

Town of Bowdoinham
Land Use Ordinance

ARTICLE 7: SHORELAND ZONING

A) Shoreland Zone Application & Review Procedures

1) Permits Required

After the effective date of this Ordinance no person shall, without first obtaining a permit, engage in any activity or use of land or structure requiring a permit in the district in which such activity or use would occur; or expand, change, or replace an existing use or structure; or renew a discontinued non-conforming 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.

- a) A permit is not required for the replacement of an existing stream crossing culvert as long as:
 - (i) the replacement culvert is not more than 25% longer than the culvert being replaced;
 - (ii) the replacement culvert is not longer than 75 feet; and
 - (iii) adequate erosion control measures are taken to prevent sedimentation of the water, and the crossing does not block fish passage in the watercourse.
- b) 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.
- c) Any permit required by this Ordinance shall be in addition to any other permit required by other law or ordinance.

2) Fees

a) Application Review Fee

An application for a shoreland zone permit requires a fifty-dollar (\$50.00) application fee, plus all mailing and advertising costs for the processing of the application. The fee shall not be refundable. This application fee shall be paid to the Town.

b) Technical Review Fee

In addition to the application fee, the applicant shall be responsible for paying for a technical review fee. The initial deposit for the technical review fee may be five hundred dollars (\$500.00) to cover the Town's legal and technical costs for hiring independent consulting services to review engineering and other technical submissions associated with the application, and to ensure compliance with regulations, if necessary.

- (i) The **Planning** Board may reduce the amount of the technical review fee or eliminate the fee if it determines that the scale or nature of the project will require little or no outside review.
- (ii) This fee must be paid to the Town and shall be deposited into a special escrow account, which shall be separate and distinct from all other municipal accounts.

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- (iii) The application will be considered incomplete until evidence of payment of this fee is submitted to the Town.
 - (iv) If the balance in this special account is drawn down by 75%, the applicant shall be notified, and the applicant shall bring the balance back up to the original deposit amount. The **Planning** Board shall continue to notify the applicant and require a deposit as necessary whenever the balance of the escrow account is drawn down by 75% of the original deposit.
 - (v) The Town shall provide the applicant with an accounting of his or her account, upon written request.
- c) The Town shall refund all of the remaining monies, including accrued interest, in the account after the payment by the Town of all costs and services related to the review. Such a refund shall be accompanied by a final accounting of expenditures from the fund. The money in such fund shall not be used by the Town for any enforcement purposes.

3) Review Process

Land Uses in the Shoreland Zone that require a permit shall be reviewed by the Code Enforcement Officer, the Local Plumbing Inspector, or the Planning Board as directed in Table 6.1.

a) Code Enforcement Officer / Local Plumbing Inspector Review Procedure

- (i) The applicant shall submit a complete application including all submission requirements to the Code Enforcement Officer / Local Plumbing Inspector.
- (ii) The Code Enforcement Officer / Local Plumbing Inspector shall review the application within ten (10) days of the receipt of the application to determine whether or not the submission is complete. If the application is determined to be incomplete, the applicant shall be notified in writing of this finding, which shall specify the additional materials required to make the application complete, and shall advise the applicant that the application will not be reviewed until the additional information is submitted. Failure to submit the additional information within six months shall be deemed an abandonment of the application.
- (iii) Once the Code Enforcement Officer / Local Plumbing Inspector receives a complete application, notice shall be sent by first class mail to all abutting property owners.
- (iv) The Code Enforcement Officer / Local Plumbing Inspector shall take final action on said application within ten (10) days of finding the application complete. The Code Enforcement Officer / Local Plumbing Inspector shall act to deny, to approve, or to approve the application with conditions as are deemed advisable to assure compliance with the approval criteria and performance standards of this article.
- (v) In issuing its decision, the Code Enforcement Officer / Local Plumbing Inspector shall make written findings of fact that establish whether the proposed development does or does not meet the standards of approval, performance standards, and other requirements of this Ordinance.
- (vi) The Code Enforcement Officer / Local Plumbing Inspector shall notify the applicant of the decision, including the findings of fact and any conditions of approval.

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b) Planning Board Review Procedure

- (i) The complete application form, evidence of payment of the required fees, and the required plans and related information must be submitted to the Town Planner at least twenty-one (21) days prior to the meeting at which it is to be considered.
- (ii) Within seven (7) days of receipt of the application, the Town Planner shall review the material and make a preliminary determination on whether or not the submission is complete.
 - (A) If the application is determined to be incomplete, the applicant shall be notified in writing of this finding, which shall specify the additional materials required to make the application complete, the applicant shall be advised that the application will not be reviewed until the additional information is submitted, and all additional information must be submitted no later ten (10) days prior to the meeting at which it is to be considered. Failure to submit the additional information within six months shall be deemed an abandonment of the application.
 - (1) As soon as the application is determined to be preliminarily complete, the applicant shall be notified in writing of this finding, and
 - (2) notice of the application shall be sent by first class mail to all abutting property owners.
- (iii) Once the application is placed on the agenda, the Planning Board shall review the material and determine whether or not the submission is complete. If the application is determined to be incomplete, the Board shall notify the applicant in writing of this finding, shall specify the additional materials required to make the application complete and shall advise the applicant that the application will not be considered by the Board until the additional information is submitted to the Board. These steps, except the notification requirements, shall be repeated until the application is found to be complete.
- (iv) After the Planning Board has determined that a complete application has been filed, it shall begin its substantive review of the application within thirty (30) days of this finding.
- (v) The Planning Board may hold an on-site inspection of the site to review the existing conditions, field-verify the information submitted and investigate the development proposal. The Board may schedule this visit either before or after the first meeting at which the application is considered. The Board may decide not to hold an on-site inspection when the site is covered in snow.
 - (A) If a review is pending during a period when there is more than one foot of snow cover, the deadline by which the Planning Board shall take final action may be extended. This extension shall not exceed thirty (30) days after the site is clear of snow and the Board is able to conduct an on-site inspection.
- (vi) The Planning Board may hold a public hearing within 30 days of the filing of the completed application. The Planning Board shall give written notice of the date, time, and place of the public hearing at which the application will be considered, to the applicant, and all abutting property owners by first-class mail. The determination of the names and owners shall be based upon the records of the local Assessor's Office. The Planning Board shall publish the time, date, and place of the hearing at least one time, the date of

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the first publication to be at least seven (7) days prior to the hearing, in a newspaper of area-wide circulation.

- (vii) 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.
- (viii) Failure of any property owner to receive notice under this section for any reason shall not necessitate a new hearing and shall not invalidate any action by the Planning Board.
- (ix) All time limits provided for in this section may be extended by mutual agreement of the applicant and Planning Board.

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c) Procedure for Public Hearing of an Application

- (i) The purpose of the public hearing is to allow the applicant and affected property owners to provide information as part of the record that the Planning Board will use in considering its action on the application. Testimony presented at the hearing should be related to factual information about the application and related submissions and the project's compliance with the review standards and other regulations and requirements of this ordinance or other municipal ordinances.
- (ii) The Planning Board Chair shall provide the applicant or his/her representative with an opportunity to make any statement or presentations at the beginning of the hearing. The Chair shall then allow the members of the Planning Board to ask questions of the applicant and for the applicant to answer those questions. Following Board questions, the Chair shall open the public hearing to the public for statements, information submissions, or questions about the project. At the close of the public comment period, the Chair shall afford the applicant an opportunity to answer any questions raised by the public, rebut any statements or information submitted, and cross-examine anyone offering testimony on the application. The Chair may allow the applicant this opportunity after each member of the public testifies if that is deemed to be desirable. At the conclusion of the applicant's response, the hearing shall be closed.

d) Procedure for Final Action on an Application

- (i) The Planning Board shall act to deny, to approve, or to approve the application with conditions. The Board may impose such conditions as are deemed advisable to assure compliance with the approval criteria and performance standards of this article.
- (ii) In issuing its decision, the Planning Board shall make written findings of fact that establish whether the proposed development does or does not meet the standards of approval, performance standards, and other requirements of this Ordinance.
- (iii) The Planning Board shall notify the applicant of the action of the Planning Board, including the findings of fact and any conditions of approval.

e) Time Limitations

All time limits provided for in this section may be extended by mutual agreement of the applicant and Planning Board.

4) Submission Requirements

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The Planning Board/Code Enforcement Officer/Local Plumbing Inspector, as applicable, may waive any of the submission requirements upon a written request of the applicant. A waiver of any submission requirement may be granted only if that information is not required to determine compliance with the approval criteria. In all instances, the burden of proof shall be upon the applicant to present adequate information to indicate the statutory criteria for approval and performance standards have been or will be met.

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- a) The applicant shall submit the following number of copies:
 - (i) For Code Enforcement Officer Review – Two (2) copies
 - (ii) For Planning Board Review – Nine (9) copies
- b) The applicant shall submit the following information:
 - (i) Completed application form
 - (ii) Evidence of right, title or interest in the property
 - (iii) Copy of the Town's Assessors Property Map
 - (iv) Evidence of payment of application fee
 - (v) Site plan of the portion of the parcel with the shoreland zone at a scale of not more than one hundred (100) ft. to the inch showing as a minimum:
 - (a) the name of the owner, north arrow, date and scale;
 - (b) the boundaries of the parcel;
 - (c) the shoreland zone district boundary(s);
 - (d) the required shoreland setback;
 - (e) the major natural features of the property, including wetlands, vernal pools, streams, ponds, floodplains, groundwater aquifers, significant wildlife habitats, scenic views or areas, significant geological features, or other important natural features;
 - (f) location and dimensions of existing developed areas (non-vegetated areas), such as buildings, driveways, decks/patios and walkways;
 - (g) location of existing subsurface wastewater disposal system, if applicable;
 - (h) existing restrictions or easements on the site;
 - (i) the location and size of existing utilities or improvements servicing the site; and
 - (j) proposed development including locations of buildings, impervious areas, and non-vegetated areas.
 - (vi) A valid plumbing permit or a completed application for a plumbing permit, including the site evaluation approved by the Plumbing Inspector, shall be submitted whenever the nature of the proposed structure or use would require the installation of a subsurface sewage disposal system.
 - (vii) Photographs of the site
 - (viii) Cost breakdown of proposed project

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(ix) A narrative describing how the proposed project meets the Approval Criteria in Section C below and the Performance Standards in Section D of this article, along with the necessary supporting evidence.

