

**Article \_\_\_\_\_ Shall an ordinance entitled “Amendments to Chapter 44, Shoreland Zoning” and amendments to the Official Eliot Zoning Map of the Municipal Code of Ordinances of the Town of Eliot, Maine to comply with The Mandatory Shoreland Zoning Act (Title 38 M.R.S.A sections 435-449 dated \_\_\_\_\_ be enacted? The Amendment will:**

- Bring Eliot’s Shoreland Zoning ordinance into compliance with the minimum requirements of Chapter 1000 of the Department of Environmental Protection’s *State of Maine Guidelines for Municipal Shoreland Zoning*.
- A complete copy of the text and map are available for review at the Town Hall.
- The proposed ordinance has been reviewed by the town’s attorney.

**Amendments to Chapter 44, Shoreland Zoning and amendments to the Official Eliot Zoning Map of the Municipal Code of Ordinances of the Town of Eliot, Maine to comply with The Mandatory Shoreland Zoning Act (Title 38 M.R.S.A sections 435-449**

**Amend Section 1-2 as follows:**

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

New text is underlined

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

In the construction of this Code, and of all ordinances, the following rules shall be observed, ~~unless such construction would be inconsistent with the manifest intent of the board of selectmen:~~

*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.

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

~~*Basement (cellar)* means a portion of the building partly underground but having less than half its clear height below the average grade of the adjoining ground.~~ any portion of a structure with a floor-to-ceiling height of 6 feet or more and having more than 50% of its volume below the existing ground level.

*Bureau* means, within Chapter 44 Shoreland Zoning, the State of Maine Department of Conservation's Bureau of Forestry

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

*Coastal wetland* means all tidal and subtidal lands; ~~all lands below any identifiable debris line left by tidal action;~~ 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 ~~maximum spring~~ 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 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 maximum spring tide are all considered to be coastal wetlands.

*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.

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

*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.

*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.

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

*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.

*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.

*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. ~~Such unit shall not exceed five persons not relatives.~~

*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.

*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.

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

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.

Foundation means the supporting substructure of a building or other structure, excluding wooden sills and post supports, but including ~~but not limited to~~ basements, slabs, sills, posts or frostwalls, or other base consisting of concrete, block, brick or similar material.

Functionally water-dependent uses means ~~a use that cannot perform its intended purpose unless it is located or carried out in close proximity to water. 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 term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and shipbuilding and ship repair facilities, but does not include long term storage or related manufacturing facilities. The uses include, but are not limited to commercial and recreational fishing and boating facilities (excluding recreational boat storage buildings), finfish and shellfish processing, fish storage and retail and wholesale fish marketing facilities, waterfront dock and port facilities, shipyards and boat building facilities, marinas, navigation aids, basins and channels, retaining walls, industrial uses dependent upon water-borne transportation or requiring large volumes of cooling or processing water that can not reasonably be located or operated at an inland site, and uses that primarily provide general public access to coastal or inland waters.~~

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

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

Harvest Area means the area where timber harvesting and related activities, including the cutting of trees, skidding, yarding, and associated road construction take place. The area affected by a harvest encompasses the area within the outer boundaries of these activities, excepting unharvested areas greater than 10 acres within the area affected by a harvest.

Height of a structure (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.

*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 (2) 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.

*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.

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

*Land Management Road* 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.

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

*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 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 lots 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.

*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 activities facilities.

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

*Native* means indigenous to the local forests.

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

Normal high-water line (non-tidal 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 non-forested wetland vegetation and hydric soils and that are at the same or lower elevation as the water level of the river or great pond during the period of normal high-water are considered part of the river or great pond. In the case of wetlands adjacent to rivers and great ponds, the normal high-water line is the upland edge of the wetland, and not the edge of the open water. NOTE: Adjacent to tidal waters, setbacks are measured from the upland edge of the "coastal wetland."

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. which is: (1) Built on a single chassis; (2) Four hundred square feet or less when measured at the largest horizontal projection, not including slideouts; (3) Designed to be self-propelled or permanently towable by a motor vehicle; and (4) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

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. The term shall include mobile homes, but not recreational vehicles.

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

Residual Stand means a stand of trees remaining in the forest following timber harvesting and related activities

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.

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.

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 which 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.

*Setback (within any Shoreland Zone governed by Chapter 44)* means the nearest horizontal distance from the normal high-water line of a waterbody 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.

*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, or saltwater body; within 250 feet of the upland edge of a ~~coastal~~ or 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.

*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.

*Structure (Building and within any Shoreland Zone governed by Chapter 44)* 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.

*Substantial start* means completion of thirty (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. ~~a collection of treatment tank(s), disposal area(s), holding tank(s) and pond(s), surface spray system(s), cesspool(s), well(s), surface ditch(es), alternative toilet(s), or other devices and associated piping designed to function as a unit for the purpose of disposing of wastes or wastewater on or beneath the surface of the earth. The term shall not include any wastewater discharge system licensed under title 38, M.R.S.A. section 414, any surface wastewater disposal system licensed under title 38, M.R.S.A. section 413-1-A, or any public sewer. The term shall not include a wastewater disposal system designed to treat wastewater which is in whole or in part hazardous waste as defined in title 38, M.R.S.A. chapter 13, subchapter 1.~~

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

Timber harvesting means the cutting and removal of timber for the primary purpose of selling or processing forest products. The cutting or removal of trees in the shoreland zone on a lot that has less than two (2) acres within the shoreland zone shall not be considered timber harvesting. Such cutting or removal of trees shall be regulated pursuant to Chapter 44, Sec. 44-35(p), *Clearing or Removal of Vegetation for Activities Other Than Timber Harvesting*. ~~trees from their growing site, and the attendant operation of cutting and skidding machinery, but not the construction or creation of roads. Timber harvesting does not include the clearing of land for approved construction.~~

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.

Tributary stream means a channel between defined banks created by the action of surface water, ~~whether intermittent or perennial, and which is characterized by the lack of upland terrestrial vegetation or presence of aquatic vegetation and by the presence of a bed, devoid of topsoil, containing waterborne deposits on 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. flows to a water body or wetland as defined.~~ 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.

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 maximum spring tide level, including all areas affected by tidal action. For purposes of a freshwater wetland, the upland edge is formed where the soils are not saturated for a duration sufficient to support wetland vegetation; or where the soils support the growth of wetland vegetation, but such vegetation is dominated by woody stems that are six (6) meters (approximately twenty (20) foot) tall or taller. ~~means the boundary between upland and wetland.~~

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.

Water body means any great pond, river, stream ~~or tidal area.~~

Water crossing means any project extending from one bank to the opposite bank of a river, ~~or stream, tributary stream, or wetland~~ whether under, through, or over the water ~~or wetland~~ course. 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.

~~Wetlands associated with great ponds and rivers means wetlands contiguous with or adjacent to a great pond or river, and which during normal high water, are connected by surface water to the great pond or river. Also included are wetlands which are separated from the great pond or river by~~

~~a Burma, causeway, or similar feature less than 100 feet in width, and which have a surface elevation at or below the normal high water line of the great pond or river. Wetlands associated with great ponds or rivers are considered to be part of that great pond or river.~~

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

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

**Amend Chapter 44 as follows:**

**Chapter 44. Shoreland Zoning**

New text is underlined

**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.

**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.

**Sec. 44-3. Applicability.**

This chapter applies to all land areas:

- within 250 feet, horizontal distance, of the normal high-water line of any great pond, 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; and
- 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 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.

