludge use or disposal in compliance with the following statutory provisions and regulations or permits issued thereunder (or more stringent state or local regulations): Section 405 of the Clean Water Act, the Solid Waste Disposal Act (SWDA) (including title II, more commonly referred to as the Resource Conservation and Recovery Act (RCRA), and including state regulations contained in any state sludge management plan prepared pursuant to subtitle D of the SWDA), the Clean Air Act, the Toxic Substances Control Act, and the Marine Protection, Research and Sanctuaries Act.

Joint authority means purporting to give authority to three or more officers or other persons shall be construed as giving such authority to a majority of such officers or other persons, unless it is otherwise declared.

State Law reference— Similar provisions, 1 M.R.S.A. § 71(3).

Junkyard (salvage yard) means a yard, field, or other area exposed to the elements and used as a place of storage or disposition for:

- (1) Discarded, worn-out or junked plumbing, heating supplies household appliances and furniture.
- (2) Discarded or scrap lumber.
- (3) Old or scrap copper, brass, rope, rags, batteries, paper trash, rubber or plastic debris, waste and all scrap iron, steel and other scrap ferrous or nonferrous material.

Keeper and proprietor. The words keeper and proprietor shall mean and include persons, firms, associations, corporations, clubs and copartnerships, whether acting by themselves or through a servant, agent or employee. M.R.S.A. The abbreviation "M.R.S.A." shall mean the latest edition or supplement of the Maine Revised Statutes Annotated.

Kitchen food waste means all residential food scraps/waste including bones, eggshells, seafood residue, coffee grounds and filters, etc. Paper napkins and non-coated paper containing food residue can also be included.

Land clearing debris means solid wastes resulting from the clearing of land and consisting solely of brush, stumps, soil material and rocks.

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

Landfill/dump means a site for the placement or disposal of refuse and debris identified as prohibited wastes by this chapter either on the ground or below ground, but not to include containerized waste or other which has been generated on site and merely awaits permanent disposal. The municipal disposal facility is the only site in the town at which any person may dispose of prohibited wastes. This facility is limited to the use of town residents and to wastes generated within the boundaries of the town.

Lateral line (chapter 18) means the sewer conduit from a house to a street.

Legislative body means town meeting.

Level of service (LOS) means a description of the operating conditions a driver will experience while traveling on a particular street or highway calculated in accordance with the provisions of the Highway Capacity Manual, 2010 Edition or latest available update, published by the National Research Council, Transportation Research Board. There are six levels of service defined in the manual, ranging from Level of Service A, with free traffic flow and no delays, to Level of Service F, with forced flow and congestion resulting in complete failure of the roadway.

Licensed forester means a forester licensed under 32 M.R.S.A. Chapter 76.

Life care facility means a planned community that meets state and federal licensing and certification requirements and includes more than one of the following uses:

- (1) Elderly housing.
- (2) Nursing facility.
- (3) Assisted living facility.

Limited commercial pier means a permanent structure extending over the water the principal use of which is associated with and in support of a water-dependent home occupation or water-dependent home business.

Locally established datum means, for the 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.

Lodginghouse. See Boardinghouse. (22 M.R.S.A. § 2491 par. 6) Eating and lodging place or lodging places means every building or structure or any part thereof is kept, used on, maintained as, advertised as, or held out to the public to be a place where eating and sleeping, or sleeping accommodations are furnished to the public as a business, such as hotels, motels, guest homes, and cottages.

Lot means a parcel of land which is defined by metes and bounds, or by boundary lines in a recorded deed, or which is shown on a recorded plot or plan.

Lot area (within chapter 44, Shoreland Zoning) means the area of land enclosed within the boundary lines of a lot, minus land below the normal high-water line of a water body or upland edge of a wetland and areas beneath roads serving more than two lots.

Lot area means the total horizontal area within the lot lines.

Lot, corner means a lot with at least two contiguous sides abutting upon a street.

Lot coverage means the percentage of the lot covered by all buildings.

Lot, interior means any lot other than a corner lot.

Lot lines means the lines bounding a lot as defined below:

Front lot line means, on an interior lot, the line separating the lot from the street; on a corner or through lot, the line separating the lot from either street.

Rear lot line means the lot line opposite the front lot line. On a lot pointed at the rear, the rear lot line shall be an imaginary line between the side lot lines parallel to the front lot line, not less than ten feet long, lying farthest from the front lot line. On a corner lot, the rear lot line shall be opposite the front lot line of least dimension.

Side lot line means any lot line other than the front lot line or rear lot line.

Lot of record means a parcel of land, a legal description of which is recorded on a document or map on file with the county registry of deeds.

Lot, through means any interior lot having frontages on two more or less parallel streets, or between a street and a waterbody, or between two waterbodies, as distinguished from a corner lot. All sides of through lots adjacent to streets and waterbodies shall be considered frontage, and front yards shall be provided as required.

Lot width, minimum means the horizontal distance between the side lot lines, measured at the setback line. In any shoreland zone governed by chapter 44, "minimum lot width" means the closest distance between the side lot lines of a lot. When only two lot lines extend into the shoreland zone, both lot lines shall be considered to be side lot lines.

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 set out in chapter 25, article IV.

Mandatory recycling means programs requiring the separation of recyclable and compostable materials from their solid wastes.

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.