B) General Provisions

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.

C) Approval Criteria

The applicant shall have the burden of proving that the proposed land use activity is in conformity with the purposes and provisions of this Ordinance. The Planning 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;
- 3) will provide adequate provisions for the collection and disposal of all stormwater that runs off proposed streets, parking areas, roofs, and other impervious surfaces;
- 4) will take adequate measures to prevent soil erosion and the sedimentation of watercourses and waterbodies;
- 5) will take adequate measures to avoid and to minimize having an adverse effect on wetlands and/or waterbodies;
- 6) will provide for the disposal of all wastewater in accordance with the State of Maine Subsurface Wastewater Disposal Rules;
- 7) will not have an adverse impact on spawning grounds, fish, aquatic life, bird or other riparian wildlife habitat;
- 8) will conserve natural, native vegetation along the shoreline;
- 9) will conserve visual corridors;
- 10) will conserve access to inland and coastal waters;
- 11) will not have an adverse effect on historic and/or archaeological sites;
- 12) will not adversely affect existing commercial fishing or maritime activities in a Commercial Fisheries/Maritime Activities district;
- 13) will be in compliance with the Town's Floodplain Management provisions; and
- 14) will be in conformance with the provisions of Article 7, Section D, Performance Standards.

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D) Performance Standards

1) Minimum Lot Standards

a) Residential per dwelling unit:

Minimum Lot Area: 40,000 sq. ft.

Minimum Shore Frontage: 200 ft.

b) Governmental, Institutional, Commercial or Industrial per principal structure:

(i) Within the Shoreland Zone Adjacent to Tidal Areas, Exclusive of Those Areas Zoned for Commercial Fisheries and Maritime Activities

Minimum Lot Area: 40,000 sq. ft.

Minimum Shore Frontage: 200 ft.

(ii) Within the Shoreland Zone Adjacent to Tidal Areas Zoned for Commercial Fisheries and Maritime Activities

Minimum Lot Area: NONE

Minimum Shore Frontage: NONE

(iii) Within the Shoreland Zone Adjacent to Non-tidal Areas

Minimum Lot Area: 60,000 sq. ft.

Minimum Shore Frontage: 300 ft.

c) Public and Private Recreational Facilities

(i) Within the Shoreland Zone Adjacent to Tidal and Non-Tidal Areas

Minimum Lot Area: 40,000 sq. ft.

Minimum Shore Frontage: 200 ft.

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

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- h) A cluster subdivision may be allowed as permitted in the underlying district provided that the overall dimensional requirements, including frontage and lot area per dwelling unit, are met. When determining whether dimensional requirements are met, only land area within the shoreland zone shall be considered.

2) Principal and Accessory Structures

- a) All new principal and accessory structures shall be set back at least one hundred (100) feet, horizontal distance, from the normal high-water line of water bodies, streams, or the upland edge of a coastal or freshwater wetland, except that in the General Development I District the setback from the normal high-water line shall be at least twenty five (25) feet, horizontal distance, and in the Commercial Fisheries/Maritime Activities District there shall be no minimum setback. 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.
 - (i) The water body, stream, or freshwater/coastal wetland setback provision shall neither apply to structures which require direct access to the water body or freshwater/coastal wetland as an operational necessity, such as piers, docks and retaining walls, nor to other functionally water-dependent uses.
 - (ii) 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, stream or freshwater/coastal 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) sq. ft. in area nor eight (8) ft. in height and shall be located as far from the shoreline or 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 stream than the principal structure.
- b) 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 thirty-five (35) ft. in height. This provision shall not apply to structures such as transmission towers, windmills, antennas, and similar structures having no floor area.
- c) The lowest floor elevation or openings of all buildings and structures, including basements, shall be elevated at least one foot above the elevation of the 100-year flood, the flood of record, or in the absence of these, the flood as defined by soil types identified as recent flood-plain soils. In those municipalities that participate in the National Flood Insurance Program and have adopted the April 2005 version, or later version, of the Floodplain Management Ordinance, accessory structures may be placed in accordance with the standards of that ordinance and need not meet the elevation requirements of this paragraph.
- d) With the exception of General Development Districts located adjacent to coastal wetlands and rivers that do not flow to great ponds, and Commercial Fisheries/Maritime Activities Districts, non-vegetated surfaces shall not exceed a total of twenty (20) percent of the portion of the lot located within the Shoreland Zone. This limitation does not apply to public boat launching facilities regardless of the district in which the facility is located. In a General

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Development District located adjacent to coastal wetlands, or river that does not flow to great ponds, or in the Commercial Fisheries/Maritime Activities District, non-vegetated surfaces shall not exceed a total of seventy (70) percent of the portion of the lot located within the shoreland zone.

- (i) For the purposes of calculating lot coverage, non-vegetated surfaces include, but are not limited to the following: structures, driveways, parking areas, and other areas from which vegetation has been removed. Naturally occurring ledge and rock outcroppings are not counted as non-vegetated surfaces when calculating lot coverage for lot of record on March 24, 1990, and in continuous existence since that date.
- e) 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:
 - (i) the site has been previously altered and an effective vegetated buffer does not exist;
 - (ii) the wall(s) is(are) at least 25 ft., horizontal distance, from the normal high-water line of a water body, stream, or upland edge of a coastal or freshwater wetland;
 - (iii) 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;
 - (iv) the total height of the wall(s), in the aggregate, is no more than 24 inches;
 - (v) retaining walls are located outside of the 100-year floodplain on rivers, streams, coastal wetlands, and 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.
 - (vi) 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
 - (vii) a vegetated buffer area is established within 25 ft., horizontal distance, of the normal high-water line of a water body, stream, or upland edge of a freshwater or coastal wetland when a natural buffer area does not exist. The buffer area must meet the following characteristics:
 - (A) 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;
 - (B) vegetation plantings must be in quantities sufficient to retard erosion and provide for effective infiltration of stormwater runoff;
 - (C) only native species may be used to establish the buffer area;
 - (D) a minimum buffer width of 15 ft., horizontal distance, is required, measured perpendicularly to the normal high-water line or upland edge of a coastal or freshwater wetland; and
 - (E) a footpath not to exceed the standards in **Article 7.D.18.b.i**, may traverse the buffer;

Commented [JH8]: Section 17 refers to text on timber harvesting and slash activity.

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- f) 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:
- (i) that the structure is limited to a maximum of four (4) ft. in width;
 - (ii) that the structure does not extend below or over the normal high-water line of a water body or upland edge of a coastal or freshwater wetland, (unless permitted by the Department of Environmental Protection pursuant to the Natural Resources Protection Act, 38 M.R.S.A. § 480-C); and
 - (iii) that the applicant demonstrates that no reasonable access alternative exists on the property.
- 3) Piers, Docks, Wharves, Bridges and Other Structures and Uses Extending Over or Below the Normal High-Water Line of a Water Body or Within a Wetland and Shoreland Stabilization
- a) Access from shore shall be developed on soils appropriate for such use and constructed so as to control erosion.
 - b) The location shall not interfere with existing developed or natural beach areas.
 - c) The facility shall be located so as to minimize adverse effects on fisheries.
 - d) The facility shall be no larger in dimension than necessary to carry on the activity and be consistent with the surrounding character and uses of the area. A temporary pier, dock or wharf in non-tidal waters shall not be wider than six feet for non-commercial uses.
 - e) 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 freshwater or coastal wetland unless the structure requires direct access to the water body or wetland as an operational necessity.
 - f) 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.
 - g) 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 freshwater or coastal wetland shall be converted to residential dwelling units in any district.
 - h) Except in the General Development Districts and Commercial Fisheries/Maritime Activities 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 coastal or freshwater wetland shall not exceed twenty (20) ft. in height above the pier, wharf, dock or other structure.
 - i) The structure should be placed to minimize the shading on existing vegetation.
 - j) The applicant must demonstrate that a community or shared dock is not possible.
 - k) The applicant must minimize the use of wood preservatives, stains and paints on said structure.
 - l) The storage of floats and boats must occur on the upland.