**Sec. 44-4. Definitions.**

(See section 1-2).

**Sec. 44-5. Effective date of ordinance and ordinance amendments, and 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 [insert new town meeting date], 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. ~~Upon approval of this ordinance,~~ The shoreland zoning ordinance previously adopted on March 19, 1988, is hereby 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. Section (o) Timber Harvesting, repeal in its entirety.

3. Chapter 1, General Provisions, Section 1-2, repeal definitions of the following terms:

Harvest area  
Residual Basal areal  
Residual stand

**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.

**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.

**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.

**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.

## **ARTICLE II. DISTRICT REGULATIONS**

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

(a) *Official ~~shoreland~~ zoning map.* The areas to which this chapter is applicable are hereby divided into the following districts as shown on the official ~~shoreland~~ zoning map(s) which is (are) made a part of this chapter:

- (1) Resource protection;
- (2) Limited residential;
- (3) Limited commercial;
- (4) General development; and
- (5) Stream ~~and wetland~~ protection.

(b) *Scale of map.* The official ~~shoreland~~ zoning map shall be drawn at a scale of not less than one inch equals ~~1,000~~ 2000 feet. District boundaries ~~are~~ shall be clearly delineated and a legend indicating the symbols for each district ~~are~~ shall be placed on the map.

(c) *Certification of official ~~shoreland~~ zoning map.* The official ~~shoreland~~ zoning map shall be certified by the attested signature of the municipal clerk and shall be located in the municipal office.

(d) *Changes to the official ~~shoreland~~ zoning map.* If amendments, in accordance with section 44-9, are made in the district boundaries or other matter portrayed on the official ~~shoreland~~ zoning map, such changes shall be made on the official ~~shoreland~~ zoning map within 30 days after the amendment has been approved by the commissioner of the department of environmental protection.

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

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

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

### 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.

#### 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 non-conforming condition shall not be permitted to become more non-conforming.

(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, 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:* 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. ~~Further limitations are as follows:~~

a. ~~If 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 (see appendix A following this section). If a replacement structure conforms with the requirements of Section 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% in floor area and volume since that date.~~

b. ~~Construction or enlargement of a foundation beneath the existing structure shall not be considered an expansion of the structure, provided that~~ Whenever a new, enlarged, or replacement foundation is constructed under a non-conforming structure, the structure and new foundation are 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 (b)(2). ~~Relocation, in subsection 44-32(c)(2) below; that If the completed foundation does not extend beyond the exterior dimensions of the structure; except for expansion in conformity with Section 44-32(c)(1)(a) above, and that 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.

c. 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.

(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 Main 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 addition, the area from which the relocated structure was removed must be replanted with vegetation. Replanting shall be required as follows:

(a) Trees removed in order to relocate a structure must be replanted with at least one native tree, three (3) feet in height, for every tree removed. If more than five trees are planted, no one species of tree shall make up more than 50% of the number of trees planted. Replaced trees must be planted no further from the water or wetland than the trees that were removed.

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

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

(3) *Reconstruction or replacement:* Any 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 ~~one year~~ eighteen (18) months of the date of said damage, destruction, or removal, and provided that such reconstruction or replacement is in compliance with the water body, tributary stream or wetland setback requirement to the greatest practical extent as determined by the planning board 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 Section 44-32(C)(1) above, as determined by the non-conforming floor area and volume of the reconstructed or replaced structure at its new location. If the total amount of floor area and volume of the original structure can be relocated or reconstructed beyond the required setback area, no portion of the relocated or reconstructed structure shall be replaced or constructed at less than the setback requirement for a new structure. When it is necessary to remove vegetation in order to replace or reconstruct a structure, vegetation shall be replanted in accordance with Section 44-32(C)(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% 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 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) above, the physical condition and type of foundation present, if any.

(4) *Change of use 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 (5) year period.

(3) *Change of use:* An existing nonconforming use may be changed to another nonconforming use provided that the proposed use has no greater adverse impact on the subject and adjacent properties and resources, than the former use, as determined by the planning board. The determination of no greater adverse impact shall be made according to criteria listed in subsection 44-32(c)(4) 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 size area, lot width and shore frontage can be met. Variances relating to setback or other requirements not involving lot size 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 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.

## APPENDIX A

### ~~CONSIDERING THE TREATMENT OF NONCONFORMING STRUCTURES IN THE SHORELAND ZONE~~

#### ~~Nonconforming structures:—~~

~~A nonconforming structure is defined in the DEP guidelines as a structure that does not meet the dimensional requirements for setback, height, or lot coverage. Structures that were in~~

compliance with dimensional requirements at the time of construction may become nonconforming when new regulations are adopted.

The treatment of structures that fail to meet the dimensional requirements contained in DEP guidelines should be based on local conditions. The degree to which such structures should be controlled will vary from municipality to municipality depending on the nature of the shoreline, the number of nonconforming structures, and the extent to which the structures are nonconforming. Municipalities will treat nonconforming structures differently depending on how shoreland areas have developed in the past and, how municipalities want their shoreland areas to develop in the future.

Addressing issues associated with nonconforming structures may take some time. However, municipalities that adopt specific ordinance language for nonconforming structures will have ordinances that will be easier for the code enforcement officer (CEO) and planning board to administer, will aid the planning board and CEO in making consistent decisions, and will avoid misunderstandings on the part of applicants. By clarifying how nonconforming structures can expand along shores, municipalities can provide better protection of water quality and scenic resources.

The following discussion focuses on structures that are nonconforming with respect to the required shoreline setback. These are structures that are: 1) less than 100 feet from great ponds classified GPA and rivers flowing to those ponds; 2) less than 75 feet from the normal high water line of other water bodies, tributary streams, or the upland edge of a wetland, or 3) less than 25 feet from shoreland areas zoned general development. Since there is no setback requirement for the commercial fisheries/maritime activities district (CFMA), structures in this district cannot be nonconforming with respect to setback requirements (unless the municipality has established additional setback standards).

*Expanding nonconforming structures towards the water:—*

*Note:* Reference to specific sections of the DEP guidelines are included in parenthesis. DEP requirements for nonconforming structures do not take effect until they have been incorporated into local ordinances.

The DEP guidelines prohibit structures, located less than the required setback from the normal high water line of a water body, from expanding towards the water body, tributary stream, or wetland (section 44-32(1)c.). There is, however, no clear description of what is meant by the phrase "expanding towards the water body . . . ." This has led to confusion on the part of planning boards, CEOs and applicants. Below are some questions and answers that illustrate different ways to address this issue.

Q: If our town adopts the DEP guidelines, what types of expansions could occur within the setback?

A: According to DEP, expansions of the type illustrated in B, C and D would be permitted while those of type A would be prohibited. (See illustration on next page).

**GRAPHIC LINK:** [Click here for graphic](#)

*Note:* The portion of the structure lying within the required setback cannot expand by more than 30 percent of the floor area or volume of the portion of the structure lying within the setback, during the lifetime of the structure.

(T.M. of 12-15-93, § 12)

## Sec. 44-33. Establishment of districts.

- (a) *Resource protection district* (as identified on ~~shoreland~~ 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 (1) through (5) described below when they occur within the limits of the shoreland zone, exclusive of the stream ~~and wetland~~ protection district, except that areas which are currently developed and areas which meet the criteria for the limited commercial, or general development, ~~or commercial fisheries/maritime activities~~ districts need not be included within the resource protection district.