Manufactured housing means a structural unit or units designed for occupancy and constructed in a manufacturing facility and transported, by the use of its own chassis or an independent chassis, to a building site. The term includes any type of building that is constructed at a manufacturing facility and transported to a building site where it is used for housing and may be purchased or sold by a dealer in the interim. For purposes of this section, two types of manufactured housing are included. Those two types are:

- (1) Mobile home means a unit constructed after June 15, 1976, commonly called a "newer mobile home," that the manufacturer certifies is constructed in compliance with the United States Department of Housing and Urban Development standards, meaning a structure is transportable in one or more sections, that in the traveling mode is 14 body feet or more in width and is 750 or more square feet, and that is built on a permanent chassis and designed to be used as a dwelling, with or without a permanent foundation, when connected to the required utilities including the plumbing, heating, air conditioning or electrical systems contained in the unit. This term also includes any structure that meets all the requirements of this subparagraph except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the Secretary of the United States Department of Housing and Urban Development and complies with the standards established under the National Manufactured Housing Construction and Safety Standards Act of 1974, United States Code, Title 42, Section 5401 et seq.

- (2) Modular home means a unit that the manufacturer certifies is constructed in compliance with Title 10, Chapter 951, and rules adopted under that chapter, meaning a structure, transportable in one or more sections, that is not constructed on a permanent chassis and is designed to be used as a dwelling on a foundation when connected to required utilities, including the plumbing, heating, air-conditioning or electrical systems contained in the unit.

Manufactured housing unit. See Manufactured housing.

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

Note: Authorization and location of rental moorings is the responsibility of the harbor master and appropriate state and federal agencies.

Marina, limited means a business establishment having frontage on navigable water and, as its principal use, providing for hire offshore moorings or docking facilities for up to eight boats (excluding dinghies) not registered in landowners name, and which may also provide accessory services such as boat and related sales, indoor storage of boats, indoor storage of marine equipment and boat repair. A limited marina does not allow outdoor storage of earth moving equipment, forklifts, dump trucks, backhoes, industrial machinery, boilers, stationary engines, boat cradles, jack stands, derelict boats or engines, hull or structural molds for fiberglass boat repair or construction, jigs and molds or frames for boat repair or construction, cranes or cherry pickers or other lifting equipment, petroleum products (except home heating oil), air compressors or sand blasters, welders, industrial gases, winches, marine railway equipment, pilings, timbers, steel plating or bar or round stock, concrete reinforcement bar, unused major marine hardware and hull items including keel castings, masts and rigging, anchors, structural sections or ladders, deckhouse, pilothouses, cabins, antennas and pulpits.

Note: Authorization and location of rental moorings is the responsibility of the harbormaster and appropriate state and federal agencies. The intent is to establish the maximum number of offshore rental moorings a waterfront landowner or lot can have to qualify for a limited marina.

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

Mean low water for the practical purposes of this chapter, shall be the location of the low water line determined by observation of low tide using a 0.00-foot tide.

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.

Medical waste means isolation wastes, infectious agents; human blood and blood products, pathological wastes; sharps and lancets, body parts, contaminated bedding, surgical wastes and potentially contaminated laboratory wastes; and dialysis wastes.

Medium intensity soils survey means a general description of soils in areas no greater than two acres in size.

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

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

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

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 percent 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.

Minor street means a street providing access to less than 15 units of residential development, or to less than 2,500 square feet of retail commercial or industrial floorspace, or serving other premises generating less than the amount of traffic normally expected for the above uses.

Mobile home park means a parcel of land under unified ownership designed and/or used to accommodate three or more manufactured housing units.

Motel means a structure in which more than five rooms are offered for overnight accommodation, with or without meals, for compensation. This definition includes hotels, but excludes boardinghouses.

Multifamily dwelling means a building or portion principally designed, adapted, or used for occupancy by three or more families, each living in its own separate quarters. Each individual unit which functions as a separate living quarters shall be deemed to be a dwelling unit.

Multiunit residential means a residential structure containing three or more residential dwelling units.

Municipal officers means the Board of Selectmen of Eliot, Maine.

Municipal official means any elected or appointed member of the town.

Municipal permitting authority means the municipal official or body that has jurisdiction over the land use approval or permit required for a development.

Municipal resident means any person who occupies a dwelling within the town for more than 180 days in a calendar year.

Municipal separate storm sewer system or "MS4" (chapters 31 and 35) means conveyances for storm water, including, but not limited to, roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, human-made channels or storm drains (other than publicly-owned treatment works and combined sewers) owned or operated by any municipality, sewer or sewage district, fire district, state agency or federal agency or other public entity that discharges directly to surface waters of the state.

Municipality means the Town of Eliot.

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)."

National pollutant discharge elimination system (NPDES) stormwater discharge permit (chapters 31 and 35) means a permit issued by the EPA or by the DEP that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.

Native means indigenous to the local forests.

Natural outlet means any outlet (other than a manmade outlet) into a watercourse, pond, ditch, lake, or other body of surface or groundwater.

NEIWPCC means New England Interstate Wastewater Pollution Control Commission.

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

New development means any construction activity on unimproved premises.

Nonconforming condition means a nonconforming lot, structure or use which is allowed solely because it was in lawful existence at the time this ordinance or subsequent amendment took effect.

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

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

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

Noncontact cooling water means water used for cooling which does not come into direct contact with any raw material, intermediate product, waste product or finished product.

Nondead-end street means any street that is not a dead-end street.