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- m) No more than one pier, dock, wharf or similar structure extending or located below the normal high-water line of a water body or within a wetland is allowed on a single lot; except that when a single lot contains at least twice the minimum shore frontage as specified in Article 7.D.1, a second structure may be allowed and may remain as long as the lot is not further divided.
 - n) A structure constructed on a float, or floats is prohibited unless it is designed to function as, and is registered with the Maine Department of Inland Fisheries and Wildlife as a watercraft.
 - o) Vegetation may be removed in excess of the standards in Article 7.D.18 of this ordinance in order to conduct shoreline stabilization of an eroding shoreline, provided that a permit is obtained from the Planning Board. Construction equipment must access the shoreline by barge when feasible as determined by the Planning Board.
 - (i) When necessary, the removal of trees and other vegetation to allow for construction equipment access to the stabilization site via land must be limited to no more than 12 ft. in width. When the stabilization project is complete the construction equipment accessway must be restored.
 - (ii) Revegetation must occur in accordance with Article 7.D.21.
 - p) A permit pursuant to the Natural Resources Protection Act is required for the Department of Environmental Protection for Shoreland Stabilization activities.
- 4) Campgrounds
- Campgrounds shall conform to the minimum requirements imposed under State licensing procedures and the following:
- a) Campgrounds shall contain a minimum of five thousand (5,000) sq. ft. 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.
 - (i) When an individual private campsite is proposed on a lot that contains another principal us and/or structure, the lot must contain the minimum lot dimensional requirements for the principal structure and/or use, and the individual campsite separately.
 - b) The areas intended for placement of a recreational vehicle, tent or shelter, and utility and service buildings shall be set back a minimum of one hundred (100) ft., horizontal distance, from the normal high-water line of water bodies, streams, or the upland edge of a coastal or freshwater wetland.
- 5) Farm Stand
- a) A permanent farm stand must meet the setbacks requirements, whereas a temporary and movable farm stand may be located within the front yard setback.
 - b) A farm stand shall not be larger than 250 sq. ft.
- 6) Individual Private Campsites
- Individual private campsites not associated with campgrounds are allowed provided the following conditions are met:
- a) One campsite per lot existing on the effective date of this Ordinance, or thirty thousand (30,000) sq. ft. of lot area within the shoreland zone, whichever is less, may be permitted.

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Commented [JH16]: Changed 20 to 21. Renumbered correctly.

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- b) Campsite placement on any lot, including the area intended for a recreational vehicle or tent platform, shall be set back seventy-five (75) ft., horizontal distance, from the normal high-water line of water bodies, streams, or the upland edge of a freshwater or coastal wetland.
- c) Only one recreational vehicle shall be allowed on a campsite. The recreational vehicle shall not be located on any type of permanent foundation except for a gravel pad, and no structure except a canopy shall be attached to the recreational vehicle.
- d) The clearing of vegetation for the siting of the recreational vehicle, tent or similar shelter in a Resource Protection District shall be limited to one thousand (1000) sq. ft.
- e) 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 landowner is required.
- f) When a recreational vehicle, tent or similar shelter is placed on-site for more than one hundred and twenty (120) days per year, all requirements for residential structures shall be met, including the installation of a subsurface sewage disposal system in compliance with the State of Maine Subsurface Wastewater Disposal Rules unless served by public sewage facilities.

7) Commercial and Industrial Uses

The following new commercial and industrial uses are prohibited within the shoreland zone, unless noted otherwise, below:

- 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, preserving wood, and stripping furniture
- f) Dry cleaning establishments
- g) Electronic circuit assembly
- h) Laundromats
- 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
 - (i) This use is allowed in the General Development I District, with the requirements that:
 - (A) a proposed project receives Site Plan Review Approval; and
 - (B) all petroleum product storage tanks must be above ground.
- k) Photographic processing
- l) Off-set Printing

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- m) Junkyard, Automobile Graveyard, and Automobile Recycling Business
- n) Slaughterhouse

8) Parking Areas

- a) Parking areas shall meet the shoreline and stream setback requirements for structures for the district in which such areas are located, except that in the Commercial Fisheries/Maritime Activities District parking areas shall be set back at least twenty-five (25) ft., horizontal distance, from the shoreline. The setback requirement for parking areas serving public boat launching facilities in Districts other than the General Development I District and Commercial Fisheries/Maritime Activities District shall be no less than fifty (50) ft., horizontal distance, from the shoreline or stream if the Planning Board finds that no other reasonable alternative exists further from the shoreline or stream.
- b) 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, stream or freshwater/coastal wetland and where feasible, to retain all runoff on-site.
- c) In determining the appropriate size of proposed parking facilities, the following shall apply:
 - (i) Typical parking space: Approximately ten (10) ft. wide and twenty (20) ft. long, except that parking spaces for a vehicle and boat trailer shall be forty (40) ft. long.
 - (ii) Internal travel aisles: Approximately twenty (20) ft. wide.

9) Roads and Driveways

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

- a) Roads and driveways shall be set back at least one hundred (100) feet, horizontal distance from the normal high-water line of water bodies, streams, or the upland edge of a freshwater or coastal wetland unless no reasonable alternative exists as determined by the Planning Board. If no other reasonable alternative exists, the road and/or driveway setback requirement shall be no less than fifty (50) ft., horizontal distance, upon clear showing by the applicant that appropriate techniques will be used to prevent sedimentation of the water body, stream, or coastal or freshwater 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, stream, or coastal or freshwater wetland.

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

Article 7.D.8.a does not apply to approaches to water crossings or to roads or driveways that provide access to permitted structures and facilities located nearer to the shoreline or tributary stream due to an operational necessity, excluding temporary docks for recreational uses. Roads and driveways providing access to permitted structures within the setback area shall comply fully with the requirements of Article 7.D.8.a except for that portion of the road or driveway necessary for direct access to the structure.

Commented [JH17]: Are the Article references here correct? I'm thinking these should be Article 7.D.9.a instead.

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- b) Existing public roads may be expanded within the legal road right of way regardless of their setback from a water body, tributary stream or wetland.
- c) New roads and driveways are prohibited in a Resource Protection District except that the Planning Board may grant a permit to construct a road or driveway to provide access to permitted uses within the district. A road or driveway may also be approved by the Planning Board in a Resource Protection District, upon a finding that no reasonable alternative route or location is available outside the district. When a road or driveway is permitted in a Resource Protection District the road and/or driveway shall be set back as far as practicable from the normal high-water line of a water body, stream, or upland edge of a coastal or freshwater wetland.
- d) Road and driveway banks shall be no steeper than a slope of two (2) horizontal to one (1) vertical and shall be graded and stabilized in accordance with the provisions for erosion and sedimentation control contained in [Article 7.D.22](#).
- e) Road and driveway grades shall be no greater than six (6) percent except for segments of less than two hundred (200) ft.
- f) In order to prevent road and driveway surface drainage from directly entering water bodies, streams or coastal or freshwater wetlands, roads and driveways shall be designed, constructed, and maintained to empty onto an un-scarified buffer strip at least (50) ft. 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, stream, or upland edge of a coastal or freshwater wetland. Surface drainage which is directed at an un-scarified 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.
- g) Ditch relief (cross drainage) culverts, drainage dips and water turnouts shall be installed in a manner effective in directing drainage onto un-scarified buffer strips before the flow gains sufficient volume or head to erode the road, driveway, or ditch. To accomplish this, the following shall apply:
 - (i) 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:

Commented [JH18]: Changed from 21 to 22. Reference now correct.

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

Commented [JH19]: I put this into a formal table.

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

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- (iii) 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.
- (iv) 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.
 - (1) Ditches, culverts, bridges, dips, water turnouts and other storm water runoff control installations associated with roads and driveways shall be maintained on a regular basis to ensure effective functioning.

10) Stream Crossings

- a) This standard applies to crossings over the following streams:
 - (i) all tidal streams;
 - (ii) Sedgely Brook, from the West Branch to its intersection with the parcel referred to as Tax Map R04, Lot 017; and
 - (iii) the Abagadasset River.
- b) A permit shall be required from the Code Enforcement Officer for all stream crossings that must meet this standard.
- c) Crossing Structure
Bridges and open bottom structures are required that span the channel, as well as both banks allowing dry passage for wildlife that move along the watercourse.
- d) Channel Span
The structure span should be at least 1.2 times the bank full width and provide banks on one or both sides with sufficient headroom to provide dry passage for semi-aquatic and terrestrial wildlife. The structure shall be designed to take into consideration stream associated floodplains and be constructed to allow dry passage of wildlife at least 90% of the year.
- e) In-structure Substrate
The substrate within the structure should match the characteristics of the substrate in the natural stream channel (mobility, slope, stability, confinement) while maintaining water column depths similar to natural stream conditions to allow species passage. The substrate shall resist significant displacement during flood events.
- f) Structure Openness Ratio
The structure must maintain a headroom height of 4 feet above the grade of dry bank passage and an openness ratio > 0.5 meters.
- g) The following stream crossings do not have to meet this stream crossing standard:
 - (i) stream crossings for timber harvesting,
 - (ii) stream crossings for agricultural, and
 - (iii) stream crossings that will be in place for less than six months.

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11) Signs

The following provisions shall govern the use of signs in the Resource Protection, Stream Protection, Limited Residential and Limited Commercial Districts:

- a) Signs relating to goods and services sold on the premises shall be allowed, provided that such signs shall not exceed six (6) sq. ft. in area and shall not exceed two (2) signs per premises. In the Limited Commercial District, however, such signs shall not exceed sixteen (16) sq. ft. in area. Signs relating to goods or services not sold or rendered on the premises shall be prohibited.
- b) Name signs are allowed, provided such signs shall not exceed two (2) signs per premises, and shall not exceed twelve (12) sq. ft. in the aggregate.
- c) Residential users may display a single sign not over three (3) sq. ft. in area relating to the sale, rental, or lease of the premises.
- d) Signs relating to trespassing and hunting shall be allowed without restriction as to number provided that no such sign shall exceed two (2) sq. ft. in area.
- e) Signs relating to public safety shall be allowed without restriction.
- f) No sign shall extend higher than twenty (20) ft. above the ground.
- g) Signs may be illuminated only by shielded, non-flashing lights; there shall be no internal lighting.