- (1) Areas within 250 feet, horizontal distance, of the upland edge of freshwater wetlands, salt marshes and salt meadows, and wetlands associated with great ponds and rivers, which are rated "moderate" or "high" value waterfowl and wading bird habitat, including nesting and feeding areas, by the Maine Department of Inland Fisheries and Wildlife (MDIF&W) ~~as of January 1, 1973.~~ that are depicted on a Geographic Information System (GIS) data layer maintained by either MDIF&W or the Department. For the purposes of this paragraph "wetlands associated with great ponds and rivers" shall mean areas characterized by non-forested wetland vegetation and hydric soils that are contiguous with a great pond or river, and have a surface elevation at or below the water level of the great pond or river during the period of normal high water. "Wetlands associated with great ponds or rivers" are considered to be part of that great pond or river.

~~Note: York Pond is listed as moderate value by MDIF&W.~~

- (2) 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.
- (3) Areas of two or more contiguous acres with sustained slopes of 20 percent or greater.
- (4) 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 ~~spring~~ high water. NOTE: These areas usually consist of forested wetlands abutting water bodies and non-forested wetlands.
- (5) Land areas along rivers subject to severe bank erosion, undercutting, or river bed movement and lands adjacent to tidal waters which are subject to severe erosion or mass movement, such as steep coastal bluffs.
- (b) *Limited residential district* (as identified on ~~shoreland~~ 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, ~~or the commercial fisheries/maritime activities district.~~

- (c) *Limited commercial district* (as identified on ~~shoreland~~ 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 ~~shoreland~~ 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 ~~and wetland~~ protection district* (as identified on ~~shoreland~~ zoning map). The stream protection district includes all land areas within 75 feet, horizontal distance, of the normal high-water line of a stream, or freshwater wetland (and associated outlet streams), ~~except that which has been rated by the department of inland fisheries and wildlife as having moderate or high value. This district excludes~~ exclusive of those areas which are within 250 {feet,} feet, horizontal distance, of the normal high-water line of a great pond, river or saltwater body, or the upland edge of a freshwater or coastal wetland. Exclusion includes areas wWhere a stream and wetland and its associated shoreland area is 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 a great pond, river or saltwater body, or the upland edge of a coastal wetland. This means when a 250-foot setback area is coincident with a 75-foot setback area the 250 foot setback area shall take precedence.

**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. The district designated for a particular site shall be determined from the official ~~shoreland~~ zoning map.

Key to table 1:

Yes	-	Allowed (no permit required but the use must comply with all applicable land use standards)
No	-	Prohibited
PB	-	<del>Requires</del> <u>Allowed with</u> permit issued by the planning board
CEO	-	<del>Requires</del> <u>Allowed with</u> permit issued by the code enforcement officer
LPI	-	<del>Required</del> <u>Allowed with</u> permit issued by the local plumbing inspector
<del>SR</del>	<del>—</del> -	<del>Site review</del>

Abbreviations:

RP	-	Resource protection
LR	-	Limited residential
LC	-	Limited commercial
GD	-	General development
<del>S&amp;WP</del> <u>SP</u>	-	Stream <del>and wetland</del> 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

		Districts				
	Land Uses	<del>S&amp;WP</del> <u>SP</u>	RP	LR	LC	GD
<b><u>Uses or Activities Without Structures</u></b>						
(1)	<u>Clearing of vegetation for activities other than timber harvesting</u>	<u>CEO</u>	<u>CEO-1</u>	<u>yes</u>	<u>yes</u>	<u>yes</u>

		Districts				
	Land Uses	<u>S&amp;WPSP</u>	RP	LR	LC	GD
(2)	<u>Emergency operations</u>	<u>yes</u>	<u>yes</u>	<u>yes</u>	<u>yes</u>	<u>yes</u>
(3)	<u>Fire prevention activities</u>	<u>yes</u>	<u>yes</u>	<u>yes</u>	<u>yes</u>	<u>yes</u>
(4)	<u>Forest management activities, except for timber harvesting &amp; land management roads</u>	<u>yes</u>	<u>yes</u>	<u>yes</u>	<u>yes</u>	<u>yes</u>
(5)	<u>Mineral exploration</u>	<u>no</u>	<u>no</u>	<u>no</u>	<u>yes-2</u>	<u>yes-2</u>
(6)	<u>Mineral extraction, including sand and gravel extraction</u>	<u>no</u>	<u>no</u>	<u>no</u>	<u>PB</u>	<u>PB</u>
(7)	<u>Motorized vehicular traffic on existing roads and trails</u>	<u>yes</u>	<u>yes</u>	<u>yes</u>	<u>yes</u>	<u>yes</u>
(8)	<u>Nonintensive recreational uses not requiring structures such as hunting, fishing and hiking</u>	<u>yes</u>	<u>yes</u>	<u>yes</u>	<u>yes</u>	<u>yes</u>
(9)	<u>Soil and water conservation practices</u>	<u>yes</u>	<u>yes</u>	<u>yes</u>	<u>yes</u>	<u>yes</u>
(10)	<u>Surveying and resource analysis</u>	<u>yes</u>	<u>yes</u>	<u>yes</u>	<u>yes</u>	<u>yes</u>
(11)	<u>Timber harvesting</u>	<u>CEO</u>	<u>CEO-1</u>	<u>yes</u>	<u>yes</u>	<u>yes</u>
(12)	<u>Wildlife management practices</u>	<u>yes</u>	<u>yes</u>	<u>yes</u>	<u>yes</u>	<u>yes</u>
(1)	<u>Nonintensive recreational uses not requiring structures such as hunting, fishing and hiking</u>	<u>yes</u>	<u>yes</u>	<u>yes</u>	<u>yes</u>	<u>yes</u>
(2)	<u>Motorized vehicular traffic on existing roads and trails</u>	<u>yes</u>	<u>yes</u>	<u>yes</u>	<u>yes</u>	<u>yes</u>

			Districts				
	Land Uses		<u>S&amp;WPSP</u>	RP	LR	LC	GD
(3)	Forest management activities, except for timber harvesting		yes—	yes—	yes—	yes—	yes—
(4)	Timber harvesting—		CEO	CEO-1	yes—	yes—	yes—
(5)	Clearing of vegetation for approved construction and other allowed uses		CEO—	CEO-1	yes—	yes—	yes—
(6)	Fire prevention activities such as dry hydrant installation or pumper parking—		yes—	yes—	yes—	yes—	yes—
(7)	Wildlife management practices—		yes—	yes—	yes—	yes—	yes—
(8)	Soil and water conservation practices—		yes—	yes—	yes—	yes—	yes—
(9)	Mineral exploration—		no—	no	no	no	yes-2
(10)	Mineral extraction, including sand and gravel extraction—		no—	no—	no—	PB—	PB—
(11)	Surveying and resource analysis—		yes—	yes—	yes—	yes—	yes—
(12)	Emergency operations—		yes—	yes—	yes—	yes—	yes—
<b><u>Principal Structures or Uses</u></b>							
(13)	Agriculture—		CEO—	PB—	CEO	CEO	CEO
(14)	Aquaculture—		PB-10—	PB-10	PB-10	PB	Yes
(15) (13)	Principal structures and uses:						
	a.	One- and two-family residential	no4 <u>PB-4</u>	no4 <u>PB-9</u>	CEO	CEO	CEO
	b.	Multiunit residential	no	no	PB	PB	PB

