

**AMENDMENT TO OLD ORCHARD BEACH ZONING ORDINANCE  
CONCERNING SHORELAND ZONING**

Be it hereby ordained, by the Town Council of the Town of Old Orchard Beach, Maine, in Town Council assembled, that Chapter 78, **ZONING**, of the Old Orchard Beach Code is amended as follows.

Section 78-1, **Definitions**, is amended by adding the underscored text and deleting the text in strikeover type, as shown below. Terms not listed below are unchanged.

If there is any difference of meaning or implication between the text of this chapter and any map or illustration ~~other than the Official Shoreland Zoning Map~~, the text shall control. Within the shoreland zone, the Official Shoreland Zoning Map shall control. Terms not defined in this section shall have their commonly accepted meanings. Certain terms specific to the shoreland zone are defined in Section 78-1218. The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Aquaculture* means ~~land devoted to the hatching, raising, and breeding of fish or other aquatic plants or animals for sale or personal use~~ the growing or propagation of harvestable freshwater, estuarine, or marine plant or animal species.

*Basal Area* - the area of cross-section of a tree stem at 4 1/2 feet above ground level and inclusive of bark.

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

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

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

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

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

Emergency operations means operations conducted for the public health, safety or general welfare, such as protection of resources from immediate destruction or loss, law enforcement, and operations to rescue human beings, property and livestock from the threat of destruction or injury.

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

Family means one or more persons occupying a premises and living as a single housekeeping unit, as distinguished from persons occupying a boardinghouse, lodging house, or hotel. ~~Such unit shall not exceed six persons not related by blood or marriage.~~ The maximum number of persons occupying a premises shall be governed by the ICC International Property Maintenance Code, section 404.

Family unit means a unit which is occupied by ~~one or more persons, whether or not related to each other by birth, adoption or marriage, but not to consist of more than six unrelated persons~~ a family, as defined by this chapter.

Floodway means the channel of a river or other watercourse and adjacent land areas that must be reserved in order to discharge the 100-year flood without cumulatively increasing the water surface elevation by more than one foot in height.

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

*Forest management activities* means timber cruising and other forest resources evaluation activities; pesticide or fertilizer application, management planning activities, timber stand improvement, pruning, regeneration of forest stands, and other similar or associated activities; ~~but not exclusive of~~ timber harvesting and the construction, creation or maintenance of roads.

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

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

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

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

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

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

*Height of a wireless telecommunications facility* means the vertical measurement from a point on the ground at the mean finished grade adjoining the foundation as calculated by averaging the highest and lowest finished grade around the building or structure to the highest point of the building or structure. Measurement of the highest point shall exclude flagpoles, chimneys, ventilators, skylights, domes, water towers, bell towers, church spires, tanks, bulkheads, or other building accessory features usually erected at a height greater than the main roofs of buildings, but shall include the entirety of the wireless telecommunications towers.

~~*High water elevation, normal,* means, along lakes, ponds, and tidal waters, the elevation at which vegetation changes from predominantly aquatic to predominantly term.~~

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

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

*Lot area, net,* means the area of contiguous land suitable to support a building unit enclosed within the boundary lines of a lot, minus land below the normal high water ~~mark-line~~ of a waterbody or upland edge of a wetland, areas beneath roads serving more than two lots, or land with slope gradients of 50 percent or more.

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

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

Native means indigenous to the local forests.

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

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

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

Normal high water elevation. See Elevation, high water.

Normal high water ~~mark line~~ of coastal waters means that line on the shore of tidal waters ~~reached by the shoreward limit of the rise of the highest tide of a normal year~~ at the upland edge of the coastal wetland, as defined by this chapter.

Normal high water ~~mark line~~ of inland waters means that line which is apparent from visible markings, changes in the character of soils due to prolonged action of the water or changes in vegetation, and which distinguishes between predominantly aquatic and predominantly terrestrial land. ~~Areas contiguous with rivers that support non-forested wetland vegetation and hydric soils and that are at the same or lower elevation as the water level of the river during the period of normal high-water are considered part of the river. For wetlands adjacent to Goosefare Brook, the normal high water mark is the upland edge of the wetland and not the edge of the open water.~~

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

Piers, docks, wharves, breakwaters, causeways, marinas, bridges, and other structures and uses projecting into water bodies extending over or beyond the normal high water line or within a wetland means as follows:

- (1) *Permanent* means structures which remain in or over the water for six months or more in any period of 12 consecutive months.
- (2) *Temporary* means structures which remain in or over the water for less than six months in any period of 12 consecutive months.

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

<u>Fryeburg</u>	<u>Hadley</u>	<u>Limerick</u>
<u>Lovewell</u>	<u>Medomak</u>	<u>Ondawa</u>
<u>Alluvial</u>	<u>Cornish</u>	<u>Charles</u>
<u>Podunk</u>	<u>Rumney</u>	<u>Saco</u>
<u>Suncook</u>	<u>Sunday</u>	<u>Winooski</u>

Recreational facility means a ~~facility, such as place~~ designed and equipped for the conduct of sports, leisure time activities, and other customary and usual recreational activities, including, but not limited to, amateur athletic fields, playgrounds/tot lots, tennis courts and picnic shelters/areas, swimming pools, minigolf and hot tubs. Within any shoreland zone, the term shall not include boat launching facilities.

Recreational vehicle means a portable unit designed as temporary living quarters for recreational, camping, travel or seasonal use that is mounted on a chassis and either self-propelled or towed by another vehicle. A recreational vehicle may be a "dependent recreational vehicle," a "self-contained recreational vehicle" or a "park model." The term "recreational vehicle" includes but is not limited to a "motor home", "camping trailer", "park model" or "pick-up coach". In order to be considered as a recreational vehicle and not as a structure, the unit must remain with its tires on the ground, and must be registered with a state division of motor vehicles or similar agency, unless it is a park model located within a campground or a pick-up coach and is located outside the shoreland zone.

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

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

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

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

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

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

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

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

*Setback from water* means the minimum horizontal distance from the normal high water ~~mark~~ line of a water body or tributary stream, or upland edge of a wetland to the nearest part of a structure, road, parking space or other regulated object or area.

Shore frontage means the length of a lot bordering on a water body or wetland measured in a straight line between the intersections of the lot lines with the shoreline.

*Shoreland zone* means the land area located within:

- (1) Two hundred fifty feet, horizontal distance, of the normal high water ~~mark-line~~ of any river, saltwater body or the nontidal portion of Goosefare Brook downstream of the Boston and Maine Railroad bridge;
- (2) Two hundred fifty feet, horizontal distance, of the upland edge of a coastal or jurisdictional freshwater wetland, as defined in this chapter;
- (3) One hundred ~~fifty~~ feet, horizontal distance, of the normal high water ~~mark-line~~ of the nontidal portion of Goosefare Brook upstream of the Boston and Maine Railroad bridge; or
- (4) One hundred feet, horizontal distance, of the normal high water ~~mark line~~ of a stream; ~~and~~
- (5) ~~All land east of the Boston and Maine Railroad between the Scarborough town line and Union Avenue and east of Seaside Avenue between Union Avenue and Goosefare Brook is included in the shoreland zone. In addition, the shoreland zone extends seaward to the municipal boundary.~~

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

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

*Slash* means the residue, e.g. treetops and branches ~~and waste wood products left from on the ground after~~ a timber harvesting operation which are not removed from the site for utilization.

*Stream* means a free-flowing body of water from the confluence of two (2) perennial streams as depicted on the most recent edition of a United States Geological Survey 7.5 minute series topographic map, to the point where the body of water becomes a river or flows to another water body or wetland within the shoreland area with a minimum water depth of two inches flowing within a distinct channel of three or more feet at the discharge confluence with another waterbody, wetland. Multiple channel streams shall have an aggregate channel width of three or more feet. Wetlands associated with a stream shall be considered as part of the stream area excepting wetlands that measure greater than 100 linear feet in width for a contiguous length of 100 feet.

*Structure, accessory*, means a structure ~~of a nature customarily which is~~ incidental and subordinate to ~~that of~~ the principal use or structure. Accessory uses, when aggregated, shall not subordinate the principal use of the lot. A deck or similar extension of the principal structure or a garage attached to the principal

structure by a roof or a common wall is considered part of the principal structure. ~~For the purpose of this chapter, swimming pools shall not be considered accessory structures.~~

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

*Subsurface sewage disposal system* ~~means a collection of treatment tank, disposal area, holding tank and pond, surface spray system, cesspool, well, surface ditch, designed to function as a unit for the purpose of disposing of wastes or wastewater on or beneath the surface licensed under 38 M.R.S.A. § 414; any surface wastewater disposal system licensed under 39 M.R.S.A. § 413(1-A); or any public sewer any system designed to dispose of waste or waste water on or beneath the surface of the earth; includes, but is not limited to: septic tanks; disposal fields; grandfathered cesspools; holding tanks; pretreatment filter, piping, or any other fixture, mechanism, or apparatus used for those purposes; does not include any discharge system licensed under 38 M.R.S.A. section 414, any surface waste water disposal system, or any municipal or quasi-municipal sewer or waste water treatment system. The term shall not include a sewage disposal system designed to treat wastewater which is in whole or in part hazardous waste as defined in 38 M.R.S.A. ch. 13, subch. 1.~~

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

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

*Timber harvesting* ~~means the cutting and removal of trees from their growing site, and the attendant operation of cutting and skidding machinery, but not the construction or creation of roads timber for the primary purpose of selling or processing forest products. Timber harvesting does not include the clearing of land for approved construction. The cutting or removal of trees in the shoreland zone on a lot that has less than two (2) acres within the shoreland zone shall not be considered timber harvesting. Such cutting or removal of trees shall be regulated pursuant to Section 78-1213 Clearing or Removal of Vegetation for Activities Other Than Timber Harvesting.~~

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

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

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

*Use, accessory,* means a use ~~of a nature customarily which is~~ incidental and subordinate to that of the principal use. Accessory uses, when aggregated, ~~must remain shall not~~ subordinate ~~to~~ the principal use of the lot.

*Vegetation* means all live trees, shrubs, ~~ground cover,~~ and other plants including, without limitation, trees both over and under 4 inches in diameter, measured at 4 1/2 feet above ground level.

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

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

*Waterbody* means an ~~impounded~~ area of water, including but not limited to great ponds, ponds, lakes, rivers, streams, the Atlantic Ocean, or tidal waters, but excluding drainage ditches and other manmade structures constructed principally for stormwater control purposes.

*Wetland, coastal,* means all tidal and subtidal lands ~~including all areas below any definable debris line left by tidal action~~; all areas with vegetation present that is tolerant of saltwater and ~~that~~ occurs primarily in a saltwater or estuarine habitat; and any swamp, marsh, bog, beach, flat or other contiguous low land ~~which that~~ is subject to tidal action during the ~~maximum spring highest~~ tide level for the year in which an activity is proposed as identified in tide tables published by the National Ocean Service. Coastal wetlands may include portions of coastal sand dunes.

*Wetland, contiguous,* means a freshwater, ~~coastal, or jurisdictional~~ wetland measuring a minimum of 100 horizontal feet in width for a lateral distance of 100 horizontal feet. Wetlands separated by roads, dikes, or topography for a horizontal distance of less than 100 feet shall be regarded as contiguous.

*Wetland, forested,* means a freshwater wetland dominated by woody vegetation that is six (6) meters tall (approximately twenty (20) feet) or taller.