12) Storm Water Runoff

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

13) Septic Waste Disposal

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

14) Essential Services

- a) Where feasible, the installation of essential services shall be limited to existing public ways and existing service corridors.
- b) The installation of essential services, other than roadside distribution lines, is not allowed in a Resource Protection or Stream Protection District, except to provide services to a permitted use within said district, or except where the applicant demonstrates that no reasonable

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alternative exists. Where allowed, such structures and facilities shall be located so as to minimize any adverse impacts on surrounding uses and resources, including visual impacts.

- c) Damaged or destroyed public utility transmission and distribution lines, towers and related equipment may be replaced or reconstructed without a permit.

15) Mineral Exploration and Extraction

- a) Mineral exploration to determine the nature or extent of mineral resources shall be accomplished by hand sampling, test boring, or other methods which create minimal disturbance of less than one hundred (100) sq. ft. of ground surface. A permit from the Code Enforcement Officer shall be required for mineral exploration which exceeds the above limitation. All excavations, including test pits and holes, shall be immediately capped, filled or secured by other equally effective measures to restore disturbed areas and to protect the public health and safety. Except within Resource Protection Districts adjacent to significant freshwater wetlands which are rated "moderate" or "high" value by the Maine Department of Inland Fisheries and Wildlife (MDIF&W) that are depicted on a Geographic Information System (GIS) data layer maintained by either MDIF&W or the Department as of December 31, 2008, mineral extraction may be performed under the following conditions:
 - (i) A reclamation plan shall be filed with, and approved, by the Planning Board before a permit is granted. Such a plan shall describe in detail the procedures to be undertaken to fulfill the requirements of subsection iii below.
 - (ii) No part of any extraction operation, including drainage and runoff control features, shall be permitted within one hundred (100) ft., horizontal distance of the normal high-water line of any water body, stream, or the upland edge of a freshwater or coastal wetland. Extraction operations shall not be permitted within fifty (50) ft., horizontal distance, of any property line without written permission of the owner of such adjacent property.
 - (iii) Within twelve (12) months following the completion of extraction operations at any extraction site, which operations shall be deemed complete when less than one hundred (100) cubic yards of materials are removed in any consecutive twelve (12) month period, ground levels and grades shall be established in accordance with the following:
 - (A) All debris, stumps, and similar materials 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.
 - (B) The final graded slope shall be two and one-half to one (2-1/2:1) slope or flatter.
 - (C) Topsoil or loam shall be retained to cover all disturbed land areas, which shall be reseeded and stabilized with vegetation native to the area. Additional topsoil or loam shall be obtained from off-site sources if necessary to complete the stabilization project.
 - (iv) In keeping with the purposes of this Ordinance, the Planning Board may impose such conditions as are necessary to minimize the adverse impacts associated with mineral extraction operations on surrounding uses and resources.

16) Agriculture

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- a) All spreading of manure shall be accomplished in conformance with the Manure Utilization Guidelines published by the former Maine Department of Agriculture on November 1, 2001, and the Nutrient Management Law (7 M.R.S.A. §§ 4201-4209).
- b) Manure shall not be stored or stockpiled within seventy-five (75) ft. horizontal distance of water bodies, streams, or coastal or freshwater wetlands. All manure storage areas within the shoreland zone must be constructed or modified such that the facility produces no discharge of effluent or contaminated storm water.
- c) Agricultural activities involving tillage of soil greater than forty thousand (40,000) sq. ft. in surface area, within the shoreland zone shall require a Conservation Plan to be filed with the Planning Board. Non-conformance with the provisions of said plan shall be considered to be a violation of this Ordinance.
- d) There shall be no new tilling of soil within seventy-five (75) ft., horizontal distance, from water bodies and coastal wetlands; nor within twenty-five (25) ft., horizontal distance, of streams and freshwater wetlands. Operations in existence on the effective date of this ordinance and not in conformance with this provision may be maintained.
- e) Newly established livestock grazing areas shall not be permitted within seventy-five (75) ft., horizontal distance, of water bodies and coastal wetlands, nor; within twenty-five (25) ft., horizontal distance, of tributary streams and freshwater wetlands. Livestock grazing associated with ongoing farm activities, and which are not in conformance with the above setback provisions may continue, provided that such grazing is conducted in accordance with a Conservation Plan that has been filed with the Town.

17) Timber Harvesting

Timber harvesting shall conform with the following Standards:

a) Shoreline integrity and sedimentation

Persons conducting timber harvesting and related activities must take reasonable measures to avoid the disruption of shoreline integrity, the occurrence of sedimentation of water, and the disturbance of water body and stream banks, water body and stream channels, shorelines, and soil lying within water bodies, streams and coastal or freshwater wetlands. If, despite such precautions, the disruption of shoreline integrity, sedimentation of water, or the disturbance of water body and stream banks, water body and stream channels, shorelines, and soil lying within water bodies, streams and coastal or freshwater wetlands occur, such conditions must be corrected.

b) Slash treatment

Timber harvesting and related activities shall be conducted such that slash or debris is not left below the normal high-water line of any water body or stream, or the upland edge of a coastal or freshwater wetland. This section does not apply to minor, incidental amounts of slash that result from timber harvesting and related activities otherwise conducted in compliance with this section.

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

(ii) Adjacent to rivers and wetlands:

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- (A) no accumulation of slash shall be left within 50 ft., horizontal distance, of the normal high-water line or upland edge of a wetland; and
 - (B) between 50 ft. and 250 ft., horizontal distance, of the normal high-water line or upland edge of a wetland, all slash larger than 3 inches in diameter must be disposed of in such a manner that no part thereof extends more than 4 ft. above the ground.
- (iii) Timber harvesting and related activities must leave adequate tree cover and shall be conducted so that a well-distributed stand of trees is retained. This requirement may be satisfied by following one of the following three options:
- (A) Option 1 (40% volume removal), as follows:
 - (1) Harvesting of no more than 40 percent of the total volume on each acre of trees, 4.5 inches DBH or greater in any 10-year period is allowed. Volume may be considered to be equivalent to basal area.
 - (2) A well-distributed stand of trees which is windfirm, and other vegetation including existing ground cover, must be maintained.
 - (3) Within 75 ft., horizontal distance, of the normal high-water line of rivers, streams, and within 75 ft., horizontal distance, of the upland edge of a freshwater or coastal wetlands, there must be no cleared openings. At distances greater than 75 ft., horizontal distance, of the normal high-water line of a river or upland edge of a coastal or freshwater wetland, timber harvesting and related activities must not create single cleared openings greater than 14,000 sq. ft. in the forest canopy. Where such openings exceed 10,000 sq. ft., they must be at least 100 ft., horizontal distance, apart. Such cleared openings will be included in the calculation of total volume removal. Volume may be considered equivalent to basal area.
 - (B) Option 2 (60 sq. ft. basal area retention), as follows:
 - (1) The residual stand must contain an average basal area of at least 60 sq. ft. per acre of woody vegetation greater than or equal to 1.0-inch DBH, of which 40 sq. ft. per acre must be greater than or equal to 4.5 inches DBH.
 - (2) A well-distributed stand of trees which is windfirm, and other vegetation including existing ground cover, must be maintained.
 - (3) Within 75 ft., horizontal distance, of the normal high-water line of water bodies and within 75 ft., horizontal distance, of the upland edge of coastal or freshwater wetlands, there must be no cleared openings. At distances greater than 75 ft., horizontal distance, of the normal high-water line of a river or upland edge of a coastal or freshwater wetland, timber harvesting and related activities must not create single cleared openings greater than 14,000 sq. ft. in the forest canopy. Where such openings exceed 10,000 sq. ft., they must be at least 100 ft., horizontal distance, apart. Such cleared openings will be included in the calculation of the average basal area. Volume may be considered equivalent to basal area.
 - (C) Option 3 (Outcome based), which requires:

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

Option 3 does not become effective until the legislative effective date of the statewide standards.

Landowners must designate on the Forest Operations Notification form required by 12 M.R.S.A. §§ 8881-8888, which option they choose to use. If landowners choose Option 1 or Option 2, compliance will be determined solely on the criteria for the option chosen. If landowners choose Option 3, timber harvesting and related activities may not begin until the Bureau has approved the alternative method.

Commented [JH20]: Replaced Chapter 805, Subchapter 5 with the section numbers for consistency.

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

- (iv) Skid trails, yards, and equipment operation. This requirement applies to the construction, maintenance, and use of skid trails and yards in shoreland areas.
 - (A) Equipment used in timber harvesting and related activities shall not use river, stream or stream channels as travel routes except when surface waters are frozen and snow covered, and the activity will not result in any ground disturbance.
 - (B) Skid trails and yards must be designed and constructed to prevent sediment and concentrated water runoff from entering a water body, stream, or coastal or freshwater wetland. Upon termination of their use, skid trails and yards must be stabilized.
 - (C) Setbacks:
 - (1) Equipment must be operated to avoid the exposure of mineral soil within 25 feet, horizontal distance, of any water body, stream, or coastal or freshwater wetland. On slopes of 10 percent or greater, the setback for equipment operation must be increased by 20 ft., horizontal distance, plus an additional 10 ft., horizontal distance, for each 5 percent increase in slope above 10 percent. Where slopes fall away from the resource, no increase in the 25-ft. setback is required.
 - (2) Where such setbacks are impracticable, appropriate techniques shall be used to avoid sedimentation of the water body, stream or coastal or freshwater wetland. Such techniques may include the installation of sump holes or settling basins, and/or the effective use of additional ditch relief culverts and ditch water turnouts placed to avoid sedimentation of the water body, stream, or coastal or freshwater wetland. If, despite such precautions, sedimentation or the disruption of shoreline integrity occurs, such conditions must be corrected.
- (v) Land Management Roads. Land management roads, including approaches to crossings of water bodies, stream channels, and freshwater wetlands, ditches and other related structures, must be designed, constructed, and maintained to prevent sediment and concentrated water runoff from directly entering the water body, stream or coastal or freshwater wetland. Surface water on or adjacent to water crossing approaches must be

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diverted through vegetative filter strips to avoid sedimentation of the watercourse or freshwater or coastal wetland. Because roadside ditches may not extend to the resource being crossed, vegetative filter strips must be established in accordance with the setback requirements in [Article 7.D.17.vii](#) of this rule.