			Districts				
	Land Uses		<u>S&amp;W</u> <u>PSP</u>	RP	LR	LC	GD
	c.	Commercial (not listed elsewhere)	<u>No-13</u>	<u>No-13</u>	<u>No-13</u>	PB	<u>PB-5</u>
	d.	Industrial	no	no	no	no	PB
	e.	Governmental and institutional	no	no	no	PB	PB
	f.	Small nonresidential facilities for educational, scientific or nature interpretation purposes	PB 4	PB	CEO	CEO	CEO
(14)	<u>Agriculture</u>		<u>CEO</u>	<u>PB</u>	<u>CEO</u>	<u>CEO</u>	<u>CEO</u>
(15)	<u>Aquaculture</u>		<u>PB-10</u>	<u>PB-10</u>	<u>PB-10</u>	<u>PB</u>	<u>Yes</u>
(16)	<u>Bed and breakfast</u>		<u>no</u>	<u>no</u>	<u>SR10</u>	<u>SR10</u>	<u>SR</u>
(17)	<u>Boardinghouse</u>		<u>no</u>	<u>no</u>	<u>SR10</u>	<u>SR</u>	<u>SR</u>
(18)	<u>Campgrounds</u>		<u>no</u>	<u>no-7</u>	<u>no</u>	<u>no</u>	<u>PB</u>
(19)	<u>Conversions of seasonal residences to year-round residences</u>		<u>LPI</u>	<u>LPI</u>	<u>LPI</u>	<u>LPI</u>	<u>LPI</u>
(20)	<u>Gambling Casino</u>		<u>no</u>	<u>no</u>	<u>no</u>	<u>no</u>	<u>no</u>
(21)	<u>Marinas</u>						
	a.	<u>Full service</u>	<u>no</u>	<u>no</u>	<u>no</u>	<u>no</u>	<u>PB</u>
	b.	<u>Limited</u>	<u>no</u>	<u>no</u>	<u>no</u>	<u>PB</u>	<u>PB</u>
(22)	<u>Off-site parking</u>		<u>no</u>	<u>no-7</u>	<u>no</u>	<u>no</u>	<u>no</u>
(23)	<u>Public and private recreational areas involving minimal structural development</u>		<u>PB</u>	<u>PB</u>	<u>PB</u>	<u>PB</u>	<u>CEO</u>
<u>Accessory Structures or Uses</u>							
(16)	Structures accessory		PB 4	PB	CEO	CEO	CEO

			Districts				
	Land Uses		<u>S&amp;WPSP</u>	RP	LR	LC	GD
(24)	to allowed uses, not otherwise listed						
(17)	<del>Piers, docks, wharves, bridges and other structures and uses and extending over or below the normal high water line or within a wetland:—</del>						
	a.	<del>Temporary—</del>	CEO	CEO	CEO	CEO	CEO
	b.	<del>Permanent residential—</del>	PB—	PB—	PB—	PB—	PB—
	c.	<del>Permanent commercial</del>	<del>NO/ PB**</del>	<del>NO/ PB**</del>	<del>NO/ PB**</del>	PB	PB
	d.	<del>Limited commercial—</del>	<del>PB-5—</del>	<del>PB-5</del>	<del>PB-5</del>	<del>PB—</del>	<del>no—</del>
		**Aquaculture Pier must meet the requirements of a residential pier in this area.					
(18)	<del>Conversions of seasonal residences to year round residences—</del>		<del>LPI—</del>	<del>PB4LPI</del>	<del>LPI—</del>	<del>LPI—</del>	<del>LPI—</del>
(19)	<del>Home occupations; regular and water dependent—</del>		<del>no—</del>	<del>no—</del>	<del>no—</del>	<del>no—</del>	<del>no—</del>
(25)	<u>Essential services</u>		<u>PB-6</u>	<u>PB-6</u>	<u>PB</u>	<u>PB</u>	<u>PB</u>
	<u>A. Roadside distribution lines (34.5kV and lower)</u>		<u>CEO-6</u>	<u>CEO-6</u>	<u>yes-12</u>	<u>yes-12</u>	<u>yes-12</u>
	<u>B. Non-roadside or cross-country distribution lines involving ten poles or less in the shoreland zone</u>		<u>PB-6</u>	<u>PB-6</u>	<u>CEO</u>	<u>CEO</u>	<u>CEO</u>
	<u>C. Non-roadside or cross-country distribution lines</u>		<u>PB-6</u>	<u>PB-6</u>	<u>PB</u>	<u>PB</u>	<u>PB</u>

		Districts				
	Land Uses	<del>S&amp;W</del> PSP	RP	LR	LC	GD
	<u>involving eleven or more poles in the shoreland zone</u>					
	<u>D. Other essential services</u>	<u>PB-6</u>	<u>PB-6</u>	<u>PB</u>	<u>PB</u>	<u>PB</u>
(26)	<u>Fences</u>	<u>yes-11A</u>	<u>yes-11A</u>	<u>yes-11A</u>	<u>yes-11A</u>	<u>yes-11A</u>
(27)	<u>Filling and earthmoving of &lt;10 cubic yards</u>	<u>CEO</u>	<u>CEO</u>	<u>yes</u>	<u>yes</u>	<u>yes</u>
(28)	<u>Filling and earthmoving of &gt;10 cubic yards</u>	<u>CEO PB</u>	<u>PB</u>	<u>CEO</u>	<u>CEO</u>	<u>CEO</u>
<del>(20)</del> (29)	<u>Home business</u>	<u>no-12A</u>	<u>no-12A</u>	<u>PB-10A</u>	<u>PB-10A</u>	<u>no</u>
<del>(21)</del>	<del><u>Home business, water dependent</u></del>	<del><u>no-12A</u></del>	<del><u>no-12A</u></del>	<del><u>PB-10A</u></del>	<del><u>PB-10A</u></del>	<del><u>no</u></del>
(30)	<u>Home occupations; regular and water-dependent</u>	<u>no</u>	<u>no</u>	<u>no</u>	<u>no</u>	<u>no</u>
(31)	<u>Home Office</u>	<u>CEO</u>	<u>no</u>	<u>CEO</u>	<u>CEO</u>	<u>CEO</u>
(32)	<u>Individual, private campsites</u>	<u>CEO</u>	<u>CEO</u>	<u>CEO</u>	<u>CEO</u>	<u>CEO</u>
(33)	<u>Land management roads</u>	<u>yes</u>	<u>PB</u>	<u>yes</u>	<u>yes</u>	<u>yes</u>
(34)	<u>Piers, docks, wharves, bridges and other structures and uses and extending over or below the normal high-water line or within a wetland:</u>					
	a. <u>Temporary</u>	<u>CEO-11</u>	<u>CEO-11</u>	<u>CEO-11</u>	<u>CEO-11</u>	<u>CEO-11</u>
	b. <u>Permanent residential</u>	<u>PB</u>	<u>PB</u>	<u>PB</u>	<u>PB</u>	<u>PB</u>
	c. <u>Permanent commercial</u>	<u>PB-14</u>	<u>PB-14</u>	<u>PB-14</u>	<u>PB</u>	<u>PB</u>
	d. <u>Limited</u>	<u>PB-5</u>	<u>PB-5</u>	<u>PB-5</u>	<u>PB</u>	<u>no</u>