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

Nonprofit medical marijuana dispensary means a not for profit entity licensed under Section 6 of the Rules Governing the Maine Medical Use of Marijuana Program, that acquires, possesses, cultivates, manufactures, delivers, transfers, transports, sells, supplies or dispenses marijuana, paraphernalia, prepared marijuana any marijuana products or byproducts, or related supplies and educational materials to registered patients who have designated the dispensary to cultivate marijuana for their medical use and the registered primary caregivers of those patients.

Non-stormwater discharge (chapter 31) means any discharge to an MS4 that is not composed entirely of stormwater.

Normal high-water line (nontidal waters) means that line which is apparent from visible markings, changes in the character of soils due to prolonged action of the water or changes in vegetation, and which distinguishes between predominantly aquatic and predominantly terrestrial land. Areas contiguous with rivers and great ponds that support nonforested wetland vegetation and hydric soils and that are at the same or lower elevation as the water level of the river or great pond during the period of normal high-water are considered part of the river or great pond. NOTE: Adjacent to tidal waters, setbacks are measured from the upland edge of the "coastal wetland."

Number. A word importing the singular may extend and be applied to the plural, and vice versa.

State Law reference— Similar provisions, 1 M.R.S.A. § 71(9).

Nursery schools. See Day nurseries.

Nursing facility means a skilled nursing facility on the Medicare program or a nursing facility in the Medicare program which meets state licensing and federal certification requirements for nursing facilities and has a valid agreement with the department of human services. The primary function of the facility is to provide housing, meals and nursing care for the aged, chronically ill, infirm or incurable persons.

Nursing home means any building in which three or more aged, chronically ill, infirm or incurable persons are housed and furnished meals and nursing care for compensation.

Oath. The word oath shall include an affirmation in all cases in which, by law, an affirmation may be substituted for an oath, and in such cases the words swear and sworn shall be equivalent to the words affirm and affirmed.

Official map means the map adopted by the town showing the location of public property, ways used in common by more than two owners of abutting property, and approved subdivisions; and any amendments thereto adopted by the town or additions thereto resulting from the approval of subdivision plans by the planning board and the subsequent filing of record for such approved plans.

Official submittal date means the time of submission of a preapplication, final plan for minor subdivision, preliminary plan or final plan for a major subdivision. The date the planning board accepts by majority vote a complete application shall be indicated on the application. The application shall be accompanied by any required fees and all data required by this chapter.

Off-site parking means an off-site parking facility is any facility meeting one or more of the following criteria:

- (1) Any surface parking lot or parking structure which provides more than ten parking spaces for use by persons who are not visitors to or occupants, customers or employees of a use other than parking located on the same lot or a contiguous lot;
- (2) Any surface parking lot or parking structure which charges fees for parking, where such fees constitute the primary source of revenue derived from the use of the lot on which the parking is located;
- (3) Any surface parking lot or parking structure which provides parking spaces for passengers of a regularly scheduled shuttle bus service;
- (4) Any surface parking lot or parking structure which is the only use located on the lot, unless the parking is utilized to provide required off street parking for a use on an adjacent lot as allowed by section 45-490 or section 45-492 of this Code.

The term off street parking does not include a long term storage facility approved as a storage business.

Outflow stream means any perennial or intermittent stream, as shown on the most recent edition of a 7.5-minute series or, if not available, a 15-minute series topographic map produced by the United States Geological Survey, that flows from a freshwater wetland.

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

Owner. The word owner applied to a building or land shall include any part owner, joint owner, tenant in common, tenant in partnership, joint tenant, or tenant by the entirety, of the whole or of a part of such building or land.

Ownership means ownership by the same person, corporation, firm, entity, partnership, or unincorporated association; or ownership by different corporations, firms, partnerships, entities, or unincorporated associations, in which a stockholder, partner, or associate, or a member of his family owns an interest in each corporation, firm, partnership, entity, or unincorporated association. The term family shall include spouse, parent, child or grandchild.

Paraphernalia means equipment, products and materials that are ordinarily used in planting, propagating, cultivating, growing, harvesting, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, ingesting, inhaling or otherwise introducing marijuana into the human body and includes all items listed in the state definition.

Pass-through means a discharge that exits the Town of Kittery wastewater pollution control facility into waters of the United States in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirement of the Town of Kittery or Town of Eliot's NPDES permit (including an increase in the magnitude or duration of a violation).

Peak rate or flow means the maximum instantaneous rate of flow recorded during any calendar year measured in gallons per day.

Permitted use. See Conforming use.

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

Personal property. The term personal property includes every kind, tangible and intangible except real property.

Petitioner means a person, group, firm, organization, corporation, developer or subdivider who petitions the municipal officers to lay out a street as a town way.

pH means the logarithm of the reciprocal of the weight of hydrogen ions in grams per liter of solution.

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

Temporary: Structures that remain in or over the water for less than seven months in any period of 12 consecutive months.

Permanent: Structures that remain in or over the water for seven months or more in any period of 12 consecutive months.

Planning assistant means the person designated by the board of selectmen to perform the functions assigned by this Code to the planning assistant or, in the event the board of selectmen has not appointed a planning assistant, the code enforcement officer.

Planning board means the planning board of the town created under 30-A M.R.S.A.

Plumbing inspector. See Code enforcement officer.