- (A) Land management roads and associated ditches, excavation, and fill must be set back at least:
- (1) 100 ft., horizontal distance, from the normal high-water line of a river or freshwater or coastal wetland;
 - (2) 50 ft., horizontal distance, from the normal high-water line of tributary streams; and
 - (3) 25 ft., horizontal distance, from the normal high-water line of streams.
- (B) The minimum 100-foot setback specified in [Article 7.D.17.v.A.1](#) above may be reduced to no less than 50 ft., horizontal distance, and the 50-foot setback specified in [Article 7.D.17.v.A.2](#) above may be reduced to no less than 25 ft., horizontal distance, if, prior to construction, the landowner or the landowner's designated agent demonstrates to the Planning Board's satisfaction that no reasonable alternative exists and that appropriate techniques will be used to prevent sedimentation of the water body, stream, or coastal or freshwater wetland. Such techniques may include, but are not limited to, the installation of settling basins, and/or the effective use of additional ditch relief culverts and turnouts placed to avoid sedimentation of the water body, stream or coastal or freshwater wetland. If, despite such precautions, sedimentation or the disruption of shoreline integrity occurs, such conditions must be corrected.
- (C) On slopes of 10 percent or greater, the land management road setback must be increased by at least 20 ft., horizontal distance, plus an additional 10 ft., horizontal distance, for each 5 percent increase in slope above 10 percent.
- (D) New land management roads are not allowed within the shoreland area along Significant River Segments as identified in 38 M.R.S.A. § 437, nor in a Resource Protection District, unless, prior to construction, the landowner or the landowner's designated agent makes a clear demonstration to the Planning Board's satisfaction that no reasonable alternative route exists outside the shoreland zone, and that the new road must be set back as far as practicable from the normal high-water line and screened from the river by existing vegetation.
- (E) Ditches, culverts, bridges, dips, water turnouts and other water control installations associated with roads must be maintained on a regular basis to ensure effective functioning. Drainage structures shall deliver a dispersed flow of water into an unscarified filter strip no less than the width indicated in the setback requirements in [Article 7.D.17.vii](#). Where such a filter strip is impracticable, appropriate techniques shall be used to avoid sedimentation of the water body, stream, or coastal or freshwater wetland. Such techniques may include the installation of sump holes or settling basins, and/or the effective use of additional ditch relief culverts and ditch water turnouts placed to avoid sedimentation of the water body, stream, or coastal or freshwater wetland. If, despite such precautions, sedimentation or the disruption of shoreline integrity occurs, such conditions must be corrected.

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- (F) Road closeout and discontinuance. Maintenance of the water control installations required in [Article 7.D.17.v.E](#) must continue until use of the road is discontinued and the road is put to bed by effective installation of water bars or other adequate road drainage structures at appropriate intervals, constructed to avoid surface water flowing over or under the water bar, and extending a sufficient distance beyond the traveled way so that water does not reenter the road surface.
- (G) Upgrading existing roads. Extension or enlargement of presently existing roads must conform to the provisions of [Article 7.D.17](#). Any nonconforming existing road may continue to exist and to be maintained, as long as the nonconforming conditions are not made more nonconforming.
- (H) Exception. Extension or enlargement of presently existing roads need not conform to the setback requirements of [Article 7.D.17.v.A](#) if, prior to extension or enlargement, the landowner or the landowner's designated agent demonstrates to the Planning Board's satisfaction that no reasonable alternative exists and that appropriate techniques will be used to prevent sedimentation of the water body, stream, or coastal or freshwater wetland. Such techniques may include, but are not limited to, the installation of settling basins, and/or the effective use of additional ditch relief culverts and turnouts placed to avoid sedimentation of the water body, stream, or coastal or freshwater wetland. If, despite such precautions, sedimentation or the disruption of shoreline integrity occurs, such conditions must be corrected.
- (I) Additional measures. In addition to the foregoing minimum requirements, persons undertaking construction and maintenance of roads and river, stream and stream crossings must take reasonable measures to avoid sedimentation of surface waters.
- (vi) Crossings of waterbodies. Crossings of rivers, streams, and tributary streams must allow for fish passage at all times of the year, must not impound water, and must allow for the maintenance of normal flows.
- (A) Determination of flow. Provided they are properly applied and used for the circumstances for which they are designed, methods including but not limited to the following are acceptable as a means of calculating the 10 year and 25 year frequency water flows and thereby determining water crossing sizes as required in [Article 7.D.17](#): The United States Geological Survey (USGS) Methods; specifically: Hodgkins, G. 1999. Estimating the Magnitude of Peak Flows for Streams in Maine for Selected Recurrence Intervals. U.S. Geological Survey. Water Resources Investigations Report 99-4008. 45 pp.
- (B) Upgrading existing water crossings. Extension or enlargement of presently existing water crossings must conform to the provisions of [Article 7.D.17](#). Any nonconforming existing water crossing may continue to exist and be maintained, as long as the nonconforming conditions are not made more nonconforming; however, any maintenance or repair work done below the normal high-water line must conform to the provisions of [Article 7.D.17](#).
- (C) Other Agency Permits. Any timber harvesting and related activities involving the design, construction, and maintenance of crossings on waterbodies other than a river, stream or tributary stream may require a permit from the Land Use Regulation

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Commission, the Department of Environmental Protection, or the US Army Corps of Engineers.

- (D) Any timber harvesting and related activities involving the design, construction, and maintenance of crossings of freshwater wetlands identified by the Department of Inland Fisheries and Wildlife as essential wildlife habitat require prior consultation with the Department of Inland Fisheries and Wildlife.
- (E) Notice to the Bureau of Forestry. Written notice of all water crossing construction maintenance, alteration and replacement activities in shoreland areas must be given to the Bureau prior to the commencement of such activities. Such notice must contain all information required by the Bureau, including:
- (1) a map showing the location of all proposed permanent crossings;
 - (2) the GPS location of all proposed permanent crossings;
 - (3) for any temporary or permanent crossing that requires a permit from state or federal agencies, a copy of the approved permit or permits; and
 - (4) a statement signed by the party responsible that all temporary and permanent crossings will be constructed, maintained, and closed out in accordance with the requirements of this Section.
- (F) Water crossing standards. All crossings of rivers require a bridge or culvert sized according to the requirements of [Article 7.D.17.vi.G](#) below. Streams and tributary streams may be crossed using temporary structures that are not bridges or culverts provided:
- (1) concentrated water runoff does not enter the stream or tributary stream;
 - (2) sedimentation of surface waters is reasonably avoided;
 - (3) there is no substantial disturbance of the bank, or stream or tributary stream channel;
 - (4) fish passage is not impeded; and
 - (5) water flow is not unreasonably impeded.
- Subject to [Article 7.D.17.vi.F](#) above, skid trail crossings of streams and tributary streams when channels of such streams and tributary streams are frozen and snow-covered or are composed of a hard surface which will not be eroded or otherwise damaged are not required to use permanent or temporary structures.
- (G) Bridge and Culvert Sizing. For crossings of river, stream and tributary stream channels with a bridge or culvert, the following requirements apply:
- (1) Bridges and culverts must be installed and maintained to provide an opening sufficient in size and structure to accommodate 25-year frequency water flows or with a cross-sectional area at least equal to 3 times the cross-sectional area of the river, stream, or tributary stream channel.
 - (2) Temporary bridge and culvert sizes may be smaller than provided in [Article 7.D.17.vi.G.1](#) if techniques are effectively employed such that in the event of culvert or bridge failure, the natural course of water flow is maintained, and

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sedimentation of the water body or stream is avoided. Such crossing structures must be at least as wide as the channel and placed above the normal high-water line. Techniques may include, but are not limited to, the effective use of any, a combination of, or all of the following:

- a. use of temporary skidder bridges;
 - b. removing culverts prior to the onset of frozen ground conditions;
 - c. using water bars in conjunction with culverts; or
 - d. using road dips in conjunction with culverts.
- (3) Culverts utilized in river, stream and tributary stream crossings must:
- a. be installed at or below river, stream or tributary stream bed elevation;
 - b. be seated on firm ground;
 - c. have soil compacted at least halfway up the side of the culvert;
 - d. be covered by soil to a minimum depth of 1 foot or according to the culvert manufacturer's specifications, whichever is greater; and
 - e. have a headwall at the inlet end which is adequately stabilized by riprap or other suitable means to reasonably avoid erosion of material around the culvert.
- (4) River, stream and tributary stream crossings allowed under [Article 7.D.17](#), but located in flood hazard areas (i.e. A zones) as identified on a community's Flood Insurance Rate Maps (FIRM) or Flood Hazard Boundary Maps (FHBM), must be designed and constructed under the stricter standards contained in that community's National Flood Insurance Program (NFIP). For example, a water crossing may be required to pass a 100-year flood event.
- (5) Exception. Skid trail crossings of streams within shoreland areas and wetlands adjacent to such streams may be undertaken in a manner not in conformity with the requirements of the foregoing subsections provided persons conducting such activities take reasonable measures to avoid the disruption of shoreline integrity, the occurrence of sedimentation of water, and the disturbance of stream banks, stream channels, shorelines, and soil lying within ponds and wetlands. If, despite such precautions, the disruption of shoreline integrity, sedimentation of water, or the disturbance of stream banks, stream channels, shorelines, and soil lying within ponds and wetlands occurs, such conditions must be corrected.
- (H) Skid trail closeout. Upon completion of timber harvesting and related activities, or upon the expiration of a Forest Operations Notification, whichever is earlier, the following requirements apply:
- (1) Bridges and culverts installed for river, stream and tributary stream crossings by skid trails must either be removed and areas of exposed soil stabilized or upgraded to comply with the closeout standards for land management roads in [Article 7.D.17.vi.I](#) below.