			Districts				
	Land Uses		<del>S&amp;W</del> <u>PSP</u>	RP	LR	LC	GD
		<u>commercial</u>					
<del>(22)</del> (35)	Private sewage disposal systems for allowed uses		LPI	<del>PB-4</del> <u>LPI</u>	LPI	LPI	LPI
<del>(36)</del>	<u>Road and driveway construction</u>		<u>PB</u>	<u>no-8</u>	<u>PB</u>	<u>PB</u>	<u>PB</u>
<del>(24)</del> (37)	Service drops, as defined, to allowed uses		yes	yes	yes	yes	yes
<del>(38)</del>	<u>Signs. See zoning ordinance</u>		<u>yes-9A</u>	<u>yes-9A</u>	<u>yes-9A</u>	<u>yes-9A</u>	<u>yes-9A</u>
<del>(39)</del>	<u>Uses similar to allowed uses</u>		<u>CEO</u>	<u>CEO</u>	<u>CEO</u>	<u>CEO</u>	<u>CEO</u>
<del>(40)</del>	<u>Uses similar to uses requiring a CEO permit</u>		<u>CEO</u>	<u>CEO</u>	<u>CEO</u>	<u>CEO</u>	<u>CEO</u>
<del>(41)</del>	<u>Uses similar to uses requiring a PB permit</u>		<u>PB</u>	<u>PB</u>	<u>PB</u>	<u>PB</u>	<u>PB</u>
<del>(42)</del>	<u>Waste containers</u>		<u>CEO-5A</u>	<u>CEO-5A</u>	<u>CEO-5A</u>	<u>CEO-5A</u>	<u>CEO-5A</u>
<del>(23)</del>	<del>Essential services</del>		<del>PB-6</del>	<del>PB-6</del>	<del>PB</del>	<del>PB</del>	<del>PB</del>
<del>(25)</del>	<del>Public and private residential areas involving minimal structural development</del>		<del>PB</del>	<del>PB</del>	<del>PB</del>	<del>PB</del>	<del>CEO</del>
<del>(26)</del>	<del>Individual, private campsites</del>		<del>CEO</del>	<del>CEO</del>	<del>CEO</del>	<del>CEO</del>	<del>CEO</del>
<del>(27)</del>	<del>Campgrounds</del>		<del>no</del>	<del>no-1</del>	<del>no</del>	<del>no</del>	<del>PB</del>
<del>(28)</del>	<del>Boardinghouse</del>		<del>no</del>	<del>no</del>	<del>SR10</del>	<del>SR</del>	<del>SR</del>
<del>(29)</del>	<del>Bed and breakfast</del>		<del>no</del>	<del>no</del>	<del>SR10</del>	<del>SR10</del>	<del>SR</del>
<del>(30)</del>	<del>Road and driveway construction</del>		<del>CEO</del>	<del>no-8</del>	<del>CEO</del>	<del>CEO</del>	<del>CEO</del>
<del>(31)</del>	<del>Off site parking</del>		<del>no</del>	<del>no-1</del>	<del>no</del>	<del>no</del>	<del>no</del>
<del>(32)</del>	<del>Marinas</del>		<del>—</del>	<del>—</del>	<del>—</del>	<del>—</del>	<del>—</del>
	<del>a-</del> -	<del>Full service</del>	<del>no</del>	<del>no</del>	<del>no</del>	<del>no</del>	<del>PB</del>

			Districts				
	Land Uses		<u>S&amp;WPSP</u>	RP	LR	LC	GD
	<del>b.</del> <del>-</del>	<del>Limited</del>	<del>no</del>	<del>no</del>	<del>no</del>	<del>PB</del>	<del>PB</del>
<del>(33)</del>	<del>Filling and earthmoving of &lt;10 cubic yards</del>		<del>CEO</del>	<del>CEO</del>	<del>yes</del>	<del>yes</del>	<del>yes</del>
<del>(34)</del>	<del>Filling and earthmoving of &gt;10 cubic yards</del>		<del>CEO</del> <u>PB</u>	<del>PB</del>	<del>CEO</del>	<del>CEO</del>	<del>CEO</del>
<del>(35)</del>	<del>Signs. See zoning ordinance</del>		<del>yes</del> <u>9A</u>	<del>yes</del> <u>9A</u>	<del>yes</del> <u>9A</u>	<del>yes</del> <u>9A</u>	<del>yes</del> <u>9A</u>
<del>(36)</del>	<del>Uses similar to allowed uses</del>		<del>CEO</del>	<del>CEO</del>	<del>CEO</del>	<del>CEO</del>	<del>CEO</del>
<del>(37)</del>	<del>Uses similar to uses requiring a CEO permit</del>		<del>CEO</del>	<del>CEO</del>	<del>CEO</del>	<del>CEO</del>	<del>CEO</del>
<del>(38)</del>	<del>Uses similar to uses requiring a PB permit</del>		<del>PB</del>	<del>PB</del>	<del>PB</del>	<del>PB</del>	<del>PB</del>
<del>(39)</del>	<del>Home Office</del>		<del>CEO</del>	<del>no</del>	<del>CEO</del>	<del>CEO</del>	<del>CEO</del>
<del>(40)</del>	<del>Gambling Casino</del>		<del>no</del>	<del>no</del>	<del>no</del>	<del>no</del>	<del>no</del>
<del>(41)</del>	<del>Fences</del>		<del>yes</del> <u>11A</u>	<del>yes</del> <u>11A</u>	<del>yes</del> <u>11A</u>	<del>yes</del> <u>11A</u>	<del>yes</del> <u>11A</u>
<del>(42)</del>	<del>Waste containers</del>		<del>CEO</del> <u>5A</u>	<del>CEO</del> <u>5A</u>	<del>CEO</del> <u>5A</u>	<del>CEO</del> <u>5A</u>	<del>CEO</del> <u>5A</u>

*Footnotes:*

- 1 In RP not ~~permitted~~ 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 ~~permitted~~ 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 45-422, Waste containers.
- 6 See further restrictions in section 44-35(1)(2), Essential Services.
- 7 Except when area is zoned for resource protection due to floodplain criteria in which case a permit is required from the PB.

- 8 ~~Except to provide access to permitted uses within the district, or where no reasonable alternative route or location is available outside the RP area, in which case a permit is required from the PB as provided in Section 44-35(h).~~
- 9 Single family residential structures may be allowed by special exception only according to the provisions of 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 Commerical 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.

#### **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 underlying 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 underlying zoning district.

Minimum shore frontage: Unless otherwise specified, the The minimum shore frontage will 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 ~~underlying zoning district~~ 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 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 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 ~~not~~ 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 non-conforming lot of record on which only a residential structure exists, and it is not possible to place an accessory structure meeting the required water body, tributary stream or wetland setbacks, the code enforcement officer may issue a permit to place a single accessory structure, with no utilities, for the storage of yard tools and similar equipment. Such accessory structure shall not exceed eighty (80) square feet in area nor eight (8) feet in height, and shall be located as far from the shoreline or tributary stream as practical and shall meet all other applicable standards, including lot coverage and vegetation clearing limitations. In no case shall the structure be located closer to the shoreline or tributary stream than the principal structure.