~~*Wetland, freshwater,* means areas of land periodically inundated by surface water or groundwater creating a condition whereby a predominance of hydrophytic (wetland) vegetation, hydric soils, and wetland hydrologic conditions exist, as defined and classified by the Federal Manual for Identification and Delineation of Jurisdictional Wetlands as published by the U.S. Fish and Wildlife Service (1989), a freshwater swamp, marsh, bog or similar area, other than a forested wetland, which is:~~

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

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

~~*Wetland, jurisdictional,* means jurisdictional wetlands are defined as follows:-~~

- ~~(1) Freshwater wetlands of ten or more contiguous acres rated as being of moderate or high value by the state department of inland fisheries and wildlife; or wetlands of less than ten contiguous acres and adjacent to a~~

~~surface waterbody, excluding any stream or brook such that, in a natural state, the combined surface area is in excess of ten acres; or  
(2) Any coastal or marine wetland of any size.~~

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

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

Section 78-2, **Purpose**, is amended by adding the underscored text and deleting the text in strikeover type, as shown below.

### **Sec. 78-2. Purpose.**

- (a) This chapter and its regulations are designed for all the purposes of zoning embraced in the state statutes as an integral part of a comprehensive plan.
- (b) This chapter is, among other things, designed to:
  - (1) Encourage the most appropriate use of land throughout the town;
  - (2) Provide safety from fire and other elements, and further the maintenance of safe and healthful conditions;
  - (3) Promote public safety;
  - (4) Provide adequate light and air;
  - (5) Prevent overcrowding of real estate;
  - (6) Promote a wholesome home environment;
  - (7) Prevent housing developments in unsanitary areas;
  - (8) Provide an adequate street system;
  - (9) Promote the coordination of unbuilt areas;
  - (10) Encourage the formulation of community units;
  - (11) Provide an allotment of land area in new developments sufficient for all the requirements of community life;
  - (12) Provide for adequate public facilities and services;
  - (13) Conserve natural resources;
  - (14) Prevent and control water pollution;
  - (15) Protect fish spawning grounds, ~~fish,~~ aquatic life, birds, and other wildlife habitats;
  - (16) Control building sites, placement of structures, and land uses;
  - (17) Conserve shore cover, visual as well as actual points of access to inland and coastal waters; ~~and~~
  - (18) Conserve natural beauty and open space;

- (19) Protect buildings and lands from flooding and accelerated erosion;
- (20) Protect archaeological and historic resources;
- (21) Protect commercial fishing and maritime industries;
- (22) Protect freshwater and coastal wetlands; and
- (23) Anticipate and respond to the impacts of development in shoreland areas.

Section 78-3, **Applicability**, is amended by adding the underscored text, as shown below.

### **Sec. 78-3. Applicability.**

The sections of this chapter shall regulate the following:

- (1) The use of all land and water areas within the town;
- (2) The use, construction, repair, alteration, height, number of stories, and bulk of all buildings and structures;
- (3) The size and open spaces of real estate;
- (4) Population density;
- (5) The setback of structures along public rights-of-way; and
- (6) The shoreland zone. Provisions and terms which specifically address the shoreland zone or shoreland zoning matters are intended to apply only within the shoreland zone and are not to be construed as affecting or changing the meanings of any other provisions or terms existing in this chapter prior to the adoption of shoreland zoning amendments on December 7, 1993. The shoreland standards of this chapter also apply to any structure built on, over or abutting a dock, wharf or pier, or other structure extending or located below the normal high-water line of a water body or within a wetland. Shoreland zoning has been prepared in accordance with the provisions of Title 38 section 435-449 of the Maine Revised Statutes Annotated (M.R.S.A.) and customized to the needs of the Town of Old Orchard Beach.

Section 78-4, **Effective date of shoreland zoning amendments**, is amended by adding the underscored text and deleting the text in strikeover type, as shown below.

### **Sec. 78-4. Effective date of shoreland zoning amendments.**

Upon enactment of any amendment that affects the shoreland zone, the town clerk shall forward a copy of the amendment to the shoreland zoning coordinator within the state department of environmental protection, and the amendments shall not be effective unless approved by the Commissioner of the

Department of Environmental Protection. A certified copy of the Ordinance, or Ordinance Amendment, attested and signed by the Municipal Clerk, shall be forwarded to the Commissioner for approval. If the ~~department of environmental protection~~ Commissioner fails to act on any amendment within 45 days of the department's receipt of the amendment, the amendment ~~is shall be~~ automatically approved. Any application for a permit submitted to the town within the 45-day period shall be governed by the terms of the amendment, if such amendment is approved by the ~~department~~ Commissioner.

Article I, **IN GENERAL**, is amended by adding the following new Section 78-5, as shown below.

**Sec. 78-5. Automatic Repealer of Timber Harvesting Standards.**

The following sections of this Chapter shall be repealed on the statutory date established under 38 M.R.S.A. section 438-A(5):

Section 78-1212 Timber Harvesting –entire section

The following uses listed in the table, “Land Uses in the Shoreland Zone” in section 78-1183:

Forest management activities except for timber harvesting and land management roads  
Timber Harvesting  
Land Management Roads

All of the Definitions in section 78-1 pertaining to timber harvesting and forest management activities, including the following terms:

Cross Sectional Area  
Disruption of shoreline integrity  
Forest Management Activities  
Forest Stand  
Harvest area  
Land Management Road  
Licensed forester  
Residual basal area  
Residual stand  
Skid road or skid trail  
Slash  
Timber Harvesting  
Timber Harvesting and related activities  
Windfirm

Section 78-34, **Building permits**, is amended by adding the following new subsections (d), (e), (f) and (g), as shown below.

(d) Activities for Which a Permit is Not Required.

(1) A permit is not required for the replacement of an existing road culvert within any shoreland zone as long as:

(a) The replacement culvert is not more than 25% longer than the culvert being replaced;

(b) The replacement culvert is not longer than 75 feet; and

(c) Adequate erosion control measures are taken to prevent sedimentation of the water, and the crossing does not block fish passage in the watercourse.

Any other replacements of culverts within the shoreland zone which do not meet these criteria shall require a permit.

(2) A permit is not required for an archaeological excavation as long as the excavation is conducted by an archaeologist listed on the State Historic Preservation Officer's level 1 or level 2 approved list, and unreasonable erosion and sedimentation is prevented by means of adequate and timely temporary and permanent stabilization measures.

(e) Standard Conditions in Any Shoreland Zone. No permit shall be issued for any structure or activity within any shoreland zone unless all of the following standard conditions are met:

(1) Will maintain safe and healthful conditions;

(2) Will not result in water pollution, erosion, or sedimentation to surface waters;

(3) Will adequately provide for the disposal of all wastewater;

(4) Will not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat;

(5) Will conserve shore cover and visual, as well as actual, points of access to inland and coastal waters;

(6) Will protect archaeological and historic resources as designated in the comprehensive plan;

(7) Will avoid problems associated with floodplain development and use; and

(8) Is in conformance with the provisions of all applicable shoreland zoning standards in division 17 of this chapter.

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

(g) Other permits. Any permit required by this chapter shall be in addition to any other permit required by other law or ordinance.

Section 78-37, **Maintenance of records**, is amended by adding the underscored text, as shown below.

**Sec. 78-37. Maintenance of records.**

The code enforcement officer shall maintain a record of all building permits and certificates of occupancy and letters and notices issued by him, and a copy shall be issued upon request to any person. In addition, within the shoreland zone, the Code Enforcement Officer shall keep a complete record of all essential transactions of the office, including applications submitted, permits granted or denied, variances granted or denied, revocation actions, revocation of permits, appeals, court actions, violations investigated, violations found, and fees collected. On a biennial basis, a summary of this record shall be submitted to the Director of the Bureau of Land and Water Quality within the Department of Environmental Protection.

Section 78-93, **Variance appeals**, is amended by adding the following new subsection (d), as shown below.

(d) Additional requirements in the shoreland zone.

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

(2) Before granting a variance in any shoreland zone, in addition to finding undue hardship, the Board must also find that the proposed structure or use would meet the provisions of article VI, division 17 of this chapter except for the specific provision or provisions from which relief is sought.

Section 78-94, **Miscellaneous appeals--Limited reduction of yard size; limited expansion of lot coverage**, is amended by adding the following new subsection (f), as shown below.

(f) *Limitations in Shoreland Zone.* A limited reduction of yard size cannot be used to reduce setbacks required in the shoreland zone under section 78-1202 or lot coverage required in the shoreland zone under section 78-1185.

Section 78-95, **Same--Nonconforming means of egress construction**, subsection (a), *Generally*, is amended by adding the underscored text and deleting the text in strikeover type, as shown below.

(a) *Generally.* The board of appeals shall have the power and duty to hear and decide requests for the construction of means of egress stairways or ramps in order to permit:

(1) The expansion of a stairway which is legally nonconforming with regard to space and bulk requirements solely to conform to the building code as adopted by the town.

(2) The construction of a means of egress on a structure that is required by the town fire prevention code or that is required to make a structure or use accessible to a ~~physically disabled person~~ person with a disability.

Section 78-456, **Established**, subsection (1), *Residential districts*, is amended by adding a new paragraph f, as shown below.

f. *Residential beachfront district (RBD).*

Section 78-456, **Established**, subsection (5), *Overlay districts*, paragraph c, is amended by adding the underscored text and deleting the text in strikeover type, as shown below.

c. Shoreland zone, resource protection overlay district (SD), which is divided into the following subdistricts:

Resource protection subdistrict (RP)

Shoreland residential activity subdistrict (RA)

Limited commercial subdistrict (LC)

General development subdistrict (GD)

Stream protection subdistrict (SP)

## Public beach subdistrict (PB)

Section 78-457, **Official zoning map**, subsections (a), *Established*, (b), *Identification*, (c), *Changes*, (c)(1), *Amendments not effective until entry upon official zoning map*, and (g)(4), *Uncertainty of district boundaries*, are amended by adding the underscored text and deleting the text in strikeover type, as shown below.

(a) *Established*. The districts listed in section 78-456 are shown upon a map entitled "Official Zoning Map of the Town of Old Orchard Beach," dated February 3, 1998, amended (insert council meeting date), and filed in the office of the town clerk. The shoreland zone subdistricts are depicted on a separate, Official Shoreland Zoning Map adopted pursuant to section 78-1178 of this chapter.

(b) *Identification*. The official zoning map shall be ~~identified by~~ located in the town office, and shall bear the signature of the chairman of the town council, and shall be certified by the attested ~~by signature of~~ the town clerk. The map also shall bear and bearing the seal of the town under the following words: "This is to certify that this is the Official Zoning Map of the Town of Old Orchard Beach, Maine," together with the effective date of this chapter.

(c) *Changes*. If, in accordance with this chapter and the state revised statutes annotated, changes are made in district boundaries or other matter portrayed on the official zoning map, such changes shall be entered upon such map promptly within thirty (30) days after the amendment has been enacted with an entry on the official zoning map as follows: "On (date of adoption), by official action of the Town Council, the following change(s) were made in the Official Zoning Map: (brief description of nature of change)" which entry shall be signed by the chairman of the town council and attested by the town clerk.

[c](1) *Amendments not effective until entry upon official zoning map*. No amendment to this chapter, which involves matter portrayed on the official zoning map, shall become effective until such change and entry have been made upon such map. Any map amendments under the jurisdiction of the Department of Environmental Protection Municipal Shoreland Zoning Guidelines shall be submitted to the Commissioner of the Department for approval pursuant to this chapter.

[g](4) *Uncertainty of district boundaries*. Where uncertainties exist as to the exact location of district boundaries which cannot be resolved by subsection (g)(1), (2) or (3) of this section, the board of appeals, after consultation with the code enforcement officer, shall interpret the district boundaries, and shall be the final authority as to location.