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- (2) Water crossing structures that are not bridges or culverts must either be removed immediately following timber harvesting and related activities, or, if frozen into the river, stream or tributary stream bed or bank, as soon as practical after snowmelt.
- (3) River, stream and tributary stream channels, banks and approaches to crossings of water bodies and tributary streams must be immediately stabilized on completion of harvest, or if the ground is frozen and/or snow-covered, as soon as practical after snowmelt. If, despite such precautions, sedimentation or the disruption of shoreline integrity occurs, such conditions must be corrected.
- (I) Land management road closeout. Maintenance of the water control features must continue until use of the road is discontinued and the road is put to bed by taking the following actions:
 - (1) Effective installation of water bars or other adequate road drainage structures at appropriate intervals, constructed to reasonably avoid surface water flowing over or under the water bar, and extending sufficient distance beyond the traveled way so that water does not reenter the road surface.
 - (2) Water crossing structures must be appropriately sized or dismantled and removed in a manner that reasonably avoids sedimentation of the water body or tributary stream.
 - (3) Any bridge or water crossing culvert in roads to be discontinued shall satisfy one of the following requirements:
 - a. it shall be designed to provide an opening sufficient in size and structure to accommodate 25-year frequency water flows;
 - b. it shall be designed to provide an opening with a cross-sectional area at least 3 1/2 times the cross-sectional area of the river, stream or tributary stream channel; or
 - c. it shall be dismantled and removed in a fashion to reasonably avoid sedimentation of the river, stream or tributary stream.

If, despite such precautions, sedimentation or the disruption of shoreline integrity occurs, such conditions must be corrected.

(vii) Slope Table

Filter strips, skid trail setbacks, and land management road setbacks must be maintained as specified in [Article 7.D.17](#), but in no case shall be less than shown in the following table.

Commented [JH37]: Changed 16 to 17

| Average slope of land between exposed mineral soil and shoreline (feet along surface of the ground) | Width of strip between exposed mineral soil and the shoreline (percent) |
|---|---|
| 1 | 25 |
| 10 | 45 |

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| | |
|----|-----|
| 20 | 65 |
| 30 | 85 |
| 40 | 105 |
| 50 | 125 |
| 60 | 145 |
| 70 | 165 |

(viii) Definitions. Unless otherwise provided herein, this [Article 7.D.17](#) incorporates by reference the definitions contained in the Maine Forest Service Rules Chapter 20, "Forest Regeneration and Clearcutting Standards", and Chapter 21, "Statewide Standards for Timber Harvesting and Related Activities in the Shoreland Areas".

Commented [JH38]: Changed 16 to 17.

18) Clearing or Removal of Vegetation for Activities Other Than Timber Harvesting

Commented [JH39]: Renumbered this and all Sections to the end of the Article.

- a) In the Resource Protection District the cutting or removal of vegetation shall be limited to that which is necessary for uses expressly authorized in that district.
- b) Except in areas as described in [Article 7.D.18.a](#), above, within one hundred (100) feet, horizontal distance, from any other water body, stream, or the upland edge of a coastal or freshwater wetland, a buffer strip of vegetation shall be preserved as follows:
 - (i) There shall be no cleared opening greater than 250 sq. ft. in the forest canopy (or other existing woody vegetation if a forested canopy is not present) as measured from the outer limits of the tree or shrub crown. However, a single footpath not to exceed six (6) ft. in width as measured between tree trunks and/or shrub stems is allowed for accessing the shoreline provided that a clear line of sight to the water through the buffer strip is not created.
 - (ii) Selective cutting of trees within the buffer strip is allowed provided that a well-distributed stand of trees and other natural vegetation is maintained. For the purposes of [Article 7.D.18.b.ii](#) a "well-distributed stand of trees" shall be defined as maintaining a rating score of 16 **points** or more in each 25-foot by 50-foot rectangular (1250 sq. ft.) area as determined by the following rating system.

Commented [JH40]: Changed 17 to 18

Commented [JH41]: Changed 17 to 18

Commented [JH42]: Added for clarity

| Diameter of Tree at 4.5 ft. Above Ground Level (inches) | Points |
|---|--------|
| 2 ≤ 4 in. | 1 |
| 4 ≤ 8 in. | 2 |
| 8 ≤ 12 in. | 3 |
| 12 in. or greater | 4 |

The following shall govern in applying this point system:

- (A) the 25-foot by 50-foot rectangular plots must be established where the landowner or lessee proposes clearing within the required buffer;
- (B) each successive plot must be adjacent to, but not overlap a previous plot;

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- (C) any plot not containing the required points must have no vegetation removed except as otherwise allowed by this Ordinance;
- (D) any plot containing the required points may have vegetation removed down to the minimum points required or as otherwise allowed by is Ordinance; and
- (E) 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 [Article 7.D.18.b.ii](#) "other natural vegetation" is defined as retaining existing vegetation under three (3) ft. 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 (4.5) ft. 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.

Commented [JH43]: Changed 17 to 18

Notwithstanding the above provisions, no more than 40% of the total volume of trees four (4) inches or more in diameter, measured at 4.5 feet above ground level, may be removed in any ten (10) year period.

- (A) In order to protect water quality and wildlife habitat, existing vegetation under three (3) feet in height and other ground cover, including leaf litter and the forest duff layer, shall not be cut, covered, or removed, except to provide for a footpath or other permitted uses as described in [Article 7.D.18](#) paragraphs (b) and (b)(i) above.
- (B) Pruning tree branches, on the bottom 1/3 of the tree is allowed.
- (C) In order to maintain a buffer strip of vegetation, when the removal of storm-damaged, hazard, or dead trees results in the creation of cleared openings, these openings shall be replanted with native tree species in accordance with [Article 7.D.19](#) below, unless existing new tree growth is present.
- (D) In order to maintain the vegetation in the shoreline buffer, clearing or removal of vegetation for allowed activities, including associated construction and related equipment operation, within or outside the shoreland buffer, must comply with the requirements of [Article 7.D.18.b](#).

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Commented [JH45]: Changed 18 to 19

- c) At distances greater than one hundred (100) ft., horizontal distance, from the normal high-water line of any water body, stream, or the upland edge of a freshwater or coastal wetland, there shall be allowed on any lot, in any ten (10) year period, selective cutting of not more than forty (40) percent of the volume of trees four (4) inches or more in diameter, measured 4.5 ft. above ground level. Tree removal in conjunction with the development of permitted uses shall be included in the forty (40) percent calculation. For the purposes of these standards volume may be considered to be equivalent to basal area.

Commented [JH46]: Changed 17 to 18

In no event shall cleared openings for any purpose, including but not limited to, principal and accessory structures, driveways, lawns and sewage disposal areas, exceed in the aggregate, 25% of the lot area within the shoreland zone or ten thousand (10,000) sq. ft., whichever is greater, including land previously cleared. This provision applies to the portion of a lot within the shoreland zone, including the buffer area, but shall not apply to the General Development or Commercial Fisheries/Maritime Activities Districts.

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- d) Legally existing nonconforming cleared openings may be maintained, but shall not be enlarged, except as allowed by this Ordinance.
- e) Fields and other cleared openings which have reverted to primarily shrubs, trees, or other woody vegetation shall be regulated under the provisions of [Article 7.D.18](#).
- f) The vegetation clearing standards of this ordinance can be exceeded on a temporary basis exclusively for the purpose of controlling the spread of invasive species and restoring natural areas with prior written approval of the Code Enforcement Officer under the following conditions:
 - (i) The work shall be completed according to the Maine Natural Areas Program Fact Sheets under the supervision of a public natural resource agency or municipal department.
 - (ii) Woody species removed that exceed the required stand scoring limits are nonnative invasive species including: Norway Maple (*Acer platanoides*), Japanese barberry (*Berberis thunbergii*), Asiatic bittersweet (*Celastrus orbiculata*), glossy buckthorn (*Frangula alnus*), Morrow's honeysuckle (*Lonicera morrowii*), Japanese honeysuckle (*Lonicera japonica*), Tartarian honeysuckle (*Lonicera tatarica*), multiflora rose (*Rosa multiflora*), or other species identified as woody invasive plants by the Maine Natural Areas Program (MNAP).

If removal of these species exceeds the required stand scoring limits, native species will be planted to return the area to compliance with the "well distributed stand" definition as specified in this section prior to the start of the next growing season.
 - (i) Non-native invasive woody species under three (3) feet in height and herbaceous invasive species including Japanese knotweed (*Fallopia japonica*), purple loosestrife (*Lythrum salicaria*), and other species identified as invasive plants by the Maine Natural Areas Program (MNAP) can be removed if the area is replanted and monitored for the successful establishment of native species at an equal or greater density than the species removed.
 - (ii) Temporary erosion control measures shall be installed prior to the start of the activity if the invasive species removal effort has the potential to result in erosion of soil into the resource.
 - (iii) All disturbed areas shall be permanently stabilized.