- (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 ~~first~~ 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 ~~land~~ footprint area of all structures, parking 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:
  - a. ~~In~~ 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.
  - b. ~~In lots which have existing licensed State of Maine aquaculture facilities that have been in continuous operation since March of 2000, 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.]*

(4)(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 flood plain soils.
- f. The area behind the wall is revegetated with grass, shrubs, trees, or a combination thereof, and no further structural development will occur within the setback area, including patios and decks; and
- g. A vegetated buffer area is established within 25 feet, horizontal distance, of the normal high-water line of a water body, tributary stream, or upland edge of a wetland when a natural buffer area does not exist. The buffer area must meet the following characteristics:
  - (i) The buffer must include shrubs and other woody and herbaceous vegetation. Where natural ground cover is lacking the area must be supplemented with leaf or bark mulch;
  - (ii) Vegetation plantings must be in quantities sufficient to retard erosion and provide for effective infiltration of stormwater runoff;
  - (iii) Only native species may be used to establish the buffer area;
  - (iv) A minimum buffer width of 15 feet, horizontal distance, is required, measured perpendicularly to the normal high-water line or upland edge of a wetland;
  - (v) A footpath not to exceed the standards in Section 44-35 (p)(2)a., may traverse the buffer;

(56) 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 ~~and or beyond~~ below the normal high water line of a water body or within a wetland. (See Note 1 below).*

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

(2) The location shall not interfere with existing developed or natural beach areas.

(3) The facility shall be located so as to minimize adverse effects on fisheries.

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

(5) No new structure shall be built on, over or abutting a pier, wharf, dock or other structure extending beyond the normal high-water line of a water body or within a wetland unless the structure requires direct access to the water body or wetland as an operational necessity.

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

(67) 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.

(78) 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.

(89) 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 ~~(9)~~ (10) and ~~(10)-(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 lowwater deep channel centerline.

~~(9)~~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).

~~(10)~~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)

~~(11)~~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.

~~(12)~~(13) All new and existing piers and floats, temporary or permanent, shall be affixed with a reflector not less than three (3) inches in diameter located not more than twelve (12) inches from each corner. For piers exceeding 40' in length reflectors shall also be affixed to each side of the pier at a frequency of one per 20'.

*Note 2:* The purpose of the limit of paragraph ~~(9)~~ 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 (40 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 (40 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.

(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.
- (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 R~~recreational vehicles shall not be located on any type of permanent foundation, except for a gravel pad, and no structure(s), except a canopyies 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 ~~g~~General d~~Development and L.C. 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 Section 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 ~~its~~ 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. ~~or as~~ 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, in which case 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 two hundred (200) feet.

(6) In order to prevent road and driveway surface drainage from directly entering water bodies, tributary streams or wetlands, roads and drivewayss 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. ~~Road s~~ 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 ~~in the road or ditches~~ 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:

TABLE INSET:

<u>Road-Grade</u> (Percent)	Spacing (Feet)
--------------------------------	----------------

0--2	250
3--5	200--135
6--10	100--80
<u>11-15</u>	<u>80-60</u>
<u>16-20</u>	<u>60-45</u>
<u>21+</u>	<u>40</u>

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

c. On sections having slopes greater than ten (10) percent, ditch relief culverts shall be placed at approximately a thirty (30) degree angle downslope from a line perpendicular to the centerline of the road or driveway.

ed. 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 (~~rules~~), and the following:

a) clearing or removal of woody vegetation necessary to site a new system and any associated fill extensions, shall not extend closer than seventy-five (75) feet, horizontal distance, from the normal high-water line of a water body or the upland edge of a wetland and b) a holding tank is not allowed for a first-time residential use in the shoreland zone.

*Note:* The Maine Subsurface Wastewater Disposal Rules require new systems, excluding fill extensions, to be constructed ~~rules, among other requirements, include:~~ ~~a. The minimum setback for new subsurface sewage disposal systems, shall be 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.

b. 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 ~~permitted~~ 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 ~~permitted~~ 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)(4) (3) below.

(2) ~~Unless authorized pursuant to the Natural Resources Protection Act, title 38, M.R.S.A. section 480-C, no~~ 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 ~~75~~ fifty (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 (2 ½ :1) slope or flatter.

c. Top soil or loam shall be retained to cover all disturbed land areas, which shall be reseeded and stabilized with vegetation native to the area. Additional topsoil or loam shall be obtained from 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 Maine Department of Agriculture on November 1, 2001, and the Nutrient Management Law (7 M.R.S.A. sections 4201-4209). ~~Maine Guidelines for Manure and Manure Sludge Disposal on Land published by the University of Maine Soil and Water Conservation Commission in July, 1972.~~

(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. ~~Within five years of the effective date of this chapter all~~ 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. ~~Existing facilities which do not meet the setback requirement may remain, but must meet the no discharge provision within the above five year period.~~

(3) Agricultural activities involving tillage of soil greater than 40,000 square feet in surface area, ~~or the spreading, disposal or storage of manure~~ within the shoreland zone shall require a soil and water 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.

~~a. See riparian forest buffer for alternative tilling and farming standards.~~

(5) ~~After the effective date of this chapter, n~~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) *Timber harvesting.*

(1) In a Resource Protection District abutting a great pond, timber harvesting shall be limited to the following:

(a) Within the strip of land extending 75 feet inland from the normal high-water line in a shoreland area zoned for resource protection abutting a great pond there shall be no timber harvesting except to remove safety hazards.

(b) Beyond the 75 foot strip referred to in Section (o)(1)(a) above, timber harvesting is permitted in accordance with paragraph 2 below except that in no case shall the

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

(2) Except in areas as described in Section 15(O)(1) above, timber harvesting shall conform with the following provisions:

(a) Selective cutting of no more than forty (40) percent of the total volume of trees four (4) inches or more in diameter measured at 4 1/2 feet above ground level on any lot in any ten (10) year period is permitted. In addition:

(i) Within one-hundred (100) feet, horizontal distance, of the normal high-water line of a great pond classified GPA or a river flowing to a great pond classified GPA, and within seventy-five (75) feet, horizontal distance, of the normal high-water line of other water bodies, tributary streams, or the upland edge of a wetland, there shall be no clearcut openings and a well-distributed stand of trees and other vegetation, including existing ground cover, shall be maintained.

(ii) At distances greater than one-hundred (100) feet, horizontal distance, of a great pond classified GPA or a river flowing to a great pond classified GPA, and greater than seventy-five (75) feet, horizontal distance, of the normal high-water line of other water bodies or the upland edge of a wetland, harvesting operations shall not create single clearcut openings greater than ten-thousand (10,000) square feet in the forest canopy. Where such openings exceed five-thousand (5000) square feet they shall be at least one hundred (100) feet, horizontal distance, apart. Such clearcut openings shall be included in the calculation of total volume removal. Volume may be considered to be equivalent to basal area.

(b) No accumulation of slash shall be left within fifty (50) feet, horizontal distance, of the normal high-water line of a water body. In all other areas slash shall either be removed or disposed of in such a manner that it lies on the ground and no part thereof extends more than four (4) feet above the ground. Any debris that falls below the normal high-water line of a water body or tributary stream shall be removed.

(c) Timber harvesting equipment shall not use stream channels as travel routes except when:

(i) Surface waters are frozen; and

(ii) The activity will not result in any ground disturbance.

(d) All crossings of flowing water shall require a bridge or culvert, except in areas with low banks and channel beds which are composed of gravel, rock or similar hard surface which would not be eroded or otherwise damaged.

(e) Skid trail approaches to water crossings shall be located and designed so as to prevent water runoff from directly entering the water body or tributary stream. Upon completion of timber harvesting, temporary bridges and culverts shall be removed and areas of exposed soil revegetated.

(f) Except for water crossings, skid trails and other sites where the operation of machinery used in timber harvesting results in the exposure of mineral soil shall be located such that an unscarified strip of vegetation of at least seventy-five (75) feet, horizontal distance, in width for slopes up to ten (10) percent shall be retained between the exposed mineral soil and the normal high-water line of a water body or upland edge of a wetland. For each ten (10) percent increase in slope, the unscarified strip shall be increased by twenty (20) feet, horizontal distance. The provisions of this paragraph apply only to a face sloping toward the water body or wetland, provided, however, that no portion of such exposed mineral soil on a back face shall be closer than twenty five (25) feet, horizontal distance, from the normal high-water line of a water body or upland edge of a wetland.