Article VI, division 17, **SHORELAND ZONING OVERLAY DISTRICTS**, is amended by changing the division title to “**SHORELAND ZONE**” and by adding the underscored text and deleting the text in strikeover type, as shown below.

### **Subdivision I. In General**

#### **Sec. 78-1176. ~~Purpose.~~ Reserved.**

~~The purpose of this division is to:~~

- ~~(1) Further the maintenance of safe and healthful conditions;~~
- ~~(2) Prevent and control water pollution;~~
- ~~(3) Protect fish spawning grounds, aquatic life, bird and other wildlife habitat;~~
- ~~(4) Protect buildings and lands from flooding and accelerated erosion and sedimentation;~~
- ~~(5) Protect archaeological and historic resources;~~
- ~~(6) Protect jurisdictional wetlands;~~
- ~~(7) Control building sites, placement of buildings, structures and land uses;~~
- ~~(8) Conserve shore cover and visual as well as actual points of access to inland waters;~~
- ~~(9) Conserve natural beauty and open space; and~~
- ~~(10) Anticipate and respond to the impacts of development in shoreland areas in accordance with the provisions of 38 M.R.S.A. § 435-449.~~

#### **Sec. 78-1177. Applicability.**

This division applies to an overlay district known as the "shoreland ~~area zone,~~" which term is defined ~~as all land areas within 250 feet, horizontal distance, of the normal high water line of any saltwater body; within 250 feet, horizontal distance, of the upland edge of a coastal jurisdictional wetland; within 100 feet, horizontal distance, of a freshwater wetland; and within 75 feet, horizontal distance, of the normal high water line of a stream in section 78-1.~~ This division also applies to any building or structure built on, over or abutting a dock, wharf or pier, or other building extending beyond the normal high water line of a waterbody or within a wetland.

#### **Sec. 78-1178. Establishment of districts shoreland zone and subdistricts and zoning map.**

The ~~areas to which this division is applicable are shoreland zone is~~ hereby divided into the following ~~overlay district and subdistricts, which district and subdistricts collectively are referred to as the shoreland overlay district,~~ as shown on the official shoreland zoning map which is made a part of this chapter:

- (1) Resource protection subdistrict (**SRP**).
- (2) Shoreland residential activity subdistrict (**SRA**).
- (3) Limited commercial subdistrict (LC).
- (4) General development subdistrict (GD).
- ~~(3)~~(5) Stream protection subdistrict (**SP**).
- (6) Public beach subdistrict (PB).

## Sec. 78-1179. Interpretation of district boundaries.

~~(a)~~—The boundaries of the shoreland ~~zone overlay district~~ exist as set forth in section 78-1177. The depiction of the shoreland ~~zone overlay district~~ and associated subdistricts delineated on the official shoreland zoning map is illustrative of the general location of the ~~district zone~~ and subdistricts. The boundaries of the ~~district zone~~ and subdistricts shall be determined by measurement of the distance indicated on the maps from the normal high water line of the waterbody or the upland edge of wetland vegetation, regardless of the location of the boundary shown on the map.

~~(b) Where uncertainty exists as to the exact location of the district or subdistrict boundaries, the code enforcement officer shall be the final authority.~~

## Sec. 78-1180. Land use requirements.

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

## Sec. 78-1181. Nonconformance.

(a) *Purpose.* It is the ~~purpose intent~~ of this division to ~~encourage promote~~ land use conformities, except that nonconforming conditions that existed before the effective date of ~~the this ordinance chapter or amendments thereto from which this division derives~~ shall be allowed to continue, subject to the requirements set forth in this division and in division 2 of article II of this chapter. ~~Except as otherwise provided in this chapter, a non-conforming condition shall not be permitted to become more non-conforming.~~

### (b) General.

(1) Transfer of Ownership. 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 chapter.

(2) Repair and Maintenance. This chapter allows, without a permit, activities not meeting the standards of section 78-34(f), which involve the normal upkeep and maintenance of non-conforming uses and structures.

~~(b)(c) Nonconforming buildings and uses structures. Standards for nonconforming buildings and uses are as follows:~~

~~(1) *Enlargement/Expansions.* A nonconforming ~~building structure~~ may be ~~enlarged added to or expanded~~ after obtaining a ~~special exception conditional use~~ permit from the planning board, if such ~~enlargement addition or expansion~~ does not increase the nonconformity of the ~~building/structure~~ and is in accordance with subparagraphs (a) and (b) below.~~

~~a. After January 1, 1989, if any portion of a ~~building structure~~ is less than the required setback from the normal high water line of a waterbody or ~~tributary stream or the~~ upland edge of a wetland, that portion of the~~

~~building structure~~ shall not be expanded, as measured in floor area or volume ~~after January 1, 1989~~, by 30 percent or more, during the lifetime of the ~~building structure~~. If a replacement structure conforms with the requirements of Section 78-1181(c)(3), and is less than the required setback from a water body, tributary stream or wetland, the replacement structure may not be expanded if the original structure existing on January 1, 1989 had been expanded by 30% in floor area and volume since that date.

An expansion which increases either the volume or floor area of the ~~building structure~~ or any portion thereof that is less than the required water setback by 30 percent or more is a substantial expansion which is prohibited unless a variance is obtained.

b. ~~Construction or enlargement of a~~ Whenever a new, enlarged, or replacement foundation ~~beneath the existing building shall not be considered an expansion of the building, provided that the building is constructed under a nonconforming structure, the structure and new foundation~~ are must be placed such that the setback requirement is met to the greatest practical extent as determined by the planning board, basing its decision on the criteria specified in subsection (b)(2) of this section pertaining to relocation, ~~that~~ If the completed foundation does not extend beyond the exterior dimensions of the building structure, except for expansion in conformity with section (a) above, and that the foundation does not cause the building structure to be elevated by more than three (3) additional feet, as measured from the uphill side of the structure (from original ground level to the bottom of the first floor sill), it shall not be considered to be an expansion of the structure.

c. No ~~building structure~~ which is less than the required setback from the normal high water line of a waterbody, tributary stream, or upland edge of a wetland shall be expanded toward the waterbody, tributary stream, or wetland.

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

In determining whether the ~~building structure~~ relocation meets the setback to the greatest practical extent, the planning board shall consider the size of the lot, the slope of the land, the potential for soil erosion, the location of other ~~buildings structures~~ on the property and on adjacent properties ~~and the type and amount of vegetation to be removed to accomplish the relocation~~, 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 addition, the area from which the relocated structure was removed must be replanted with vegetation. Replanting shall be required as follows:

- (a) Trees removed in order to relocate a structure must be replanted with at least one native tree, three (3) feet in height, for every tree removed. If more than five trees are planted, no one species of tree shall make up more than 50% of the number of trees planted. Replaced trees must be planted no further from the water or wetland than the trees that were removed.  
Other woody and herbaceous vegetation, and ground cover, that are removed or destroyed in order to relocate a structure must be re-established. An area at least the same size as the area where vegetation and/or ground cover was disturbed, damaged, or removed must be reestablished within the setback area. The vegetation and/or ground cover must consist of similar native vegetation and/or ground cover that was disturbed, destroyed or removed.
- (b) Where feasible, when a structure is relocated on a parcel the original location of the structure shall be replanted with vegetation which may consist of grasses, shrubs, trees, or a combination thereof.

(3) *Reconstruction or replacement.* Any nonconforming structure which is located less than the required setback from ~~the normal high water line of a waterbody, tributary stream, or upland edge of a 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 ~~one year~~ eighteen (18) months of the date of said damage, destruction, or removal, and provided that such reconstruction or replacement is in compliance with the ~~waterbody, tributary stream or wetland~~ setback requirement to the greatest practical extent as determined by the planning board in accordance with the purposes of this chapter. In no case shall a structure be reconstructed or replaced so as to increase its nonconformity. If the reconstructed or replacement structure is less than the required setback it shall not be any larger than the original structure, except as allowed pursuant to Section 78-1181(c)(1) above, as determined by the non-conforming floor area and volume of the reconstructed or replaced structure at its new location. If the total amount of floor area and volume of the original structure can be relocated or reconstructed beyond the required setback area, no portion of the relocated or reconstructed structure shall be replaced or constructed at less than the setback requirement for a new structure. When it is necessary to remove vegetation in order to replace or reconstruct a structure, vegetation shall be replanted in accordance with Section 78-1181(c)(2) above.

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

In determining whether the ~~building-structure~~ reconstruction or replacement meets the water setback to the greatest practical extent, the planning board shall consider, in addition to the criteria in subsection ~~(b)(c)(2), of this section~~ Relocation, above, the physical condition and type of foundation present, if any.

(4) *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, tributary stream, or wetland, or on the subject or adjacent properties and resources than the existing use.

In determining that no greater adverse impact will occur, the Planning Board shall require written submissions 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, as applicable.

(d) *Nonconforming uses.*

(1) *Expansions.* Expansions of nonconforming uses are prohibited, except that nonconforming residential uses may, after obtaining a ~~special-exception~~ conditional use permit from the planning board be expanded within existing residential structures or within expansions of such structures as permitted in subsection (b)(1) of this section.

(2) *Resumption Prohibited.* A lot or structure in or on which a non-conforming use is discontinued for a period exceeding two years, or which is changed to a conforming use for a period exceeding one year, 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 of the period of discontinuance or changed use. This provision shall not apply to the resumption of a use of a residential structure provided that the structure has been used or maintained for residential purposes during the five (5) year period preceding the discontinuance or change of use.

(3) *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 than the former use, as determined by the Planning Board. The determination of no greater adverse impact shall be made according to criteria listed in Section 78-1181(c)(4) "Change of Use of a Non-conforming Structure," above.

(e) *Nonconforming lots.*

(1) *Nonconforming lots.* A nonconforming lot of record as of the effective date of this chapter or amendment thereto may be built upon, without the need for a variance, provided that such lot is in separate ownership and not contiguous with any other lot in the same ownership, and that all provisions of this chapter except lot area, lot width and shore frontage can be met. Variances relating to setback or other requirements not involving lot area, lot width or shore frontage shall be obtained by action of the Board of Appeals.

(2) *Contiguous built lots.* If two or more contiguous lots or parcels are in a single or joint ownership of record at the time of adoption of this chapter, if all or part of the lots do not meet the dimensional requirements of this chapter, and if a principal use or structure exists on each lot, the non-conforming lots may be conveyed separately or together, provided that the State Minimum Lot Size Law (12 M.R.S.A. sections 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 chapter, each may be sold on a separate lot provided that the State Minimum Lot Size Law and rules are complied with or each lot is served by public sewer. When such lots are divided each lot thus created must be as conforming as possible to the dimensional requirements of this chapter.

3) *Contiguous lots – vacant or partially built.* If two or more contiguous lots or parcels are in single or joint ownership of record at the time of or since adoption or amendment of this chapter, if any of these lots do not individually meet the dimensional requirements of this chapter or subsequent amendments, and if one or more of the lots are vacant or contain no principal structure the lots shall be combined to the extent necessary to meet the dimensional requirements.