Pollutants (chapters 18, 31 and 35) means dredged spoil, solid waste, junk, incinerator residue, wastewater, refuse, effluent, garbage, sewage sludge, munitions, chemicals, biological or radiological materials, oil, petroleum products or by-products, heat, wrecked or discarded equipment, rock, sand, dirt and industrial, municipal, domestic, commercial or agricultural wastes of any kind.

Post-construction stormwater management plan (chapter 35) means BMPs and stormwater management facilities employed by a development to meet the standards of chapter 35 and approved by the planning board.

Premises (chapters 31 and 35) means any building, lot, parcel of land, or portion of land, whether improved or unimproved, including adjacent sidewalks and parking strips, located within the municipality from which discharges into the storm drainage system are or may be created, initiated, originated or maintained.

Prepared marijuana means the dried leaves and flowers of the marijuana plant, and any mixture or preparation of those dried leaves and flowers, including but not limited to tinctures, ointments, and other preparations. It does not include the seeds, stalks and roots of the marijuana or other ingredients in goods prepared for human consumption and use.

Pretreatment means the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to or in lieu of discharging or otherwise introducing such pollutants into a public sewer. The reduction or alteration may be obtained by physical, chemical or biological processes, process changes or by other means, except as prohibited by Title 40, Chapter 1, Part 403 of the final rules of the United States Environmental Protection Agency.

Principal structure (building) means the structure in which the primary use of the lot is conducted. **In shoreland zoning, chapter 44: Principal structure means a structure other than one which is used for purposes wholly incidental or accessory to the use of another structure or use on the same lot.**

Principal use means the primary use to which the premises are devoted, and the main purpose for which the premises exist. There may be more than one principal use on a lot. **In shoreland zoning,**

chapter 44: Principal use means a use other than one which is wholly incidental or accessory to another use on the same lot

Private right-of-way means a street that is not intended to be offered to the town for acceptance as a public way.

Private wastewater disposal system means any sewage disposal system not constructed, installed, maintained, operated, or owned by the Town of Eliot.

Prohibited wastes means any unwanted, worn-out or discarded manufactured or industrially processed item or any naturally occurring but hazardous substance or naturally occurring substance that has been contaminated with hazardous chemicals or materials of industrial manufacture. Prohibited wastes shall not include wood, rocks, soil, sand and gravel or agricultural wastes which are uncontaminated by hazardous substances; products specifically manufactured for routine household use and discarded in the course of normal household use; scraps of construction or demolition debris when interred on site during the course of construction or demolition and which contain no hazardous materials.

Property. The word property shall include real, personal and mixed property.

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

Public property means property owned by the town and any place subject to the primary control of any public agency, including but not limited to any park, street, public way, cemetery, schoolyard or open space adjacent thereto and any lake or stream.

Public sewer means a sewer in which all owners of abutting properties have equal rights, and is controlled by public authority.

Public solid waste disposal facility means any land or structure or combination of land area and structures, including dumps and transfer stations used for storing, salvaging, reducing, incinerating, reclaiming or disposing of solid waste.

Public utility means any person, firm, corporation, municipal department, board or commission authorized to furnish gas, steam, electricity, waste disposal, transportation or water to the public.

PVC means poly vinyl chloride.

Qualifying street means a public street or a private street meeting the standards of chapter 37, streets and sidewalks.

Real property. The term real property shall include lands, tenements and hereditaments.

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

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

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

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

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

Recyclable materials means materials that can be reused or reprocessed in the manufacture of goods. A list of currently recyclable materials will be posted at the ERDF and may include glass containers, aluminum and tin cans, mixed paper, cardboard, plastics (including #1 (PETE) bottles, #2 (HDPE) natural and colored bottles, and miscellaneous (#3 - #7 and #1, #2 non-bottles)), used motor oil, rechargeable batteries, and scrap metal.

Recycling means the process by which used or otherwise discarded materials are diverted from the waste stream and returned to use in the form of remanufactured products or raw materials.

Redevelopment means construction activity on premises already improved with buildings, structures or activities or uses, but does not include such activities as exterior remodeling.

Registered primary caregiver means a person, a hospice provider licensed under Title 22 M.R.S.A. chapter 1681 or a nursing facility licensed under Title 22 M.R.S.A. chapter 405 that provides care for a registered patient and that has been named by the registered patient as a primary caregiver to assist with a registered patient's use of marijuana.

Regulated small MS4 (chapters 31 and 35) means any small MS4 regulated by the State of Maine "General Permit for the Discharge of Stormwater from Small Municipal Separate Storm Sewer Systems" ("General Permit"), including all those located partially or entirely within an urbanized area (UA) and those additional small MS4s located outside an UA that as of the issuance of the general permit have been designated by the DEP as regulated small MS4s.

Regulatory floodway means:

- (1) The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot; and
- (2) When not designated on the community's flood insurance rate map, it is considered to be the channel of a river or other watercourse 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.

Relative means child, parent, grandparent, brother or sister, and such relationships resulting from adoption or remarriage (step-parent, step-child, step-brother, step-sister, etc.).

Replacement system means a system intended to replace:

- (1) An existing system which is either malfunctioning or being upgraded with no significant change of design flow or use of the structure; or
- (2) Any existing overboard wastewater discharges.

Required improvements, as used in chapter 33, article III (Site Review) and in chapter 41 (Subdivisions), means the infrastructure improvements necessary for the construction of a development, including street grading, street surfacing, storm drainage, utilities (including conduits for cable where electric and telephone utilities are to be located underground), landscaping and any other site improvements required by the planning board in approving a site plan or subdivision plan.