~~(1) In a shoreland area zoned for resource protection abutting a great pond, timber harvesting shall be limited to the following:~~

- ~~a. Within the strip of land extending 75 feet inland from the normal high water line, there shall be no timber harvesting, except to remove safety hazards.~~
- ~~b. Beyond the 75-foot "no-harvest" strip referred to in paragraph a. above, timber harvesting is permitted in accordance with paragraph (2) below, except that in no case shall the average residual basal area of trees over one inch diameter at four and one half feet above ground level be reduced to less than 30 square feet per acre.~~

~~(2) Except in areas as described in paragraph (1) above, timber harvesting shall conform with the following provisions:~~

~~a. Selective cutting of 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 on any lot in any ten year period is permitted. In addition:~~

~~(i) 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 other water bodies, tributary streams, or the upland edge of a wetland, there shall be no clearcut openings and a well-distributed stand of trees and other vegetation, including existing ground cover, shall be maintained.~~

~~(ii) At distances greater than 100 feet, horizontal distance, of a great pond classified GPA or a river flowing to a great pond classified GPA, and greater than 75 feet, horizontal distance, of the normal high water line of other water bodies or the upland edge of a wetland, harvesting operations shall not create single clearcut openings greater than 10,000 square feet, they shall be at least 100 feet apart. Such clearcut openings shall be included in the calculation of total volume removal. For the purposes of these standards volume may be considered to be equivalent to basal area.~~

~~b. Timber harvesting operations exceeding the 40 percent limitation in paragraph a. above, may be allowed by the planning board upon a clear showing, including a forest management plan signed by a Maine licensed professional forester, that such an exception is necessary for good forest management and will be carried out in accordance with the purposes of this chapter. The planning board shall notify the commissioner of the department of environmental protection of each exception allowed, within 14 days of the planning board's decision.~~

~~c. No accumulation of slash shall be left within 50 feet of the normal high water line of a water body. In all other areas slash shall either be removed or disposed of~~

~~in such a manner that it lies on the ground and no part thereof extends more than four feet above the ground. Any debris that falls below the normal high-water line of a water body shall be removed.~~

~~d. Timber harvesting equipment shall not use stream channels as travel routes except when:~~

~~(i) Surface waters are frozen; and~~

~~(ii) The activity will not result in any ground disturbance.~~

~~e. All crossings of flowing water shall require a bridge or culvert, except in areas with low banks and channel beds which are composed of gravel, rock or similar hard surface which would not be eroded or otherwise damaged.~~

~~f. Skid trail approaches to water crossings shall be located and designed so as to prevent water runoff from directly entering the water body or tributary stream. Upon completion of timber harvesting, temporary bridges and culverts shall be removed and areas of exposed soil revegetated.~~

~~g. Except for water crossings, skid trails and other sites where the operation of machinery used in timber harvesting results in the exposure of mineral soil shall be located such that an unscarified strip of vegetation of at least 75 feet in width for slopes up to ten percent shall be retained between the exposed mineral soil and the normal high water line of a water body or upland edge of a wetland. For each ten percent increase in slope, the unscarified strip shall be increased by 20 feet. The provisions of this paragraph apply only to a face sloping toward the water body or wetland, provided, however, that no portion of such exposed mineral soil on a back face shall be closer than 25 feet from the normal high water line of a water body or upland edge of a wetland.~~

(p) *Clearing or Removal of ~~Vegetation~~ for Activities Other Than Timber Harvesting development.*

(1) ~~Within a shoreland area zoned for~~ In a resource protection district abutting a great pond, there shall be no cutting of vegetation within the strip of land extending 75 feet, horizontal distance, inland from the normal high-water line, except to remove safety hazards.

Elsewhere, in any resource protection district the ~~clearing~~ 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, 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 footpath not to exceed ~~ten~~ six (6) feet in width as measured between tree trunks and/or shrub stems is permitted allowed 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 ~~permitted~~ 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 ~~and other vegetation~~" 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 ~~12~~ 24 or more in any 25-foot by 50-foot rectangular (1250 square feet) ~~25-foot square (625 square feet)~~ area as determined by the following rating system.

TABLE INSET:

Diameter of Tree at 4 1/2 Feet Above Ground Level (inches)	Points
<del>2-4</del> <u>2 to &lt;4 inches</u>	1
<del>&gt;4-12</del> <u>4 to &lt;8 inches</u>	2
<del>&gt;12</del> <u>8 to &lt;12 inches</u>	4
<u>12 inches or greater</u>	<u>8</u>

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

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

$$(3 \times 1) + (3 \times 2) + (3 \times 4) = 21 \text{ points}$$

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

Thus, the 25-foot by ~~25~~ 50-foot plot contains trees worth ~~21~~ 36 points. Trees totaling 12 points ( $36 - 24 = 12$ ) ~~nine points (21 - 12 = 9)~~ may be removed from the plot provided that no cleared openings are created.

The following shall govern in applying this point system:

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

For the purposes of this section, "other natural vegetation" is defined as retaining existing vegetation under three (3) feet in height and other ground cover and retaining at least five (5) saplings less than two (2) inches in diameter at four and one half (4 1/2) feet above ground level for each 25-foot by 50-foot rectangle area. If five saplings do not exist, no woody stems less than two (2) inches in diameter can be removed until 5 saplings have been recruited into the plot.

Notwithstanding the above provisions, no more than 40 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 1/3 of the tree is allowed ~~permitted~~.

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 ~~as long as~~ ~~C~~ cleared areas, ~~however, shall be~~ 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, ~~except to allow for the development of permitted uses~~, there shall be ~~permitted~~ 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 development, 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 ~~C~~cleared openings ~~legally in existence on the effective date of this chapter~~ may be maintained, but shall not be enlarged, except as ~~permitted~~ 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.

(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.

~~Note: Municipal officials should contact the Maine Historic Preservation Commission for the listing and location of historic places in their community.~~

#### 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:
- ~~(1)-(a)~~ The replacement culvert is not more than 25% longer ~~one standard culvert size wider in diameter~~ than the culvert being replaced;
  - ~~(2) (b)~~ ~~The replacement culvert is not more than 20 percent longer than the culvert being replaced;~~ ~~(3)~~ The replacement culvert is not longer than 75 feet; and
  - ~~(4) (c)~~ Adequate erosion control measures are taken to prevent sedimentation of the water, and the crossing does not block fish passage in the watercourse.
- (T.M. of 12-15-93, § 16B)

- (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

**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.
- (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. ~~the owner or owners of the property or other person authorizing the work,~~ certifying that the information in the application is complete and correct. ~~If the person signing the application is not the owner or lessee of the property then that person shall submit a letter of authorization from the owner or lessee.~~
- (c) All applications shall be dated, and signed by the code enforcement officer or planning board, as appropriate, ~~who~~ 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.

(T.M. of 12-15-93, § 16C)

**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. ~~Permits shall be approved 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 ~~any state law which the municipality is responsible for enforcing.~~

(T.M. of 12-15-93, § 16D)

(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%; and
- (b) Located outside the floodway of the 100-year flood-plain along rivers and artificially formed great ponds along rivers and outside the velocity zone in areas subject to tides, based on detailed flood insurance studies and as delineated on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate Maps; all buildings, including basements, are elevated at least one foot above the 100-year flood-plain elevation; and the development is otherwise in compliance with any applicable municipal flood-plain ordinance.