~~(c) *Special exceptions.* In addition to the criteria specified in subsection (b) of this section, the planning board may approve a permit for single-family residential structure in a resource protection district provided that the applicant demonstrates that all of the following conditions are met:-~~

~~(1) There is no location on the property, other than a location within the resource protection district, where the structure can be built.~~

~~(2) The lot on which the structure is proposed is undeveloped and was established and recorded in the registry of deeds of the county in which the lot is located before the adoption of the resource protection district.~~

~~(3) The proposed location of all buildings, sewage disposal systems and other improvements are:~~

~~a. Located on natural ground slopes of less than 20 percent; and~~

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

~~(4) If the floodway is not shown on the Federal Emergency Management Agency Maps, it is deemed to be one-half the width of the 100-year floodplain.~~

## **Sec. 78-1182. Establishment of ~~district and~~ Shoreland Zone Subdistricts.**

~~(a) *Generally.* The shoreland overlay district consists of the shoreland area and any and all buildings and structures built on, over or abutting a pier, dock, wharf and any and all buildings and structures extending beyond the normal high water line of a waterbody or within a wetland. The shoreland overlay district includes the resource protection subdistrict, shoreland activity subdistrict, and the stream protection subdistrict.~~

(1) The depiction of these subdistricts on the official zoning map is merely illustrative of their general location. The boundaries of these subdistricts, unless shown to be the centerline of a street or railroad, shall be determined by measurement of the distance indicated on the maps from the high water mark line of the waterbody or the upland edge of wetland vegetation, regardless of the location of the boundary shown on the map. Exact boundaries shall be determined by on-site inspection and measurement from the normal high water line or from the upland edge of a wetland.

(2) Such on-site inspection and measurement may be requested by the property owner at any time or by the applicant at the time of filing an application for a permit or approval under this chapter. As part of such on-site inspection and measurement, the property owner or the applicant for any permit or approval may present evidence from persons with training and/or experience related to the identification, delineation and classification of wetlands and/or the delineation of the high water line or the upland edge of a wetland. Such evidence shall be presented to the code enforcement officer or to the planning board, if an application for a planning board permit or approval is pending, and a determination shall be made as to the exact boundaries, subject to review by the board of appeals pursuant to subdivision II of division 2 of article II of this chapter.

(b) *Resource protection subdistrict (SRP).* The Resource Protection Subdistrict includes areas in which development would adversely affect water quality, productive habitat, biological ecosystems, or scenic and natural values. This subdistrict ~~shall is~~ intended to include the following areas when they occur within the limits of the shoreland ~~zone overlay district~~, exclusive of the stream protection subdistrict, except that areas ~~that~~ which are currently developed and areas which meet the criteria for the Limited Commercial or General Development Subdistricts need were not ~~be~~ included within the resource protection subdistrict:

(1) Areas within 250 feet, horizontal distance, of the upland edge of ~~coastal and jurisdictional-freshwater~~ wetlands, and wetlands associated with great ponds and rivers, which are rated "moderate" or "high" value waterfowl and wading bird habitat, including nesting and feeding areas, by the Maine Department of Inland Fisheries and Wildlife (MDIF&W) that are depicted on a Geographic Information System (GIS) data layer maintained by either MDIF&W or the Department as of December 31, 2008 exclusive of the Goosefare Brook extending from the Boston and Maine Railroad tracks to the Saco border. For the purposes of this paragraph "wetlands associated with great ponds and rivers" shall mean areas characterized by non-forested wetland vegetation and hydric soils that are contiguous with a great pond or river, and have a surface elevation at or below the water level of the great pond or river during the period of normal high water. "Wetlands associated with great ponds or rivers" are considered to be part of that great pond or river. Also included in this district are areas within 250 feet, horizontal distance, of the upland edge of salt marshes and salt meadows which are rated "moderate" or "high" value waterfowl and wading bird habitat, including nesting and feeding areas, by the MDIF&W as of January 1, 1973.

~~(2) Areas within 150 feet of the high water mark of the nontidal portion of the Goosefare Brook, located from the Boston and Maine Railroad tracks to the Saco border.~~

~~(3)~~(2) Floodplains along rivers and floodplains along artificially formed great ponds along rivers defined by the 100-year floodplain as designated on the Federal Emergency Management Agency's (FEMA) flood insurance rate maps or flood hazard boundary maps, or the flood of record or, in the absence of these, by soil types identified as recent floodplain soils. This subdistrict is also intended to include undeveloped areas in 100 year floodplains adjacent to tidal waters as shown on FEMA's Flood Insurance Rate Maps or Flood Hazard Boundary Maps.

~~(4)~~(3) Areas of two or more contiguous acres with sustained slopes of 20 percent or greater.

(4) Areas of two (2) or more contiguous acres supporting wetland vegetation and hydric soils, which are not part of a freshwater or coastal wetland as defined, and which are not surficially connected to a water body during the period of normal high water. These areas usually consist of forested wetlands abutting water bodies and non-forested wetlands.

(5) Land areas along ~~streams—rivers~~ subject to severe bank erosion, undercutting, or ~~streambed—riverbed~~ movement, and lands adjacent to tidal waters which are subject to severe erosion or mass movement, such as steep coastal bluffs.

(6) In addition, the Resource Protection Subdistrict extends seaward to the municipal boundary.

(c) *Shoreland residential activity subdistrict (SRA).* The Shoreland Residential Activity Subdistrict includes those areas within the shoreland zone suitable for residential and recreational development. It includes areas other than those in the Resource Protection Subdistrict, or Stream Protection Subdistrict, and areas which are used less intensively than those in the Limited Commercial Subdistrict or the General Development Subdistrict. This subdistrict shall include the following areas when they occur within the limits of the shoreland overlay district, exclusive of the stream protection subdistrict, except that areas that are currently developed need not be included within the resource protection subdistrict:

(1) Areas within 250 feet of the Atlantic Ocean, exclusive of coastal wetlands.

(2) Areas within 250 feet of a natural freshwater waterbody with a surface area of ten acres or more.

(3) Areas within 100 feet of freshwater wetlands in excess of two contiguous acres but less than ten contiguous acres of surface area, and which are not surficially connected to a waterbody during normal spring high water.

(d) *Limited Commercial Subdistrict (LC).* The Limited Commercial Subdistrict overlays the following underlying zoning districts:

Beachfront resort district (BRD); Residential beachfront district (RBD);

Residential 3 district (R3); Neighborhood commercial district 1 (NC-1);

Neighborhood commercial district 2 (NC-2)

It includes areas of mixed, light commercial and residential uses, exclusive of the Stream Protection Subdistrict, which should not be developed as intensively as the General Development Subdistrict. This subdistrict includes areas of two or more contiguous acres in size devoted to a mix of residential and low intensity business and commercial uses. Industrial uses are prohibited.

(e) *General Development Subdistrict (GD).* The General Development Subdistrict overlays the following underlying zoning districts:

Downtown district 1 (DD-1); Downtown district 2 (DD-2); Contract zone 1 (CZ-1)

It includes the following types of existing, intensively developed areas:

(1) Areas of two or more contiguous acres devoted to commercial or intensive recreational activities, or a mix of such activities, including but not limited to the following:

(a) Areas devoted to retail trade and service activities, or other commercial activities; and

(b) Areas devoted to intensive recreational development and activities, such as, but not limited to amusement parks.

(2) Areas otherwise discernible as having patterns of intensive commercial, industrial or recreational uses.

~~(d)~~(f) Stream protection subdistrict (SP). This subdistrict includes all land areas within one hundred (100) 75-feet, horizontal distance, of the normal high water line of a stream and all land areas within 100 feet of the high water line of the nontidal portion of the Goosefare Brook, located from the Boston and Maine Railroad tracks upstream to the Saco border, exclusive of:

(1) those areas within 250 feet, horizontal distance, of the normal high water line of a tidal saltwater body; and

(2) areas within 250 feet, horizontal distance, of the upland edge of coastal or jurisdictional-freshwater wetlands.

Where a stream and its associated shoreland area is located within 250 feet, the proscribed horizontal distance, above, of from such waterbodies or wetlands, that land area should be regulated under the terms of the shoreland zone subdistrict associated with that waterbody or wetland.

(g) Public beach subdistrict (PB). This subdistrict includes the beach area and public park land acquired by the Town of Old Orchard Beach for a public park on or about April 23, 1935 and May 5, 1935. The purpose of this subdistrict is to allow continuation of all the public recreational uses which have been made of the beach historically, subject to such rules and regulations as the Town Council may from time to time impose by ordinance, regulation or policy governing the use of the public park.

## **Sec. 78-1183. Land uses.**

~~(a) Generally. All permitted uses and special exception uses within the zoning district underlying The use of land, buildings and structures in the shoreland zone overlay district may be commenced, maintained, enlarged or expanded as provided in this chapter, subject to this division, except that within the resource protection and stream protection subdistricts only those uses listed in subsections (b) and (d) of this section are permitted. Within the shoreland activity subdistrict those prohibited uses listed in subsection (c) of this section shall not be commenced, enlarged, or expanded. Is governed as follows:~~

~~(b)(a) In the Resource Protection, Stream Protection and Public Beach subdistricts, uses are governed exclusively by the table "Land Uses in the Shoreland Zone," below (the "Shoreland Use Table"). Only the following uses are permitted in the resource protection subdistrict, and all other uses allowed in the underlying district as permitted uses and special exception uses are prohibited:~~

~~(1) Nonintensive recreational uses not requiring structures such as hunting, fishing and hiking;~~

~~(2) Motorized and nonmotorized vehicular traffic on existing roads, trails and rails;~~

~~(3) Hiking trails, inactive trails, bridle paths, pedestrian trails and walkways;~~

~~(4) Forest management activities;~~

~~(5) Timber harvesting;~~

~~(6) Wildlife management activities;~~

~~(7) Agriculture;~~

~~(8) Gravel pits;~~

- ~~(9) Nonresidential facilities for educational, scientific or nature interpretation purposes;~~
- ~~(10) Aquaculture;~~
- ~~(11) Buildings and structures accessory to existing residential buildings and to uses permitted in this section;~~
- ~~(12) Permanent and temporary piers, docks, wharves, bridges and other structures and uses extending over or below the normal high water line or within a wetland;~~
- ~~(13) Public and private recreational areas involving minimal structural development;~~
- ~~(14) Parking facilities where the resource protection designation is due to floodplain criteria;~~
- ~~(15) Road and driveway construction;~~
- ~~(16) Public/private utility facility;~~
- ~~(17) Clearing of vegetation;~~
- ~~(18) Filling and earth-moving activities associated with permitted uses; and~~
- ~~(19) Signs.~~

~~(e)(b) In the Shoreland Residential Activity, Limited Commercial and General Development subdistricts, uses are governed by the Shoreland Use Table and by the use regulations for the underlying zoning district as set forth in the other divisions of this article. In cases where comparison between the Shoreland Use Table and the underlying zoning district regulations creates uncertainty as to whether a use is permitted, the regulation imposing the greater restrictions and/or allowing a less intensive use shall control. In any case where a use is specifically listed as prohibited in the underlying zoning district, the use is also prohibited in the shoreland zone overlay subdistrict, despite anything to the contrary in the Shoreland Use Table. In any case where a use is specifically listed as prohibited in the Shoreland Use Table, the use is prohibited, despite anything to the contrary in the underlying zoning district regulations. All uses allowed in the underlying district shall be permitted in the shoreland activity district, with the exception of the following prohibited uses:-~~

- ~~(1) Automobile repair and service stations.~~
- ~~(2) Mining and earth extraction operations.~~
- ~~(3) Fuel storage, excepting fuel storage for heating, cooking, or other support activities incidental to the operation of the permitted use.~~
- ~~(4) Truck terminals/motor freight business.~~

~~(d) Stream protection district uses. Only the following uses are permitted in the stream protection subdistrict, and all other uses allowed in the underlying district as permitted uses and special exception uses are prohibited:-~~

- ~~(1) Nonintensive recreational uses not requiring structures such as hunting, fishing and hiking;~~
- ~~(2) Motorized and nonmotorized vehicular traffic on existing roads, trails and rails;~~
- ~~(3) Hiking trails, inactive trails, bridle paths, pedestrian trails and walkways;~~
- ~~(4) Forest management activities;~~
- ~~(5) Timber harvesting;~~
- ~~(6) Agriculture;~~
- ~~(7) Nonresidential facilities for educational, scientific or nature interpretation purposes;~~
- ~~(8) Aquaculture;~~

- ~~(9) Buildings accessory to existing residential buildings and to uses permitted in this section;~~
- ~~(10) Permanent and temporary piers, docks, wharves, bridges and other structures and uses extending over or below the normal high water line or within a wetland;~~
- ~~(11) Conversion of seasonal residences to yearround residences where allowed by state statute and the state plumbing code;~~
- ~~(12) Private sewage disposal systems for allowed uses;~~
- ~~(13) Public and private recreational areas involving minimal structural development;~~
- ~~(14) Road and driveway construction;~~
- ~~(15) Public/private utility facility;~~
- ~~(16) Clearing of vegetation;~~
- ~~(17) Filling and earth-moving activities associated with permitted uses; and~~
- ~~(18) Signs.~~
- ~~(e) Conditional uses. Conditional uses for shoreland overlay districts are as follows:-~~
  - ~~(1) Public/private utility facility.~~
  - ~~(2) Wireless telecommunication facilities: architectural siting in the SA subdistrict only; prohibited in SRP and SP subdistricts.~~

Key to Use Table:

Yes - Allowed (no permit required under this division, but the use must comply with all applicable land use standards of this division, and permits or approvals required by other provisions of this chapter must be obtained.)