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

~~Residential dwelling unit means a room or group of rooms designed and equipped exclusively for use as permanent, seasonal, or temporary living quarters for only one family. The term shall include mobile homes, but not recreational vehicles.~~

Residential pier means a permanent structure extending over the water the principal use of which is the personal, recreational, and noncommercial use of the shoreland owner. Any pier which is over six feet in width or which has any permanent structural parts extending below the mean low water line shall not qualify as a residential pier and shall be deemed to be a commercial pier.

Restaurant means an establishment where meals are prepared and served to the public for consumption on the premises entirely within a completely enclosed building; and where no food or beverages are served directly to occupants of motor vehicles or directly to pedestrian traffic from an exterior service opening or counter, or any combination of the foregoing; and where customers are not permitted or encouraged by the design of the physical facilities, by advertising, or by the servicing or packaging procedures to take out food or beverages for consumption outside the enclosed building.

Restaurant, takeout means an establishment where food and/or nonalcoholic beverages are prepared and served to the public for consumption on or off the premises; where food and/or beverages may be served to pedestrians from an exterior opening or counter but not to occupants in motor vehicles whether parked or in a drive-through lane or similar arrangements; and where use of exterior loudspeakers is not permitted. The licensing authority may approve service of alcoholic beverages within an enclosed service area for on-premises consumption.

Restrictive easement, as used in the provisions of this Code governing small wind energy systems, means an easement on a property abutting a small wind energy system that imposes restrictions on the uses and structures within the easement area that are sufficient to allow the small wind energy system to be located closer to the property line than the otherwise applicable setback requirement.

Resubdivision means the division of an existing subdivision or any change or lot size therein or the relocation of any street or lot in a subdivision.

Riparian forest buffers means performance standards for setback areas associated with farm and croplands contained in USDA booklet titled "Riparian Forest Buffers," NA-PR-07-91.

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

River means a free flowing body of water including its associated floodplain wetlands from that point at which it provides drainage for a watershed of 25 square miles to its mouth. NOTE: The portion of a river that is subject to tidal action is a coastal wetland.

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

Road means a route or track consisting of a bed of exposed mineral soil, gravel, asphalt, or other surfacing material constructed for or created by the repeated passage of motorized vehicles, excluding a driveway as defined.

Roominghouse. See Boardinghouse.

Rotor diameter means the cross sectional dimension of the circle swept by the rotating blades.

Roulette means a game of chance in which players bet on the compartment of a revolving wheel into which a small ball will come to rest.

Routine maintenance (chapter 35) means maintenance performed to maintain the original line and grade, hydraulic capacity, and original purpose of land or improvements thereon.

Salt marsh means areas along coastal waters (most often along coastal bays) which support salt tolerant species, and where at average high tide during the growing season, the soil is irregularly inundated by tidal waters. The predominant species is saltmarsh cordgrass (*Spartina alterniflora*). More open areas often support widgeon grass, eelgrass, and Sago pondweed.

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

Sanitary sewer means a sewer which carries wastewater and to which storm, surface, and groundwater are not intentionally admitted.

Sanitary wastewater means the wastewater which is essentially free of industrial wastes or toxic materials and which discharges from sanitary conveniences such as toilets, urinals, sinks, showers, drinking fountains, home laundries, and from kitchens, school cafeterias, and floor drains, as approved under the Maine State Plumbing Code.

Sapling means a tree species that is less than two inches in diameter at four and one half feet above ground level.

Seedling means a young tree species that is less than four and one half feet in height above ground level.

SDR means standard dimension ratio.

Seasonal means six months out of any one-year period.

Septage means the wastes from holding tanks such as vessels, chemical or portable toilets, campers, recreational vehicles or trailer wastes from septic tanks of private systems and cesspools, including trucked or hauled wastes.

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

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

Setback means the minimum horizontal distance from a lot line to the nearest part of a structure.

Setback (within any shoreland zone governed by chapter 44) means the nearest horizontal distance from the normal high-water line of a water body or tributary stream, or upland edge of a wetland, to the nearest part of a structure, road, parking space or other regulated object or area.

Sewage. See "Wastewater."

Sewer means a pipe or conduit for carrying wastewater.

Sewer capacity allocation. See "Allocation."

Sewer main means the line serving as a conduit for sanitary wastewater from the lateral lines from each individual property.

Sewer superintendent ("superintendent") means the head of the Eliot Sewer Department and shall be appointed by the Eliot Board of Selectmen or his/her authorized deputy, agent, or representative, as appointed by the board of selectmen.

Shall and will are mandatory; may is permissive.

Sharp curve means any curve with a centerline radius less than the minimum centerline radius allowed by section 37-70.

Shore frontage means the length of a lot bordering on a water body measured in a straight line between the intersections of the lot lines with the shoreline at normal high-water elevation.

Shoreland zone means the land area located within 250 feet, horizontal distance, of the normal high-water line of any great pond or river, within 250 feet, horizontal distance, of the upland edge of a coastal wetland, including all areas affected by tidal action, within 250 feet of the upland edge of a freshwater wetland; or within 75 feet, horizontal distance, of the normal high-water line of a stream.

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

Sidewalk means any portion of a street between the curblin and the adjacent property line, intended for the use of pedestrians, excluding parkways.

Sight distance means the length of unobstructed view from a particular access point to the farthest visible point of reference on a roadway.