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19) Hazard Trees, Storm-Damaged Trees, and Dead Tree Removal

Commented [JH48]: Renumbered

- a) Hazard trees in the shoreland zone may be removed without a permit after consultation with the Code Enforcement Officer if the following requirements are met:
 - (i) Within the shoreline buffer, if the removal of a hazard tree results in a cleared opening in the tree canopy greater than two hundred and fifty (250) sq. ft., replacement with native tree species is required, unless there is new tree growth already present. New tree growth must be as near as practicable to where the hazard tree was removed and be at least two (2) inches in diameter, measured at four and one half (4.5) ft. above the ground level. If new growth is not present, then replacement trees shall consist of native species and be at least four (4) ft. in height and be no less than two (2) inches in diameter. Stumps may not be removed.

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- (ii) Outside of the shoreline buffer, when the removal of hazard trees exceeds forty (40) percent of the volume of trees four (4) inches or more in diameter, measured at four and one half (4.5) ft. above ground level in any ten (10) year period, and/or results in cleared openings exceeding twenty-five (25) percent of the lot area within the shoreland zone, or ten thousand (10,000) sq. ft., whichever is greater, replacement with native tree species is required, unless there is new tree growth already present. New tree growth must be as near as practicable to where the hazard tree was removed and be at least two (2) inches in diameter, measured at four and one half (4.5) ft. above the ground level. If new growth is not present, then replacement trees shall consist of native species and be at least two (2) inches in diameter, measured at four and one half (4.5) ft. above the ground level.
 - (iii) The removal of standing dead trees, resulting from natural causes, is permissible without the need for replanting or a permit, as long as the removal does not result in the creation of new lawn areas, or other permanently cleared areas, and stumps are not removed. For the purposes of this provision dead trees are those trees that contain no foliage during the growing season.
 - (iv) The Code Enforcement Officer may require the property owner to submit an evaluation from a licensed forester or arborist before any hazard tree can be removed within the shoreland zone.
 - (v) The Code Enforcement Officer may require more than a one-for-one replacement for hazard trees removed that exceed eight (8) inches in diameter measured at four and one half (4.5) ft. above the ground level.
- b) Storm-damaged trees in the shoreland zone may be removed without a permit after consultation with the Code Enforcement Officer if the following requirements are met:
- (i) Within the shoreline buffer, when the removal of storm-damaged trees results in a cleared opening in the tree canopy greater than two hundred and fifty (250) sq. ft., replanting is not required, but the area shall be required to naturally revegetate, and the following requirements must be met:
 - (a) the area from which a storm-damaged tree is removed does not result in new lawn areas, or other permanently cleared areas;
 - (b) stumps from the storm-damaged trees may not be removed;
 - (c) limbs damaged from a storm event may be pruned even if they extend beyond the bottom one-third (1/3) of the tree; and
 - (d) if after one growing season, no natural regeneration or regrowth is present, replanting of native tree seedlings or saplings is required at a density of one seedling per every eighty (80) sq. ft. of lost canopy.
 - (ii) Outside of the shoreline buffer, if the removal of storm damaged trees exceeds 40% of the volume of trees four (4) inches or more in diameter, measured at four and one half (4.5) ft. above the ground level in any ten (10) year period, or results, in the aggregate, in cleared openings exceeding 25% of the lot area within the shoreland zone or ten thousand (10,000) sq. ft., whichever is greater, and no natural regeneration occurs within one growing season, then native tree seedlings or saplings shall be replanted on a one-for-one basis.

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20) Exemptions to Clearing and Vegetation Removal Requirements

The following activities are exempt from the clearing and vegetation removal standards set forth in **Article 7.D.18**, provided that all other applicable requirements of this chapter are complied with, and the removal of vegetation is limited to that which is necessary:

- a) The removal of vegetation that occurs at least once every two (2) years for the maintenance of legally existing areas that do not comply with the vegetation standards in this chapter, such as but not limited to cleared openings in the canopy or fields. Such areas shall not be enlarged, except as allowed by this section. If any of these areas, due to lack of removal of vegetation every two (2) years, reverts back to primarily woody vegetation, the requirements of **Article 7.D.18** apply.
- b) The removal of vegetation from the location of allowed structures or allowed uses, when the shoreline setback requirements of **Article 7.D.2** are not applicable.
- c) The removal of vegetation from the location of public swimming areas associated with an allowed public recreational facility.
- d) The removal of vegetation associated with allowed agricultural uses, provided best management practices are utilized, and provided all requirements of **section 15(N)** are complied with.
- e) The removal of vegetation associated with brownfields or voluntary response action program (VRAP) projects provided that the removal of vegetation is necessary for remediation activities to clean-up contamination on a site in a general development district, commercial fisheries and maritime activities district or other equivalent zoning district approved by the Commissioner that is part of a state or federal brownfields program or a voluntary response action program pursuant 38 M.R.S.A § 343-E, and that is located along:
 - (i) a coastal wetland; or
 - (ii) a river that does not flow to a great pond classified as GPA pursuant to 38 M.R.S.A § 465-A.
- f) The removal of non-native invasive vegetation species, provided the following minimum requirements are met:
 - (i) If removal of vegetation occurs via wheeled or tracked motorized equipment, the wheeled or tracked motorized equipment is operated and stored at least twenty-five (25) ft., horizontal distance, from the shoreline, except that wheeled or tracked equipment may be operated or stored on existing structural surfaces, such as pavement or gravel.
 - (ii) Removal of vegetation within twenty-five (25) ft., horizontal distance, from the shoreline occurs via hand tools.
 - (iii) If applicable clearing and vegetation removal standards are exceeded due to the removal of non-native invasive species vegetation, the area shall be revegetated with native species to achieve compliance.
- g) The removal of vegetation associated with emergency response activities conducted by the Department, the U.S. Environmental Protection Agency, the U.S. Coast Guard, and their agents.

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Commented [JH50]: Renumbered 17 to 18

Commented [JH51]: Renumbered 17 to 18

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21) Revegetation Requirements

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When revegetation is required in response to violations of the vegetation standards set forth in [Article 7.D.18](#), to address the removal of non- native invasive species of vegetation, or as a mechanism to allow for development that may otherwise not be permissible due to the vegetation standards, including removal of vegetation in conjunction with a shoreline stabilization project, the revegetation must comply with the following requirements.

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- a) The property owner must submit a revegetation plan, prepared with and signed by a qualified professional, that describes revegetation activities and maintenance. The plan must include a scaled site plan, depicting where vegetation was, or is to be removed, where existing vegetation is to remain, and where vegetation is to be planted, including a list of all vegetation to be planted.
- b) Revegetation must occur along the same segment of shoreline and in the same area where vegetation was removed and at a density comparable to the pre-existing vegetation, except where a shoreline stabilization activity does not allow revegetation to occur in the same area and at a density comparable to the pre-existing vegetation, in which case revegetation must occur along the same segment of shoreline and as close as possible to the area where vegetation was removed.
- c) If part of a permitted activity, revegetation shall occur before the expiration of the permit. If the activity or revegetation is not completed before the expiration of the permit, a new revegetation plan shall be submitted with any renewal or new permit application.
- d) Revegetation activities must meet the following requirements for trees and saplings:
 - (i) All trees and saplings removed must be replaced with native non-invasive species.
 - (ii) All trees and saplings removed must be replaced with native non-invasive species.
 - (iii) If more than three (3) trees or saplings are planted, then at least three (3) different species shall be used.
 - (iv) No one species shall make up 50% or more of the number of trees and saplings planted.
 - (v) If revegetation is required for a shoreline stabilization project, and it is not possible to plant trees and saplings in the same area where trees or saplings were removed, then trees or sapling must be planted in a location that effectively reestablishes the screening between the shoreline and structures.
 - (vi) A survival rate of at least eighty (80) percent of planted trees or saplings is required for a minimum five (5) years period.
- e) Revegetation activities must meet the following requirements for woody vegetation and other vegetation under three (3) ft. in height:
 - (i) All woody vegetation and vegetation under three (3) ft. in height must be replaced with native noninvasive species of woody vegetation and vegetation under three (3) ft. in height as applicable.
 - (ii) Woody vegetation and vegetation under three (3) ft. in height shall be planted in quantities and variety sufficient to prevent erosion and provide for effective infiltration of stormwater.
 - (iii) If more than three (3) woody vegetation plants are to be planted, then at least three (3) different species shall be planted.

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- (iv) No one species shall make up 50% or more of the number of planted woody vegetation plants.
- (v) Survival of planted woody vegetation and vegetation under three feet in height must be sufficient to remain in compliance with the standards contained within this chapter for a minimum of five (5) years.
- f) Revegetation activities must meet the following requirements for ground vegetation and ground cover:
 - (i) All ground vegetation and ground cover removed must be replaced with native herbaceous vegetation, in quantities and variety sufficient to prevent erosion and provide for effective infiltration of stormwater.
 - (ii) Where necessary due to a lack of sufficient ground cover, an area must be supplemented with a minimum four (4) inch depth of leaf mulch and/or bark mulch to prevent erosion and provide for effective infiltration of stormwater.
 - (iii) Survival and functionality of ground vegetation and ground cover must be sufficient to remain in compliance with the standards contained within this chapter for minimum of five (5) years.