No - Prohibited

PB - Allowed with permit issued by the Planning Board.

CEO - Allowed with permit issued by the Code Enforcement Officer

LPI - Allowed with permit issued by the Local Plumbing Inspector

<b>LAND USES IN THE SHORELAND ZONE</b>						
<b>USE</b>	<b>Permission/Review Authority by Subdistrict</b>					
	<b>SP</b>	<b>RP</b>	<b>RA</b>	<b>LC</b>	<b>GD</b>	<b>PB</b>
<u>(1) Nonintensive recreational uses not requiring structures such as hunting, fishing and hiking;</u>	<u>yes</u>	<u>yes</u>	<u>yes</u>	<u>yes</u>	<u>yes</u>	<u>yes</u>
<u>(2) Motorized and nonmotorized vehicular traffic on existing roads, trails and rails;</u>	<u>yes</u>	<u>yes</u>	<u>yes</u>	<u>yes</u>	<u>yes</u>	<u>yes</u>

<b>LAND USES IN THE SHORELAND ZONE</b>						
<u>USE</u>	<u>Permission/Review Authority by Subdistrict</u>					
	<u>SP</u>	<u>RP</u>	<u>RA</u>	<u>LC</u>	<u>GD</u>	<u>PB</u>
<u>(3) Forest management activities except for timber harvesting &amp; land management;</u>	<u>yes</u>	<u>yes</u>	<u>yes</u>	<u>yes</u>	<u>yes</u>	<u>no</u>
<u>(4) Timber harvesting;</u>	<u>yes</u>	<u>CEO</u>	<u>yes</u>	<u>yes</u>	<u>yes</u>	<u>no</u>
<u>(5) Clearing or removal of vegetation for activities other than timber harvesting</u>	<u>CEO</u>	<u>CEO<sup>1</sup></u>	<u>yes</u>	<u>yes</u>	<u>yes</u>	<u>CEO</u>
<u>(6) Fire prevention activities</u>	<u>yes</u>	<u>yes</u>	<u>yes</u>	<u>yes</u>	<u>yes</u>	<u>yes</u>
<u>(7) Wildlife management activities;</u>	<u>yes</u>	<u>yes</u>	<u>yes</u>	<u>yes</u>	<u>yes</u>	<u>yes</u>
<u>(8) Soil and water conservation practices</u>	<u>yes</u>	<u>yes</u>	<u>yes</u>	<u>yes</u>	<u>yes</u>	<u>yes</u>
<u>(9) Agriculture;</u>	<u>yes</u>	<u>PB</u>	<u>yes</u>	<u>no</u>	<u>no</u>	<u>no</u>
<u>(10) Mineral exploration</u>	<u>no</u>	<u>no</u>	<u>no</u>	<u>no</u>	<u>no</u>	<u>no</u>
<u>(11) Mineral extraction including sand and gravel extraction;</u>	<u>no</u>	<u>no</u>	<u>no</u>	<u>no</u>	<u>no</u>	<u>no</u>
<u>(12) Surveying and resource analysis</u>	<u>yes</u>	<u>yes</u>	<u>yes</u>	<u>yes</u>	<u>yes</u>	<u>yes</u>
<u>(13) Emergency operations</u>	<u>yes</u>	<u>yes</u>	<u>yes</u>	<u>yes</u>	<u>yes</u>	<u>yes</u>
<u>(14) One family residential structures, including driveways</u>	<u>PB<sup>4</sup></u>	<u>PB<sup>9</sup></u>	<u>CEO</u>	<u>CEO</u>	<u>CEO</u>	<u>no</u>
<u>(15) Multi-unit residential</u>	<u>No</u>	<u>No</u>	<u>PB</u>	<u>PB</u>	<u>PB</u>	<u>no</u>
<u>(16) Commercial, not otherwise listed</u>	<u>No</u>	<u>No<sup>10</sup></u>	<u>PB</u>	<u>PB</u>	<u>PB</u>	<u>no</u>
<u>(17) Industrial, not otherwise listed</u>	<u>No</u>	<u>No</u>	<u>No</u>	<u>No</u>	<u>PB</u>	<u>no</u>

<b>LAND USES IN THE SHORELAND ZONE</b>						
<u>USE</u>	<u>Permission/Review Authority by Subdistrict</u>					
	<u>SP</u>	<u>RP</u>	<u>RA</u>	<u>LC</u>	<u>GD</u>	<u>PB</u>
<u>(18) Prohibited commercial or industrial, which includes: Automobile repair and service stations; Fuel storage, excepting fuel storage for heating, cooking, or other support activities incidental to the operation of the permitted use; Truck terminals/motor freight business.</u>	<u>No</u>	<u>No</u>	<u>No</u>	<u>No</u>	<u>No</u>	<u>no</u>
<u>(19) Governmental and institutional</u>	<u>No</u>	<u>No</u>	<u>PB</u>	<u>PB</u>	<u>PB</u>	<u>yes</u>
<u>(20) Small Nonresidential facilities for educational, scientific or nature interpretation purposes;</u>	<u>PB<sup>4</sup></u>	<u>PB</u>	<u>CEO</u>	<u>CEO</u>	<u>CEO</u>	<u>yes</u>
<u>(21) Aquaculture;</u>	<u>PB</u>	<u>PB</u>	<u>PB</u>	<u>yes</u>	<u>yes</u>	<u>yes</u>
<u>(22) structures accessory to allowed uses permitted in this section;</u>	<u>PB<sup>4</sup></u>	<u>PB</u>	<u>CEO</u>	<u>CEO</u>	<u>yes</u>	<u>yes</u>
<u>(23) piers, docks, wharves, bridges and other structures and uses extending over or below the normal high water line or within a wetland;</u> <u>a. permanent</u> <u>b. temporary</u>	<u>PB</u> <u>CEO<sup>11</sup></u>	<u>PB</u> <u>CEO<sup>11</sup></u>	<u>PB</u> <u>CEO<sup>11</sup></u>	<u>PB</u> <u>CEO<sup>11</sup></u>	<u>PB</u> <u>CEO<sup>11</sup></u>	<u>PB</u> <u>CEO<sup>11</sup></u>
<u>(24) Conversions of seasonal residences to year-round residences</u>	<u>LPI</u>	<u>LPI</u>	<u>LPI</u>	<u>LPI</u>	<u>LPI</u>	<u>no</u>
<u>(25) Home occupations</u>	<u>PB</u>	<u>PB</u>	<u>PB</u>	<u>PB</u>	<u>PB</u>	<u>no</u>
<u>(26) Private sewage disposal systems for allowed uses</u>	<u>LPI</u>	<u>LPI</u>	<u>LPI</u>	<u>LPI</u>	<u>LPI</u>	<u>no</u>

<b>LAND USES IN THE SHORELAND ZONE</b>						
<u>USE</u>	<u>Permission/Review Authority by Subdistrict</u>					
	<u>SP</u>	<u>RP</u>	<u>RA</u>	<u>LC</u>	<u>GD</u>	<u>PB</u>
<u>(27) Essential services</u>	<u>PB<sup>6</sup></u>	<u>PB<sup>6</sup></u>	<u>PB</u>	<u>PB</u>	<u>PB</u>	<u>yes</u>
<u>A. Roadside distribution lines (34.5kV and lower)</u>	<u>CEO<sup>6</sup></u>	<u>CEO<sup>6</sup></u>	<u>yes<sup>12</sup></u>	<u>yes<sup>12</sup></u>	<u>yes<sup>12</sup></u>	<u>no</u>
<u>B. Non-roadside or cross-country distribution lines involving ten poles or less in the shoreland zone</u>	<u>PB<sup>6</sup></u>	<u>PB<sup>6</sup></u>	<u>CEO</u>	<u>CEO</u>	<u>CEO</u>	<u>no</u>
<u>C. Non-roadside or cross-country distribution lines involving eleven or more poles in the shoreland zone</u>	<u>PB<sup>6</sup></u>	<u>PB<sup>6</sup></u>	<u>PB</u>	<u>PB</u>	<u>PB</u>	<u>no</u>
<u>D. Other essential services</u>	<u>PB<sup>6</sup></u>	<u>PB<sup>6</sup></u>	<u>PB</u>	<u>PB</u>	<u>PB</u>	<u>yes</u>
<u>(28) Service drops, as defined, to allowed uses</u>	<u>yes</u>	<u>yes</u>	<u>yes</u>	<u>yes</u>	<u>yes</u>	<u>yes</u>
<u>(29) Public and private recreational areas involving minimal structural development;</u>	<u>PB</u>	<u>PB</u>	<u>PB</u>	<u>CEO</u>	<u>CEO</u>	<u>yes<sup>13</sup></u>
<u>(30) Parking facilities;</u>	<u>no</u>	<u>no<sup>7</sup></u>	<u>PB</u>	<u>PB</u>	<u>PB</u>	<u>no</u>
<u>(31) Road construction;</u>	<u>PB</u>	<u>no<sup>8</sup></u>	<u>PB</u>	<u>PB</u>	<u>PB</u>	<u>no</u>
<u>(32) Campgrounds</u>	<u>no</u>	<u>no<sup>7</sup></u>	<u>PB</u>	<u>PB</u>	<u>PB</u>	<u>no</u>
<u>(33) Land management roads</u>	<u>yes</u>	<u>PB</u>	<u>yes</u>	<u>yes</u>	<u>yes</u>	<u>no</u>
<u>(34) Marinas</u>	<u>no</u>	<u>no</u>	<u>no</u>	<u>no</u>	<u>no</u>	<u>no</u>

<b>LAND USES IN THE SHORELAND ZONE</b>						
<u>USE</u>	<u>Permission/Review Authority by Subdistrict</u>					
	<u>SP</u>	<u>RP</u>	<u>RA</u>	<u>LC</u>	<u>GD</u>	<u>PB</u>
<u>(35) Filling and earth-moving activities associated with permitted uses; and &lt; 10 cubic yards</u>	<u>CEO</u>	<u>CEO</u>	<u>yes</u>	<u>yes</u>	<u>yes</u>	<u>CEO</u>
<u>(36) Filling and earth-moving activities associated with permitted uses; and &gt; 10 cubic yards</u>	<u>PB</u>	<u>PB</u>	<u>CEO</u>	<u>CEO</u>	<u>CEO</u>	<u>CEO</u>
<u>(37) Signs</u>	<u>yes</u>	<u>yes</u>	<u>yes</u>	<u>yes</u>	<u>yes</u>	<u>yes</u>
<u>(38) Wireless telecommunication facilities</u>	<u>NO</u>	<u>NO</u>	<u>PB</u>	<u>PB</u>	<u>PB</u>	<u>no</u>
<u>(39) Public parks</u>	<u>yes</u>	<u>yes</u>	<u>yes</u>	<u>yes</u>	<u>yes</u>	<u>yes</u>

<sup>1</sup>In RP not allowed within 75 feet horizontal distance, of the normal high-water line of great ponds, except to remove safety hazards.