Sign means any structure, device, light, letter, word, model, banner pennant, insignia, trade flag, or representation that is designed to be seen from outside a building or from a town way and which is designed to occupy a message to the public. It advertises activities, goods, products, services or facilities available either on the lot where the sign appears or in some other location.

Sign, direct illuminated means a sign which has characters, letters, figures, designs or outlines illuminated by electric lighting or luminous tubes which are part of that sign.

Sign, flashing means a sign whose illumination is not kept constant in intensity at all times when in use, and which exhibits changes in light, color, light direction, and/or animation. Illuminated signs which indicate the time and temperature shall not be considered as flashing signs.

Sign, freestanding means a sign which is not attached to or supported by any building or tree.

Sign, indirect-illuminated means an illuminated sign whose illumination is derived entirely from an external artificial source.

Sign, parallel means a wall-mounted sign which is parallel to the building surface and not more than 12 inches from that surface.

Sign, projecting means a sign which is attached to a building wall, tree, or other structure and which extends more than 12 inches beyond the surface of that portion of the building wall, tree, or other structure to which it is attached.

Sign, roof means a sign which is located above, or which projects above, the eave line or the parapet wall of the building.

Sign, wall means any sign which is painted on, incorporated into, or consisting of cutout letters or devices affixed to the building wall with no background defined on the building wall.

Signature or subscription. The word signature or subscription includes a mark when the person cannot write.

Significant river segments. See title 38, M.R.S.A. section 437.

Single-family dwelling. See Dwelling unit and family.

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

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

Slot machine means any machine which operates by inserting a coin, token or similar object, setting the internal mechanism of the machine in motion, and by the application of the element of chance may deliver or entitle the person playing or operating the machine to receive cash, premiums, tickets or something of value.

Sludge (or biosolids) means waste containing varying amounts of contaminants removed from water, sanitary sewage, wastewater, or industrial wastes by physical, chemical, or biological treatment.

Slug means any discharge of water, wastewater, or industrial waste which in concentration of any given constituent or in quantity of flow exceeds for any period of duration longer than 15 minutes, more than five times the average 24-hour concentration or flows during normal operation.

Small municipal separate storm sewer system, or "small MS4" (chapters 31 and 35) means any MS4 that is not already covered by the Phase I MS4 stormwater program including municipally owned or operated storm sewer systems, state- or federally-owned systems, such as colleges, universities, prisons, Maine Department of Transportation and Maine Turnpike Authority road systems and facilities, and military bases and facilities.

Small wind energy system means a system of equipment located on a single lot that has an aggregate rated capacity of not more than 100 kW that converts and then stores or transfers energy from the wind into usable forms of energy for use on the same lot as the system, or on an abutting lot in the case of a common system serving more than one principal use or structure. This equipment includes the base, blade, foundation, generator, nacelle, rotor, tower, transformer, vane, wire, inverter, batteries, or other components used in the system. Small wind energy systems are allowed only as accessory uses or structures, and only one small wind energy system is allowed per lot.

Small wind energy system height means the height above grade to the tip of the turbine blade when it reaches its highest elevation.

Soil scientist means a soil scientist certified by the state.

Solar energy system means a system designed and used to obtain energy from the sun in order to supply energy to a principal use or structure located on the same lot as the system, or on an abutting lot in the case of a common system serving more than one principal use or structure, for the purpose of reducing the consumption of fuel for heating or electricity. A solar energy system may include solar hot water or air heating or photovoltaic systems. Solar energy systems are allowed only as accessory uses or structures.

Solid waste means useless, unwanted or discarded solid material with insufficient liquid content to be free-flowing, including, but not limited to, rubbish, garbage, refuse-derived fuel, scrap materials, junk, refuse, inert fill material and landscape refuse, but does not include hazardous waste, biomedical waste, septage or agricultural wastes. The fact that a solid waste or constituent of the waste may have value or other use or may be sold or exchanged does not exclude it from this definition.

Something of value means: (A) any money or property; (B) any token, object or article exchangeable for money, property, amusement or entertainment; or (C) any form of credit or promise directly or indirectly contemplating transfer of money or property, or of any interest therein, or involving extension of a service, entertainment or a privilege of playing at a game or scheme without charge.

Special flood hazard area. See Area of special flood hazard.

Special handling items means a group of acceptable wastes that require special handling at the ERDF. These may include but are not limited to furniture, white goods, auto parts, carpet, demolition and construction debris, TVs and monitors, fluorescent tubes, electronic equipment, propane tanks, etc.

Start of construction means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, 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.

State. The term state shall mean the State of Maine.

Storm-damaged tree means a tree that has been uprooted, blown down, is lying on the ground, or that remains standing and is damaged beyond the point of recovery as the result of a storm event.

Storm drainage system means the municipality's regulated small MS4 and any of the unregulated small MS4.

Stormwater means any stormwater runoff, snowmelt runoff, and surface runoff and drainage; "stormwater" has the same meaning as "storm water."

Stormwater management facilities (chapter 35) means any parking areas, catch basins, drainage swales, detention basins and ponds, pipes and related structures that are part of the post-construction stormwater management plan for a development.