22) Erosion and Sedimentation Control

- a) All activities which involve filling, grading, excavation or other similar activities which result in un-stabilized 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:
 - (i) mulching and revegetation of disturbed soil;
 - (ii) temporary runoff control features such as hay bales, silt fencing or diversion ditches; and
 - (iii) permanent stabilization structures such as retaining walls or riprap.
- b) 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.
- c) 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.
- d) Any exposed ground area shall be temporarily or permanently stabilized within one (1) week from the time it was last actively worked, by use of riprap, sod, seed, and mulch, or other effective measures. In all cases permanent stabilization shall occur within nine (9) months of the initial date of exposure. In addition:
 - (i) Where mulch is used, it shall be applied at a rate of at least one (1) bale per five hundred (500) sq. ft. and shall be maintained until a catch of vegetation is established.
 - (ii) Anchoring the mulch with netting, peg and twine or other suitable method may be required to maintain the mulch cover.

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Commented [JH57]: All subheadings under Section 22 have been relettered.

Commented [JH58]: Bale is a unit that is not defined and I don't think is a standard amount in any industry. Can this be reworded to be more clear as to the amount required?

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

23) Soils

All land uses shall be located on soil 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.

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24) 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, stream or coastal or freshwater wetland.

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25) Archaeological Site

Any proposed land use activity involving structural development or soil disturbance on or adjacent to sites listed on, or eligible to be listed on the National Register of Historic Places, as determined by the permitting authority, shall be submitted by the applicant to the Maine Historic Preservation Commission for review and comment, at least twenty (20) days prior to action being taken by the permitting authority. The permitting authority shall consider comments received from the Commission prior to rendering a decision on the application.

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26) Marinas

- a) Marinas must not interfere with the free and safe navigation and reasonable public use of the rivers and waterways.
- b) Marinas must be in conformity of the Army Corps of Engineers guidelines "For the Placement of fixed floating structures in Navigable Waters of The United States regulated by New England District" (July 1996 or most recent edition). The Army Corps' "rule of thumb" for mooring fields (Army Corps guideline #10, 1996) shall not apply in the Town of Bowdoinham.
- c) In a linear waterway, such as a river or narrow estuary, a reasonable area of public water should be maintained for the public interest. In such areas, the marina structure in the water shall extend from shore to a distance that does not exceed 25% of the width of the waterway as measured at mean low water.

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- d) All structures and boats docked at marinas must be sited to provide a reasonable buffer between the boat and/or structure and the full scope of boats at nearby moorings, in order to provide safe access to those moorings. The minimum buffer zone between the scope of the moorings for moored boats and marina boats and/or structures is 15 feet.
- e) The overall length of a marina, including all floats and docks, shall not exceed 280 linear ft. along the length shore. Counting all piers, docks, wharves and other uses projecting into the water as boat slips, there shall be no more than 20 boat slips.
- f) In general, to prevent conflicts with neighboring waterfront property owners, the required minimum setback is 25 ft. from the side property line.
- g) The maximum boat length shall not exceed 34 ft.
- h) Marinas shall not engage in either significant boatyard maintenance activities (including, but not limited to, extensive engine repair, stripping of paint, and power-washing) or the commercial storage and pumping of fuel.

E) Nonconformance

1) Purpose

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

2) General

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

3) Non-conforming Structures

- a) Expansions. All new principal and accessory structures, excluding functionally water-dependent uses, must meet the water body, stream, or wetland setback requirements contained in Article 7.D.2.a. A non-conforming structure may be added to or expanded after obtaining a permit from the same permitting authority as that for a new structure, if such addition or expansion does not increase the non-conformity of the structure and is in accordance with subparagraphs (i) and (ii) below.
 - (i) Expansion of any portion of a structure within 25 ft. of the normal high-water line of a water body, stream, or upland edge of a wetland is prohibited, even if the expansion will not increase nonconformity with the water body, stream or wetland setback requirement. Expansion of an accessory structure that is located closer to the normal high-water line of

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a water body, stream, or upland edge of a wetland than the principal structure is prohibited, even if the expansion will not increase nonconformity with the water body, stream, or wetland setback requirement.

- (ii) Notwithstanding paragraph (i) above, if a legally existing nonconforming principle structure is entirely located less than 25 ft. from the normal high-water line of a water body, stream, or upland edge of a wetland, that structure may be expanded as follows, as long as all other applicable municipal land use standards are met and the expansion is not prohibited by Article 7.E.3.a.

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

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- (iii) All other legally existing nonconforming principal and accessory structures that do not meet the water body, stream, or wetland setback requirements may be expanded or altered as follows, as long as other applicable municipal land use standards are met and the expansion is not prohibited Article 7.E.3.a above.

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

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

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

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- (iv) A principal building may exceed the height requirements in Limited Commercial, General Development, or Commercial Fisheries/Maritime Activities Districts only if necessary to elevate the building in order to meet the floodplain standards provided there is no other practical alternative as determined by the Code Enforcement Officer. The increase in the building's height shall be limited to the minimum elevation required to meet the floodplain standards. The basement may not be elevated, and any expansion of the structure may not exceed the maximum structure height limitation.
- (v) An approved plan for expansion of a nonconforming structure must be recorded by the applicant with the registry of deeds, within 90 days of approval. The recorded plan must show the existing and proposed footprint of the non-conforming structure, the existing and proposed structure height, the footprint of any other structures on the parcel, the shoreland zone boundary and evidence of approval by the municipal review authority.
- b) Foundations. Whenever a new, enlarged, or replacement foundation is constructed under a non-conforming structure, the structure and new foundation must be placed such that the setback requirement is met to the greatest practical extent as determined by the Planning Board or its designee, basing its decision on the criteria specified in this Section, Non-conforming Structures.
- c) Relocation. A non-conforming structure may be relocated within the boundaries of the parcel on which the structure is located provided that the site of relocation conforms to all setback requirements to the greatest practical extent as determined by the Planning Board or its designee, and provided that the applicant demonstrates that the present subsurface sewage disposal system meets the requirements of State law and the State of Maine Subsurface Wastewater Disposal Rules (Rules), or that a new system can be installed in compliance with the law and said Rules. In no case shall a structure be relocated in a manner that causes the structure to be more non-conforming.

In determining whether the building relocation meets the setback to the greatest practical extent, the Planning Board or its designee shall consider the size of the lot, the slope of the land, the potential for soil erosion, the location of other structures on the property and on adjacent properties, the location of the septic system and other on-site soils suitable for septic systems, and the type and amount of vegetation to be removed to accomplish the relocation. When it is necessary to remove vegetation within the water or wetland setback area in order to relocate a structure, the Planning Board shall require replanting of native vegetation to compensate for the destroyed vegetation in accordance with Article 7.D.20. In addition, the area from which the relocated structure was removed must be replanted with vegetation. Replanting shall be required as follows:

- (i) Trees removed in order to relocate a structure must be replanted with at least one native tree, three (3) ft. 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 freshwater or coastal 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

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cover must consist of similar native vegetation and/or ground cover that was disturbed, destroyed or removed.

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

Any non-conforming structure which is located less than the required setback from a water body, stream, or freshwater or coastal wetland and which is removed by 50% or less of the market value, or damaged or destroyed by 50% or less of the market value of the structure, excluding normal maintenance and repair, may be reconstructed in place if a permit is obtained from the Code Enforcement Officer within one year of such damage, destruction, or removal.

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

- e) Change of Use of a Non-conforming Structure. The use of a non-conforming structure may not be changed to another use unless the Planning Board, after receiving a written application, determines that the new use will have no greater adverse impact on the water body, stream, or coastal or freshwater 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.

4) Non-conforming Uses

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- a) Expansions. Expansions of non-conforming uses are prohibited, except that non-conforming residential uses may, after obtaining a permit from the Planning Board, be expanded within existing residential structures or within expansions of such structures as allowed in subsection 3 above.
 - b) Resumption Prohibited. A lot, building or structure in or on which a non-conforming use is discontinued for a period exceeding one year, or which is superseded by a conforming use, may not again be devoted to a non-conforming use except that the Planning Board may, for good cause shown by the applicant, grant up to a one-year extension to that time period. This provision shall not apply to the resumption of the use of a residential structure provided that the structure has been used or maintained for residential purposes during the preceding five (5) year period.
 - c) Change of Use. An existing non-conforming use may be changed to another non-conforming use provided that the proposed use has no greater adverse impact on the subject and adjacent properties and resources, including water dependent uses in the CFMA district, than the former use, as determined by the Board of Appeals. The determination of no greater adverse impact shall be made according to criteria listed in subsection 3.d above.
- 5) Non-conforming Lots
- a) Non-conforming Lots. A non-conforming lot of record as of the effective date of this Ordinance or amendment thereto may be built upon, without the need for a variance, provided that such lot is in separate ownership and not contiguous with any other lot in the same ownership, and that all provisions of this Ordinance except lot area, lot width and shore frontage can be met. Variances relating to setbacks or other requirements not involving lot area, lot width or shore frontage shall be obtained by action of the Board of Appeals.
 - b) Contiguous Built Lots. If two or more contiguous lots or parcels are in a single or joint ownership of record at the time of adoption of this Ordinance, if all or part of the lots do not meet the dimensional requirements of this Ordinance, and if a principal use or structure exists on each lot, the non-conforming lots may be conveyed separately or together, provided that the State Minimum Lot Size Law (12 M.R.S.A. § 4807-A through § 4807-D) and the State of Maine Subsurface Wastewater Disposal Rules are complied with.

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

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F) Special Exceptions

In addition to the criteria specified in Article 7.B above, excepting structure setback requirements, the Planning Board may approve a permit for a single-family residential structure in a Resource Protection District provided that the applicant demonstrates that all of the following conditions are met:

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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 footprint, including cantilevered or similar overhanging extensions, of all principal and accessory structures is limited to a maximum of 1,500 sq. ft. 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 freshwater or coastal wetland to the greatest practical extent, but not less than 75 ft., 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.