<sup>2</sup>Reserved

<sup>3</sup>Reserved

<sup>4</sup>Provided that a variance from the setback requirement is obtained from the Board of Appeals.

<sup>5</sup>Functionally water-dependent uses and uses accessory to such water dependent uses only (See note on previous page).

<sup>6</sup>See further restrictions in Section 78-1209, Essential Services.

<sup>7</sup>Except when area is zoned for resource protection due to floodplain criteria in which case a permit is required from the PB.

<sup>8</sup>Except as provided in Section 78-1206, Roads and driveways

<sup>9</sup>Single family residential structures may be allowed only according to the provisions of Section 78-1186, Undeveloped Lots in Resource Protection. Two-family residential structures are prohibited.

<sup>10</sup>Except for commercial uses otherwise listed in this Table, such as marinas and campgrounds, that are allowed in the respective district.

<sup>11</sup>Excluding bridges and other crossings not involving earthwork, in which case no permit is required.

<sup>12</sup>Permit not required but must file a written "notice of intent to construct" with CEO.

<sup>13</sup>Public facilities only.

## **Sec. 78-1184. Land use performance standards.**

All land use activities within the shoreland ~~zone overlay district~~ shall conform to the shoreland zoning performance standards contained in division 13 of article VIII of this chapter, if applicable. When there is any conflict between the performance standards in division 13 of article VIII of this chapter and the other standards of this chapter, the more restrictive standards shall control.

**Sec. 78-1185. Space and bulk requirements.**

~~(a) Shoreland resource protection subdistrict.~~ Space and bulk requirements for the shoreland ~~resource protection zone and its~~ subdistricts are as follows:

TABLE INSET:

<u>Zoning Standards</u>	<u>Minimum or Maximum</u>	<u>Use Space and bulk requirement</u>					
		<u>SP</u>	<u>RP</u>	<u>RA</u>	<u>LC</u>	<u>GD</u>	<u>PB</u>
<u>Lot area</u>	<u>Minimum square footage</u>	<u>30,000 – tidal, 40,000-non-tidal, per dwelling unit</u>	<u>30,000 – tidal, 40,000-non-tidal, per dwelling unit</u>	<u>Same as underlying district</u>	<u>Same as underlying district</u>	<u>Same as underlying district</u>	<u>None</u>
<u>Street frontage</u>	<u>n/a</u>	<u>Same as underlying district</u>	<u>Same as underlying district</u>	<u>None</u>			
<u>Shore frontage</u>	<u>Minimum</u>	<u>150 ft. - tidal, 200 ft. non-tidal, per dwelling unit</u>	<u>150 ft. - tidal, 200 ft. non-tidal, per dwelling unit</u>	<u>150 ft. - tidal, 200 ft. non-tidal, per dwelling unit</u>	<u>Tidal areas-200 ft. per principal structure, for governmental, institutional or commercial uses, 300 ft. for non-tidal</u>	<u>Tidal areas-200 ft. per principal structure, for governmental, institutional or industrial uses, 300 ft. for non-tidal</u>	<u>None</u>
<u>Front yard setback</u>	<u>Minimum</u>	<u>50 ft.</u>	<u>50 ft.</u>	<u>Same as underlying district</u>	<u>Same as underlying district</u>	<u>Same as underlying district</u>	<u>None</u>
<u>Side yard setback</u>	<u>Minimum</u>	<u>25 ft.</u>	<u>25 ft.</u>	<u>Same as underlying district</u>	<u>Same as underlying district</u>	<u>Same as underlying district</u>	<u>None</u>
<u>Rear yard setback</u>	<u>Minimum</u>	<u>25 ft.</u>	<u>25 ft.</u>	<u>Same as underlying district</u>	<u>Same as underlying district</u>	<u>Same as underlying district</u>	<u>None</u>

<u>Zoning Standards</u>	<u>Minimum or Maximum</u>	<u>Use-Space and bulk requirement</u>					
		<u>SP</u>	<u>RP</u>	<u>RA</u>	<u>LC</u>	<u>GD</u>	<u>PB</u>
-							
<u>Setback from the normal high water mark of a waterbody or upland edge of a wetland water bodies, wetlands and tributary streams</u>	<u>Minimum</u>	<u>100 ft. See Sec. 78-1202</u>	<u>See Sec. 78-1202</u>	<u>See Sec. 78-1202</u>	<u>See Sec. 78-1202</u>	<u>See Sec. 78-1202</u>	<u>See Sec. 78-1202</u>
<u>Lot coverage</u>	<u>Maximum</u>	<u>20%</u>	<u>20%</u>	<u>Same as underlying district</u>	<u>Same as underlying district</u>	<u>Same as underlying district</u>	<u>20%</u>
<u>Building height <sup>1</sup></u>	<u>Maximum</u>	<u>35 ft.</u>	<u>35 ft.</u>	<u>Same as underlying district</u>	<u>Same as underlying district</u>	<u>Same as underlying district</u>	<u>35 ft.</u>

<sup>1</sup> This provision shall not apply to structures such as transmission towers, windmills, antennas, and similar structures having no floor area.

~~(b) Shoreland activity subdistrict. Space and bulk requirements for the shoreland activity subdistrict are as follows:-~~

TABLE INSET:

<del><u>Zoning Standards</u></del>	<del>—</del>	<del>Use</del>
<del>Lot area</del>	<del>—</del>	<del>Same as underlying district</del>
<del>Street frontage</del>	<del>—</del>	<del>Same as underlying district</del>
<del>Shore frontage</del>	<del>Minimum</del>	<del>100 ft. or same as underlying district, whichever is less</del>
<del>Yard setbacks</del>	<del>Minimum</del>	<del>Same as underlying district</del>
<del>Setback from a saltwater or freshwater body</del>	<del>Minimum</del>	<del>100 ft.</del>
<del>Setback from the upland edge of a wetland</del>	<del>Minimum</del>	<del>25 ft.</del>

<del>Lot coverage—</del>	<del>Maximum— -</del>	<del>35%—</del>
<del>Building height—</del>	<del>Maximum— -</del>	<del>Same as underlying district—</del>

~~(c) Stream protection subdistrict. Space and bulk requirements for the stream protection subdistrict are as follows:-~~

**TABLE INSET:**

<del>Zoning Standards—</del>	<del>—</del>	<del>Use—</del>
<del>Lot area—</del>	<del>—</del>	<del>Same as underlying district—</del>
<del>Street frontage—</del>	<del>—</del>	<del>Same as underlying districts—</del>
<del>Front yard setback—</del>	<del>Minimum—</del>	<del>50 ft.—</del>
<del>Side yard setback—</del>	<del>Minimum—</del>	<del>25 ft.—</del>
<del>Rear yard—</del>	<del>Minimum—</del>	<del>25 ft.—</del>
<del>Setback from the normal high water mark of a stream—</del>	<del>Minimum—</del>	<del>75 ft.—</del>
<del>Lot coverage—</del>	<del>Maximum— -</del>	<del>20%—</del>
<del>Building height—</del>	<del>Maximum— -</del>	<del>35 ft.—</del>

**Sec. 78-1186. Special permit for undeveloped lots in resource protection.**

In addition to the criteria specified in subsection 78-34(e), excepting structure setback requirements, the planning board may approve a permit for single-family residential structure in a resource protection district provided that the applicant demonstrates that all of the following conditions are met:

(a) There is no location on the property, other than a location within the resource protection district, where the structure can be built.

(b) 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.

(c) The proposed location of all buildings, sewage disposal systems and other improvements are:

(1) Located on natural ground slopes of less than 20 percent; and

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

If the floodway is not shown on the Federal Emergency Management Agency Maps, it is deemed to be one-half the width of the 100-year floodplain.

(d) The total ground-floor area, including cantilevered or similar overhanging extensions, of all principal and accessory structures is limited to a maximum of 1,500 square feet. This limitation shall not be altered by variance.

(e) All structures, except functionally water-dependent structures, are set back from the normal high water line of a waterbody, tributary stream or upland edge of a wetland to the greatest practical extent, but no less than 75 feet, horizontal distance. In determining the greatest practical extent, the Planning Board shall consider the depth of the lot, the slope of the land, the potential for soil erosion, the type and amount of vegetation to be removed, the proposed building site's elevation in regard to the floodplain, and its proximity to moderate-value and high-value wetlands.

## **Subdivision II. Shoreland ~~Zoning~~ Zone Performance Standards**

### **Sec. 78-1201. Applicability; conformance required.**

All land use activities within the shoreland zone ~~—districts—~~ shall conform to the performance standards in this division, if applicable. When there is any conflict between these performance standards and the other standards of this chapter, the more restrictive standards shall apply.

### **Sec. 78-1202. Principal and accessory buildings and structures.**

(1) All new principal and accessory buildings and structures in the shoreland zone ~~districts~~ shall be set back at least 100 feet, horizontal distance, from streams or tributary streams, as defined by this chapter, or 100 feet, horizontal distance, from the normal high water ~~mark~~ line of a waterbody—other waterbodies or the upland edge of a wetland or coastal wetland, except that in the General Development District the setback from the normal high water line shall be at least twenty five (25) feet, horizontal distance. In the Resource Protection District the setback requirement shall be 250 feet, horizontal distance, except for structures, roads, parking spaces or other regulated objects specifically allowed in that district in which case the setback requirements specified above shall apply.

(2) In addition, the water body, tributary stream, or wetland setback provision shall neither apply to structures which require direct access to the water body or wetland as an operational necessity, such as piers, docks and retaining walls, nor to other functionally water-dependent uses.

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

(4) All tidal land which is subject to tidal action during the maximum spring tide is coastal wetland. A tributary stream may be perennial or intermittent. Where a tributary stream is present within the shoreland zone, setback standards from that tributary stream are applicable.

(5) 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.

(6) Retaining walls that are not necessary for erosion control shall meet the structure setback requirement, except for low retaining walls and associated fill provided all of the following conditions are met:

(a) The site is located outside of a frontal or back dune area as designated by Maine Department of Environmental Protection Sand Dune rules;

(b) The site has been previously altered and an effective vegetated buffer does not exist;

(c) The wall(s) is(are) at least 25 feet, horizontal distance, from the normal high-water line of a water body, tributary stream, or upland edge of a wetland;

(d) 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;

(e) The total height of the wall(s), in the aggregate, are no more than 24 inches;

(f) Retaining walls are located outside of the 100-year floodplain on rivers, streams, coastal wetlands, and tributary streams, as designated on the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps or Flood Hazard Boundary Maps, or the flood of record, or in the absence of these, by soil types identified as recent flood plain soils.