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

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

#### **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.

~~Following the issuance of a building permit, if start of construction, as defined in section 1-2, has not been made within one year beginning with the date the permit is issued, the permit shall expire.~~

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

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

~~No 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. code enforcement officer. Following installation of service, the company or district shall forward the written authorization to the code enforcement officer, indicating that installation has been completed.~~

#### **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 code enforcement officer or 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: are permitted only as described in this paragraph.

(1) ~~The board of appeals may grant a variance from a dimensional requirement, including, but not limited to, lot width, structure height, percentage of lot coverage, area and setback requirements, only if the board finds that:~~ 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 ~~meets all applicable the~~ provisions of section 44-35, except for the specific provision which has created the nonconformity and from which relief is sought appropriate hereunder; and

b. The strict application of the terms of this Ordinance ~~dimensional requirement~~ would result in undue hardship. The term "undue hardship" shall means:

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

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

~~(2) The board of appeals may not grant a variance for a use otherwise prohibited by this chapter except as provided in this paragraph. The board of appeals may grant a variance allowing a single family dwelling in a resource protection district only if the board finds that:~~

~~a. There is no location on the applicants property, other than in the resource protection district, where a single family dwelling may be established; and~~

~~b. The strict application of the terms of this chapter would result in undue hardship. The term "undue hardship" means:~~

~~(i) The land in question cannot yield a reasonable economic return unless a variance is granted;~~

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

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

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

~~(3 4)~~ Notwithstanding the section above, the board of appeals may grant a variance to a property owner an owner of a residential dwelling for the purpose of making that property dwelling accessible to a person with a disability who is living resides in or regularly uses the dwelling on the property. 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 property 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 on the property. 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.

(4) 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.

(5) A copy of each variance request, including the application and all supporting information supplied by the applicant, shall be forwarded by the municipal officials to the Commissioner of the Department of Environmental Protection at least twenty (20) days prior to action by the Board of Appeals. Any comments received from the Commissioner prior to the action by the Board of Appeals shall be made part of the record and shall be taken into consideration by the Board of Appeals.

~~(5) A copy of all variances granted by the board of appeals shall be submitted to the planning board, CEO and the department of environmental protection within 14 days of the decision.~~

(c) Administrative Appeals procedure:

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 16(H)(1)(a) above. Such an appeal shall be taken within thirty (30) days of the date of the official, written decision appealed from, and not otherwise, except that the Board, upon a showing of good cause, may waive the thirty (30) day requirement. (See section 45-46 et seq. of the Eliot Zoning Ordinance.)
  - (ii) Applications for appeals shall be made by filing with the Board of Appeals a written notice of appeal which includes:
    - a. A concise written statement indicating what relief is requested and why the appeal or variance should be granted.
    - b. A sketch drawn to scale showing lot lines, location of existing buildings and structures and other physical features of the lot pertinent to the relief sought.
  - (iii) Upon receiving an application for an administrative appeal or a variance, the Code Enforcement Officer or Planning Board, as appropriate, shall transmit to the Board of Appeals all of the papers constituting the record of the decision appealed from.
  - (iv) The Board of Appeals shall hold a public hearing on an administrative appeal or a request for a variance within thirty-five (35) days of its receipt of a complete written application, unless this time period is extended by the parties
- (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. ~~A member who abstains shall not be counted in determining whether a quorum exists.~~
  - b. The person filing the appeal shall have the burden of proof.
  - c. The Board shall decide all administrative appeals and variance appeals within thirty five (35) days after the close of the hearing, and shall issue a written decision on all appeals.
  - 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 (7) days of the Board's decision. Copies of written decisions of the Board of Appeals shall be given to the Planning Board, Code Enforcement Officer, and the municipal officers.
  - ~~b. The concurring vote of a majority of the members of the board of appeals present and voting shall be necessary to reverse an order, requirement, decision, or determination of the code enforcement officer or planning board, or to decide in favor of the applicant on any matter on which it is required to decide under this chapter, or to affect any variation in the application of this chapter from its stated terms. The board may reverse the decision, or failure to act, of the code enforcement officer or planning board only upon a finding that the decision, or failure to act, was clearly contrary to specific provisions of this chapter.~~
  - ~~c. The person filing the appeal shall have the burden of proof.~~

~~d. The board shall decide all appeals within 35 days after the close of the hearing, and shall issue a written decision on all appeals.~~

~~e. All decisions shall become a part of the record and shall include a statement of findings and conclusions as well as the reasons or basis therefor, and the appropriate order, relief or denial thereof.~~

~~An aggrieved person or party is: (1) an owner of land whose property is directly or indirectly affected by the granting or denial of a permit, variance, waiver or administrative appeal under this chapter; (2) a person whose land abuts land for which a permit, variance, waiver, or appeal has been granted; or (3) a group of five or more residents or taxpayers of the municipality who represent an interest adverse to the granting or denial of such permit variance, waiver, or appeal. Municipal officials, and members of committees, boards, and commissions shall be granted the same rights as residents or taxpayers when filing appeals.~~

(d) *Appeal to superior court.* ~~Any~~ 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.

(e) *Reconsideration.*

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

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

~~Reconsideration of board of appeals action is administered in accordance with 30 A M.R.S.A. § 2691(3)(f). (Requests must be received within ten days of the original decision and if reconsideration is accepted, the board of appeals action must be completed within 45 days of the original decision.)~~

~~(T.M. of 12-15-93, § 16G; T.M. of 11-8-05)~~

#### **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 ~~control~~ within the department of environmental protection.

~~(4) Where the CEO cannot determine that a violation exists because of technical complexity or need to use equipment not available to the town, he may consult with such independent experts or agencies as necessary to determine whether a violation exists. If a violation exists, the CEO shall notify the violator of such violation, order appropriate corrective action, and require the violator to reimburse the town for any consulting services. If no violation exists, the town shall pay for consulting services.~~

(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 nor more than \$2,500 per violation for each day that the violation continues. However, in a resource protection district the maximum penalty is increased to \$5000

**Cross references:** Code enforcement officer, 2-51 et seq.

**Background and rationale for Amendments to Chapter 44, Shoreland Zoning and amendments to the Official Eliot Zoning Map of the Municipal Code of Ordinances of the Town of Eliot, Maine to comply with The Mandatory Shoreland Zoning Act (Title 38 M.R.S.A sections 435-449)**

- The Mandatory Shoreland Zoning Act, 38 M.R.S.A. sections 435-449, requires all municipalities to adopt, administer, and enforce ordinances which regulate land use activities within 250 feet of great ponds, rivers, freshwater and coastal wetlands, including all tidal waters; and within 75 feet of streams as defined. The Act also requires the Board of Environmental Protection to establish minimum guidelines for such ordinances. The Act requires that municipalities adopt shoreland zoning ordinances consistent with, or no less stringent than, those minimum guidelines by July 1<sup>st</sup>, 2009.

**Attest: A true copy of the adoption of the ordinance entitled “Chapter 44, Shoreland Zoning and amendments to the Official Eliot Zoning Map of the Municipal Code of Ordinances of the Town of Eliot, Maine to comply with The Mandatory Shoreland Zoning Act (Title 38 M.R.S.A sections 435-449”, which was adopted at Town Meeting, June 9<sup>th</sup>, 2009.**

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*Town Clerk*