Stream means a free-flowing body of water from the outlet of a great pond or the confluence of two perennial streams as depicted on the most recent, **highest resolution version of the national hydrography dataset available from the United States Geological Survey on the website of the United States Geological Survey or the national map to the point where the stream becomes a river or where the stream meets the shoreland zone of another water body or wetland. When a stream meets the shoreland zone of a water body or wetland and a channel forms downstream of the water body or wetland as an outlet, that channel is also a stream.** ~~edition of a United States Geological Survey 7.5-minute series topographic map, or if not available, a 15-minute series topographic map, to the point where the body of water becomes a river or flows to another water body or wetland within the shoreland area.~~

Street, town way or public way. The word street shall embrace streets, highways, avenues, boulevards, roads, town ways, lanes, bridges, and all other public ways dedicated to public use.

Structure (building) means anything built for the support, shelter or enclosure of persons, animals, goods or property of any kind, together with anything constructed or erected with a fixed location on or in the ground, exclusive of fences. The term includes structures temporarily or permanently located, such as decks and satellite dishes.

Structure (building, and within any shoreland zone governed by chapter 44) **means anything temporarily or permanently located, built, constructed or erected for the support, shelter or enclosure of persons, animals, goods or property of any kind or anything constructed or erected on or in the ground. The term includes structures temporarily or permanently located, such as decks, patios, and satellite dishes. Structure does not include fences; poles and wiring and other aerial equipment normally associated with service drops, including guy wires and guy anchors; subsurface waste water disposal systems as defined in Title 30-A, section 4201, subsection 5; geothermal heat exchange wells as defined in Title 32, section 4700-E, subsection 3-C; or wells or water wells as defined in Title 32, section 4700-E, subsection 8.** ~~means anything built for the support, shelter or enclosure of persons, animals, goods or property of any kind, together with anything constructed or erected with a fixed location on or in the ground, exclusive of fences, and poles, wiring and other aerial equipment normally associated with service drops as well as guying and guy anchors. The term includes structures temporarily or permanently located, such as decks, patios, and satellite dishes.~~

Structure (floodplain) 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.

Subdivision means the division of a tract or parcel of land into three or more lots within any five-year period that begins on or after September 23, 1971. This definition applies whether the division is accomplished by sale, lease, development, buildings or otherwise. The term subdivision also includes the division of a new structure or structures on a tract or parcel of land into three or more dwelling units within a five-year period, the construction or placement of three or more dwellings units on a single tract or parcel of land and the division of an existing structure or structures previously used for commercial or industrial use into three or more dwelling units within a five-year period.

Subdivision, major means any subdivision containing more than four lots, or any subdivision requiring new public or private street connection, or the extension of municipal services.

Subdivision, minor means subdivision containing not more than four lots.

Subdivision, mobile home park means any subdivision containing three or more manufactured homes on a parcel of land under unified ownership.

Substantial damage means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged 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 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 actual repair work performed. The term does not, however, include either:

- (1) 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
- (2) Any alteration of a historic structure, provided that the alteration will not preclude the structure's continued designation as a historic structure, and a variance is obtained from the community's board of appeals.

Substantial start means completion of 30 percent of a permitted structure or use measured as a percentage of estimated total cost.

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

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

TDH means total dynamic head.

Telecommunication structure means a tower of any height and all accessory equipment which supports communication (broadcast or receiving) equipment, either analog or digital. It also includes a tower of any height and all accessory equipment which supports communication (broadcast or receiving) used by television or radio broadcasts.

Tenant, occupant. The words tenant and occupant applied to a building or land shall include any person holding a written or oral lease of, or who occupies the whole or part of such building or land, either alone or with others.

Tense. Words used in the past or present tense include the future as well as the past and present.

Tidal waters means all waters affected by tidal action during the highest annual tide. ~~maximum spring tide.~~

Timber harvesting means the cutting and removal of timber for the primary purpose of selling or processing forest products. "Timber harvesting" does not include the cutting or removal of vegetation within the shoreland zone when associated with any other land use activities. The cutting or removal of trees in the shoreland zone on a lot that has less than two (2) acres within the shoreland zone shall not be considered timber harvesting. Such cutting or removal of trees shall be regulated pursuant to Chapter 44, subsection 44-35(p), Clearing or Removal of Vegetation for Activities Other than Timber Harvesting. ~~the cutting and removal of timber for the primary purpose of selling or processing forest products. The cutting or removal of trees in the shoreland zone on a lot that has less than two acres within the shoreland zone shall not be considered timber harvesting. Such cutting or removal of trees shall be regulated pursuant to chapter 44, subsection 44-35(p), clearing or removal of vegetation for activities other than timber harvesting.~~

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

Tower means with regard to a wind energy system, the structure on which the wind system is mounted. This includes a monopole, freestanding, or guyed structure that supports a wind generator.

Tower height means with regard to a wind energy system, the height above grade of the fixed portion of the tower, excluding the wind turbine itself.

Town. The word town shall mean the Town of Eliot, Maine, and shall extend to and include its several officers, agents and employees.

Town boards, committees, commissions, officers, employees, departments, etc. Whenever reference is made to a board, committee, commission, officer, employee or department, etc., it shall mean the same as if it were followed by the words "of the Town of Eliot, Maine."

Town of Kittery (chapter 18) means Town of Kittery wastewater pollution control facility.

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

Tributary stream means a channel between defined banks created by the action of surface water, which is characterized by the lack of terrestrial vegetation or by the presence of a bed, devoid of topsoil, containing waterborne deposits or exposed soil, parent material or bedrock, and which is connected hydrologically with other water bodies. "Tributary stream" does not include rills or gullies forming because of accelerated erosion in disturbed soils where the natural vegetation cover has been removed by human activity. This definition does not include the term stream as defined elsewhere in this chapter, and only applies to that portion of the tributary stream located within the shoreland zone of the receiving water body or wetland. NOTE: Water setback requirements apply to tributary streams within the shoreland zone.