(g) 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

(h) A vegetated buffer area is established within 25 feet, horizontal distance, of the normal high-water line of a water body, tributary stream, or upland edge of a wetland when a natural buffer area does not exist. The buffer area must meet the following characteristics:

(i) The buffer must include shrubs and other woody and herbaceous vegetation. Where natural ground cover is lacking the area must be supplemented with leaf or bark mulch;

(ii) Vegetation plantings must be in quantities sufficient to retard erosion and provide for effective infiltration of stormwater runoff;

(iii) Only native species may be used to establish the buffer area;

(iv) A minimum buffer width of 15 feet, horizontal distance, is required, measured perpendicularly to the normal high-water line or upland edge of a wetland;

(v) A footpath not to exceed the standards in Section 15(P)(2)(a), may traverse the buffer;

(7) Notwithstanding the requirements stated above, stairways or similar structures may be allowed with a permit from the Code Enforcement Officer, to provide shoreline access in areas of steep slopes or unstable soils provided: that the structure is limited to a maximum of four (4) feet in width; that the structure does not extend below or over the normal high-water line of a water body or upland edge of a wetland, (unless permitted by the Department of Environmental Protection pursuant to the Natural Resources Protection Act, 38 M.R.S.A. section 480-C); and that the applicant demonstrates that no reasonable access alternative exists on the property.

**Sec. 78-1203. Piers, docks, wharves, bridges and other structures and uses extending over or beyond below the normal high water mark-line of a waterbody or within a wetland.**

In the shoreland districts, the following are required for piers, docks, wharves, bridges and other structures and uses extending over or beyond the normal high water ~~mark-line~~ of a waterbody or within a wetland:

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

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

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

(4) The facility shall be no larger in dimension than necessary to carry on the activity and be consistent with ~~existing conditions, use, and 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.

(5) Outside of the DD-1 and DD-2 districts, no new structure shall be built on, over or abutting a pier, wharf, dock or other structure extending beyond the normal high-water line of a water body or within a wetland unless the structure requires direct access to the water body or wetland as an operational necessity.

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

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

~~(6)~~(8) Except in the DD-1 and DD-2 districts, structures built on, over or abutting a pier, wharf, dock or other structure extending beyond the normal high water mark-line of a waterbody or within a wetland shall not exceed 20 feet in height above the pier, wharf, dock or other structure. In the DD-1 and DD-2 districts, structures built on, over or abutting a pier, wharf, dock or other structure extending beyond the normal high water mark-line of a waterbody or within a wetland shall not exceed 35 feet in height above the pier, wharf, dock or other structure.

#### **Sec. 78-1204. Campgrounds.**

All campgrounds located within the shoreland zone overlay districts shall meet the following additional criteria:

(1) ~~No campground development shall be such that any campsite is located within 100 feet of any stream or other body of water or wetland or within 100 feet of a tributary stream. The areas intended for placement of a recreational vehicle, tent or shelter, and any utility and service buildings or drainage and runoff control features, shall be set back a minimum of one hundred (100) feet, horizontal distance, from the normal high-water line of a water bodies, streams, tributary streams, or the upland edge of a wetland.~~

(2) Campgrounds in the shoreland zone shall contain a minimum of 5,000 square feet of land, not including roads and driveways, for each site. Land supporting wetland vegetation and land below the normal high water mark-line of a waterbody shall not be included in calculating land area per site.

#### **Sec. 78-1205. Parking.**

Notwithstanding article VIII, division 4 of this article, all parking areas in the shoreland zone overlay districts shall meet the following additional criteria:

(1) Parking areas shall meet the shoreline and tributary stream setback requirements for structures for the district in which such areas are located. The setback requirement for parking areas serving public boat launching facilities shall be no less than fifty (50) feet, horizontal distance, from the shoreline or tributary stream if the Planning Board finds that no other reasonable alternative exists further from the shoreline or tributary stream.

(2) Parking areas shall be adequately sized for the proposed use and shall be designed to prevent stormwater runoff from flowing directly into a waterbody, tributary stream or wetland and, where feasible, to retain all runoff on site.

(3) In determining the appropriate size of proposed parking facilities, the following shall apply:

(a) Typical parking space: Approximately ten (10) feet wide and twenty (20) feet long, except that parking spaces for a vehicle and boat trailer shall be forty (40) feet long.

(b) Internal travel aisles: Approximately twenty (20) feet wide.

## **Sec. 78-1206. Roads and driveways.**

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

(1) Roads and driveways shall be set back at least 75 feet, horizontal distance, from the normal high water mark-line of waterbodies, tributary streams, or the upland edge of a wetland unless no reasonable alternative exists as determined by the planning board. If no other reasonable alternative exists, the planning board may reduce the road and/or driveway setback requirements to no less than 50 feet upon clear showing by the applicant that appropriate techniques will be used to prevent sedimentation of the waterbody, tributary stream or wetland. Such techniques may include but are not limited to the installation of settling basins and/or the effective use of additional ditch relief culverts and turnouts placed so as to avoid sedimentation of the waterbody, tributary stream, or wetland.

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

This subsection shall neither does not apply to approaches to water crossings nor or to roads or driveways that provide access to permitted structures and functionally water-dependent uses 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 this subsection except for that portion of the road or driveway necessary for direct access to the structure.

(2) Existing public roads may be expanded within the legal road right-of-way regardless of its their setback from a waterbody, tributary stream or wetland.

(3) New roads and driveways are prohibited in the shoreland resource protection district except that the Planning Board may grant a permit to construct a road or driveway to provide access to permitted uses within the district, or as A road or driveway may also be approved by the planning board in a shoreland resource

protection district upon a finding that no reasonable alternative route or location is available outside the district, ~~in which case.~~ When a road or driveway is permitted in a resource protection district, the road and/or driveway shall be set back as far as practicable from the normal high water mark-line of a waterbody, tributary stream, or upland edge of a wetland.

(4) Road and driveway banks shall be no steeper than a slope of two horizontal to one vertical and shall be graded and stabilized in accordance with the provisions for erosion and sedimentation control contained in article VIII, division 7 of this chapter.

(5) Road and driveway grades shall be no greater than ten percent except for short segments of less than 200 feet.

(6) In order to prevent road and driveway surface drainage from directly entering waterbodies, tributary streams or wetlands, roads and driveways shall be designed, constructed, and maintained to empty onto an unspecified-unscarified buffer strip at least 50 feet plus two times the average slope, in width between the outflow point of the ditch or culvert and the normal high water mark-line of a waterbody, tributary stream, or upland edge of a wetland. ~~Road~~ Surface drainage which is directed to an unspecified unscarified buffer strip shall be diffused or spread out to promote infiltration of the runoff and to minimize channelized flow of the drainage through the buffer strip.

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

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

TABLE INSET:

<del>Road</del> Grade (%)	Spacing (feet)
0--2	250
3--5	200--135
6--10	100--80
11--15	80--60
16--20	60--45
21+	40

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

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

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

(8) Ditches, culverts, bridges, dips, water turnouts and other stormwater runoff control installations associated with roads and driveways shall be maintained on a regular basis to ~~ensure~~ assure effective functioning.

~~(9) No permit is required for the repair or maintenance of an existing road culvert or for the replacement of an existing road culvert, as long as the replacement culvert is:~~

~~a. Not more than one standard culvert size wider in diameter than the culvert being replaced;~~

~~b. Not more than 25 percent longer than the culvert being replaced; and~~

~~c. Not longer than 75 feet.~~

~~Activities ancillary to culvert repair or maintenance, including excavation and filling, may also be conducted without a permit. A person repairing, replacing or maintaining an existing culvert under this section shall ensure that erosion control measures are taken to prevent sedimentation of the water and that the crossing does not block fish passage in the watercourse.~~

## Sec. 78-1207. Signs.

Notwithstanding those standards in article VIII, division 5 of this chapter, the following shall govern the use of signs in the following shoreland zone subdistricts: resource protection, stream protection, shoreland residential activity and limited commercial districts:

(1) Signs relating to goods and services sold on the premises shall be ~~permitted~~ allowed, provided that such signs shall not exceed six square feet in area and shall not exceed two signs per premises. In the Limited Commercial District, however, such signs shall not exceed sixteen (16) square feet in area. Signs relating to goods or services not sold or rendered on the premises shall be prohibited.

(2) ~~A single sign shall be permitted.~~ Name signs are allowed, provided such signs shall not exceed two (2) signs per premises and shall not exceed twelve (12) square feet in area the aggregate.

(3) Residential users may display a single sign not over three square feet in area relating to the sale, rental, or lease of the premises ~~may be erected~~ for the period in which the property is for sale, lease or rent.

(4) Signs relating to trespassing and hunting shall be ~~permitted~~ allowed without restriction as to number, provided that no such sign shall exceed two square feet in area.

(5) Signs relating to public safety shall be ~~permitted~~ allowed without restriction.

(6) No sign shall extend higher than six feet above the ground.

(7) Signs may be illuminated only by shielded, nonflashing lights. Illumination of signs shall be from an exterior source mounted on the ground in such a manner that point-source glare does not impact adjacent properties or motorists.

**Sec. 78-1208. Stormwater runoff.**

(a) All new construction and development in the shoreland districts shall be designed to minimize stormwater runoff from the site in excess of the natural predevelopment conditions. Where possible, existing natural runoff control features, such as berms, swales, terraces and wooded areas, shall be retained in order to reduce runoff and encourage infiltration of stormwaters.

(b) Stormwater runoff control systems shall be maintained as necessary to ensure proper functioning.

**Sec. 78-1209. Essential services.**

(a) Where feasible, the installation of essential services in the shoreland districts shall be limited to existing public ways and existing service corridors.

(b) The installation of essential services, other than road-side distribution lines, is not permitted in a resource protection or stream protection district, except to provide services to a permitted use within such district or except where the applicant demonstrates that no reasonable alternative exists. Where ~~permitted~~ allowed, such structures and facilities shall be located so as to minimize any adverse impacts on surrounding uses and resources, including visual impacts.

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

**~~Sec. 78-1210. Earth-moving and deposition associated with campground. Septic waste disposal.~~**

~~No part of any campground operation, including drainage and runoff control features, shall be permitted in the shoreland districts within 75 feet of the normal high water mark of a waterbody, tributary stream, or the upland edge of a wetland.~~

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

(b) The Maine Subsurface Wastewater Disposal Rules require new systems, excluding fill extensions, to be constructed no less than one hundred (100) horizontal feet from the normal high-water line of a perennial water body. The minimum setback distance for a new subsurface disposal system may not be reduced by variance.

**Sec. 78-1211. Agriculture.**

(a) All spreading ~~or disposal~~ of manure in the shoreland districts shall be accomplished in ~~compliance with the most current "Maine Guidelines for Manure and Manure Sludge Disposal on Land," published by the University of Maine and the state soil and water conservation commission~~ conformance with the *Manure Utilization Guidelines* published by the Maine Department of Agriculture on November 1, 2001, and the Nutrient Management Law (7 M.R.S.A. sections 4201-4209).

(b) Manure shall not be stored or stockpiled within one hundred (100) feet, horizontal distance, of a great pond classified GPA or a river flowing to a great pond classified GPA, or within seventy-five (75) feet horizontal distance, of other water bodies, tributary streams, or wetlands. All manure storage areas within the shoreland zone must be constructed or modified such that the facility produces no discharge of effluent or contaminated storm water.

(c) Agricultural activities involving tillage of soil greater than 40,000 square feet in surface area ~~or the spreading, disposal or storage of manure~~ within the shoreland zone shall require a ~~soil and water~~ conservation plan to be filed with the planning board. Nonconformance with the provisions of ~~such said~~ plan shall be considered to be a violation of this chapter.

~~(c) Manure shall not be stored or stockpiled within 100 feet, horizontal distance, of waterbodies, tributary streams, or wetlands. Within five years of the effective date of the ordinance from which this chapter derives, all manure storage areas within the shoreland zone must be constructed or modified such that the facility produces no discharge of effluent or contaminated stormwater. Existing facilities which do not meet the setback requirements may remain, but must meet the no discharge provision within the five-year period.~~

(d) There shall be no new tilling of soil within one hundred (100) feet, horizontal distance, of the normal high water line of a great pond classified GPA; within seventy-five (75) feet, horizontal distance, from of other waterbodies and coastal wetlands; nor within twenty-five (25) feet, horizontal distance, of tributary streams and freshwater wetlands. Operations in existence on the effective date of the ordinance from which this chapter derives and not in conformance with this ~~subsection~~ provision may be maintained.

(e) ~~After the effective date of the ordinance from which this section derives,~~ Newly established livestock grazing areas shall not be permitted within one hundred (100) feet, horizontal distance, of the normal high water line of a great pond classified GPA; within seventy-five (75) feet, horizontal distance, of a waterbody other waterbodies and coastal wetlands; nor within twenty-five (25) feet, horizontal distance, of tributary streams and freshwater wetlands. Livestock grazing associated with ongoing farm activities and which are not in conformance with ~~such the above~~ setback provisions may continue, provided that such grazing is conducted in accordance with a ~~soil and water~~ conservation plan.

## **Sec. 78-1212. Timber harvesting.**

The following standards shall govern timber harvesting within the shoreland zone:

(1) ~~Harvesting operations. Standards for harvesting operations are as follows:~~ Selective cutting of no more than forty percent (40%) of the total volume of trees

four (4) inches or more in diameter measured at four and one half (4 ½) feet above ground level on any lot in any ten (10) year period is permitted. In addition:

a. Within seventy-five (75) 100-feet, horizontal distance, of the normal high water mark-line of other waterbodies, tributary streams, or the upland edge of a wetland, there shall be no clear-cut openings, and a well-distributed stand of trees and other vegetation, including existing ground cover, shall be maintained.

b. At distances greater than seventy-five (75) 100-feet, horizontal distance, of the normal high water mark-line of other waterbodies or the upland edge of a wetland, harvesting operations shall not create single clear-cut openings greater than ten thousand (10,000) square feet in the forest canopy. Where such openings exceed five thousand (5,000) square feet, they shall be at least one hundred (100) feet, horizontal distance, apart. Such clear-cut openings shall be included in the calculation of total volume removal. ~~For the purposes of these standards,~~ Volume may be considered to be equivalent to basal area.

~~c.—Selective cutting shall remove not more than 40 percent of the total volume of trees four inches in diameter and larger, measured at 4 1/2 feet above ground level, on any lot in any ten-year period. Removal of trees less than four inches in diameter, as measured pursuant to this subsection, is permitted in conformance with all other subsections of this section. Timber harvesting operations exceeding the 40 percent limitation of this section may be allowed by the planning board upon a clear showing, including a forest management plan signed by a state-licensed professional forester, that such an exception is necessary for good forest management and is carried out in accordance with the purposes of this chapter. The planning board shall notify the commissioner of the department of environmental protection of each exception allowed. The procedures for a conditional use permit shall be followed for such an application.~~

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

(3) ~~Roads.~~ ~~Standards for roads are as follows:~~

~~a.—No roads requiring earth moving, cut or fill shall be constructed.~~

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

1. Surface waters are frozen: and
2. The activity will not result in any ground disturbance.

~~e.(4)~~ All crossings of flowing water shall require a bridge or culvert, except in areas with low banks and channel beds which are composed of gravel, rock or similar hard surface which would not be eroded or otherwise damaged.

~~d.(5)~~ Skid trail approaches to water crossings shall be located and designed so as to prevent water runoff from directly entering the waterbody or tributary stream. Upon completion of timber harvesting, temporary bridges and culverts shall be removed and areas of exposed soil revegetated.

~~e-(6)~~ Except for water crossings, skid trails and other sites where the operation of machinery used in timber harvesting results in the exposure of mineral soil, roads shall be located such that an unspecified-unscarified strip of vegetation of at least seventy-five (75) feet, horizontal distance, in width for slopes up to ten percent (10%) shall be retained between the exposed mineral soil and the normal high water mark-line of a waterbody or upland edge of a wetland. For each ten- percent (10%) increase in slope, the unspecified strip shall be increased by twenty (20) feet, horizontal distance. The subsection applies-provisions of this paragraph apply only to a face sloping toward the waterbody or wetland; provided, however, that no portion of such exposed mineral soil on a back face shall be closer than twenty-five (25) feet, horizontal distance, from the normal high water mark-line of a waterbody or upland edge of a wetland.

**Sec. 78-1213. Clearing or removal of vegetation for development activities other than timber harvesting.**

(a) In the resource protection shoreland district, the clearing-cutting or removal of vegetation shall be limited to that which is necessary for uses expressly authorized in that district.

(b) In all other portions of the shoreland zone, and except to allow for the development of permitted uses, within a strip of land extending 75 feet, horizontal distance, from a waterbody, tributary stream, or the upland edge of a wetland, a buffer strip of vegetation shall be preserved as follows:

(1) There shall be no cleared opening greater than 250 square feet in the forest canopy (or other existing woody vegetation if a forested canopy is not present) as measured from the outer limits of the tree or shrub crown. However, a footpath not to exceed ten-six (6) feet in width as measured between tree trunks and/or shrub stems is permitted allowed, provided that a cleared line of sight to the water through the buffer strip is not created.

(2) Selective cutting of trees within the buffer strip is permitted allowed, provided that a well-distributed stand of trees and other natural vegetation is maintained. For the purposes of this subsection, a "well-distributed stand of trees and other vegetation" shall be defined as maintaining a rating score of eight-sixteen (16) or more in any 25-foot by 25 50-foot square (625 square feet)-rectangular area as determined by the following rating system:

TABLE INSET:

Tree at 4 1/2 Feet above Ground Level (inches)	Points
<u>2"-- to less than 4"</u>	1
<u>4"-- to less than 12 8"</u>	2
<u>8" to less than 12"</u>	<u>4</u>
<u>Greater than 12" or greater</u>	<u>4-8</u>

The following shall govern in applying this point system:

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

- (iii) Any plot not containing the required points must have no vegetation removed except as otherwise allowed by this chapter;
- (iv) Any plot containing the required points may have vegetation removed down to the minimum points required or as otherwise allowed by this chapter;
- (v) Where conditions permit, no more than 50% of the points on any 25-foot by 50-foot rectangular area may consist of trees greater than 12 inches in diameter.

For the purposes of subsection 2 above “other natural vegetation” is defined as retaining existing vegetation under three (3) feet in height and other ground cover and retaining at least five (5) saplings less than two (2) inches in diameter at four and one half (4 ½) feet above ground level for each 25-foot by 50-foot rectangle area. If five saplings do not exist, no woody stems less than two (2) inches in diameter can be removed until 5 saplings have been recruited into the plot.

Notwithstanding the requirements of this subsection, no more than 40 percent of the total volume of trees four inches or more in diameter, measured at 4 1/2 feet above ground level, may be removed in any ten-year period.

(3) 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 78-1213(b)(1) above.

(4) Pruning of tree branches, on the bottom one-third of the tree, is ~~permitted~~ allowed.

(4)(5) In order to maintain a buffer strip of vegetation, when the removal of storm-damaged, diseased, unsafe, or dead trees results in the creation of cleared openings, these openings shall be replanted with native tree species unless existing new tree growth is present.

This subsection shall not apply to those portions of public recreational facilities adjacent to public swimming areas: as long as cleared areas, ~~however, shall be~~ are limited to the minimum area necessary.

(6) At distances greater than 75 feet, horizontal distance, from the normal high water ~~mark-line~~ of ~~a-any other~~ waterbody, tributary stream, or the upland edge of a wetland, ~~except to allow for the development of permitted uses,~~ there shall be ~~permitted-allowed~~ on any lot, in any ten-year period, selective cutting of not more than 40 percent of the volume of trees four inches or more in diameter, measured 4 1/2 feet above ground level. Tree removal in conjunction with the development of permitted uses shall be included in the 40-percent calculation. For the purposes of these standards, volume may be considered to be equivalent to basal area.

(7) In no event shall cleared openings for development, including but not limited to principal and accessory structures, driveways and sewage disposal areas, exceed in the aggregate 25 percent of the lot area or 10,000 square feet, whichever is greater, including land previously developed. This shall not apply to shoreland zone overlay-subdistricts in the BRD, GB-1, GB-2, AO, DD-1, DD-2 and NC districts.

(8) ~~Legally existing nonconforming~~ cleared openings ~~legally in existence on the effective date of the ordinance from which this chapter derives~~ may be maintained, but shall not be enlarged, except as ~~permitted-allowed~~ by this chapter.

~~(e)~~(9) Fields and other cleared opening which have reverted to primarily shrubs, trees, or other woody vegetation shall be regulated under this section.

#### **Sec. 78-1214. Water quality.**

No activity in the shoreland districts 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 waterbody, tributary stream or wetland.

#### **Sec. 78-1215. Erosion and Sedimentation Control**

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

(a) Mulching and revegetation of disturbed soil.

(b) Temporary runoff control features such as hay bales, silt fencing or diversion ditches.

(c) Permanent stabilization structures such as retaining walls or rip-rap.

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

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

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

(a) Where mulch is used, it shall be applied at a rate of at least one (1) bale per five hundred (500) square feet and shall be maintained until a catch of vegetation is established.

(b) Anchoring the mulch with netting, peg and twine or other suitable method may be required to maintain the mulch cover.

(c) Additional measures shall be taken where necessary in order to avoid siltation into the water. Such measures may include the use of staked hay bales and/or silt fences.

(5) Natural and 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.

### **Sec. 78-1216. Soils.**

All land uses shall be located on soils in or upon which the proposed uses or structures can be established or maintained without causing adverse environmental impacts, including severe erosion, mass soil movement, improper drainage, and water pollution, whether during or after construction. Proposed uses requiring subsurface waste disposal, and commercial or industrial development and other similar intensive land uses, shall require a soils report based on an on-site investigation and be prepared by state-certified professionals. Certified persons may include Maine Certified Soil Scientists, Maine Registered Professional Engineers, Maine State Certified Geologists and other persons who have training and experience in the recognition and evaluation of soil properties. The report shall be based upon the analysis of the characteristics of the soil and surrounding land and water areas, maximum ground water elevation, presence of ledge, drainage conditions, and other pertinent data which the evaluator deems appropriate. The soils report shall include recommendations for a proposed use to counteract soil limitations where they exist.

### **Sec. 78-1217. 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.

### **Sec. 78-1218. Definitions exclusive to shoreland zone.**

As used in this division and applied in the shoreland zone and its subdistricts, the terms listed below have meanings set forth below, whether or not such terms are otherwise defined elsewhere in this chapter. Terms not listed below have the same meanings as in sec. 78-1 of this chapter.

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

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

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

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

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

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

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

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

Institutional means a non-profit or quasi-public use, or institution such as a church, library, public or private school, hospital, or municipally owned or operated building, structure or land used for public purposes.

Lot coverage means the total footprint area of all structures, parking lots and other non-vegetated surfaces within the shoreland zone.

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

Public park means a tract of land owned by the Town of Old Orchard Beach and available to the general public for recreational purposes.

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

Structure means anything built for the support, shelter or enclosure of persons, animals, goods or property of any kind, together with anything constructed or erected with a fixed location on or in the ground, exclusive of fences, and poles, wiring and other aerial equipment normally associated with service drops as well as guying and guy anchors. The term includes structures temporarily or permanently located, such as decks, patios, and satellite dishes.