TSS (total suspended solids) means the total of all settleable and nonsettleable solids in a sample of wastewater, measured in milligrams per liter by weight.

Two-family dwelling means a building or portion principally designed, adapted, or used for occupancy by two families, and each living in its own separate quarters.

Unacceptable waste means hazardous waste, sewage treatment plant and septic tank residues, industrial waste, commercial waste sludge, coal and incinerator ash, asbestos and asbestos containing waste, tires, and other waste designated unacceptable by the board of selectmen.

Universal waste means electronic equipment specified by the State of Maine. Examples include TVs, computers, fluorescent tubes, etc.

Unpolluted drainage means water of quality equal to or better than the effluent criteria in effect or water that would not cause violation of receiving water quality standards and would not be benefited by discharge to the sanitary sewers and wastewater treatment facilities provided.

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

Urbanized area ("UA") (chapter 35) means the areas of the State of Maine so defined by the latest decennial (2000) census by the U.S. Bureau of the Census.

Use means the purpose for which land or a structure is arranged, designed or intended, or for which land or a structure is or may be occupied.

Variance means relaxation of requirements of this chapter as provided in section 45-49(b).

Variance (floodplain management ordinance) means a grant of relief by a community from the terms of the floodplain management regulations.

Vegetation means all live trees, shrubs, ground cover, and other plants including without limitation, trees both over and under four inches in diameter, measured at four and one half feet above ground level.

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

Veterinary hospital means a commercial establishment, operated by a licensed veterinarian, for the medical and surgical care of sick or injured animals.

VFD means variable frequency drive.

Vibration means a temporal and spatial oscillation of a displacement, velocity and acceleration in any material.

Viewing booth means any booth, cubicle, room, or stall within premises of a commercial adult enterprise used to display, by audio or visual reproduction, projection or other means, any materials listed under the definition of commercial adult enterprise.

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

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

Waste container means any receptacle with a capacity of two or more cubic yards used for the collection, storage and/or transportation of rubbish, garbage, materials to be recycled and other substances and materials.

Wastewater (or sewage) means the spent water of a community, which may be a combination of the liquid and water-carried wastes from residences, business buildings, institutions, and industrial establishments, together with any groundwater, surface water or stormwater that may be present.

Wastewater collection system means the structures, pipes, pumping stations and other facilities and appurtenances owned by the Town of Kittery and/or Town of Eliot required to convey sanitary wastewater and/or industrial wastes to the Kittery wastewater treatment facility.

Wastewater pollution control facility means all facilities owned by the Town of Kittery for the collection, treatment, and disposal of sanitary wastewater, industrial waste, and septage. The wastewater pollution control facility is comprised of the wastewater collection system and the wastewater treatment facility.

Wastewater treatment facility means the central plant facility owned by the Town of Kittery for the treatment and disposal of sanitary wastewater, industrial waste, and septage.

Water body means any great pond, river, stream.

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

Watercourse means a channel in which a flow of water occurs, either continuously or intermittently.

Waters of the state means any and all surface and subsurface waters that are contained within, flow through, or under or border upon this state or any portion of the state, including the marginal and high seas, except such waters as are confined and retained completely upon the property of one person and do not drain into or connect with any other waters of the state, but not excluding waters susceptible to use in interstate or foreign commerce, or whose use, degradation or destruction would affect interstate or foreign commerce.

Wetland means a freshwater or coastal wetland.

Wind turbine means the parts of the wind system including the blades, generator, and tail.

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

Wood waste means brush, stumps, lumber, bark, woodchips, shavings, slabs, edgings, slash and sawdust, which are not mixed with other waste.

Woody vegetation means live trees or woody, nonherbaceous shrubs.

Written and in writing. The words written and in writing shall include any representation of words, letters or figures, whether by printing or otherwise.

State Law reference— Similar definitions, 30-A M.R.S.A. § 2001.

Yard means the area of land on a lot not occupied by the principal building and parking.

Yard, front means the area of land between the front lot line and the nearest part of the principal building.

Yard, rear means the area of land between the rear lot line and the nearest part of the principal building.

Yard, side means the area of land between the side lot line and the nearest part of the principal building.

Yard waste means grass clippings, leaves and other vegetal matter other than wood wastes and land clearing debris.

(T.M. of 6-19-01, (arts. 6—8); T.M. of 11-6-01, (arts. 2, 8); T.M. of 3-16-02, (art. 3, § 1), (art. 4); T.M. of 11-5-02; T.M. of 6-10-03; T.M. of 11-4-03; T.M. of 3-20-04; T.M. of 6-8-04; T.M. of 6-14-05; T.M. of 6-16-07; T.M. of 6-16-07; T.M. of 6-14-08; T.M. of 6-9-09(1); T.M. of 6-9-09(2); T.M. of 6-12-2010(3); T.M. of 6-18-2011(5); T.M. of 6-18-2011(6); T.M. of 6-16-2012(1); T.M. of 6-16-2012(3); T.M. of 6-11-2013(1); T.M. of 11-5-2013; T.M. of 6-9-2015(1); T.M. of 6-9-2015(2))

State Law reference— Similar definitions, 30-A M.R.S.A. § 2001.