STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
17 STATE HOUSE STATION AUGUSTA, MAINE 04333-0017

DEPARTMENT ORDER

IN THE MATTER OF

TOWN OF LUBEC	) MANDATORY SHORELAND ZONING ACT
WASHINGTON COUNTY	)
SHORELAND ZONING ORDINANCE	)
ORDER #44-2024	) CONDITIONAL APPROVAL

Pursuant to the provisions of 38 M.R.S. §§ 435-448, the *Mandatory Shoreland Zoning Act* ("Act"), and the Maine Department of Environmental Protection's *Guidelines for Municipal Shoreland Zoning Ordinances*, 06-096 C.M.R. ch. 1000 (amended January 26, 2015) ("Guidelines"), the Department of Environmental Protection has considered the request for approval of the Town of Lubec Shoreland Zoning Ordinance (Ordinance), as amended on August 7, 2024, and FINDS THE FOLLOWING FACTS:

1. The Act requires municipalities to establish zoning controls in areas within 250 feet of the normal high-water line of great ponds and rivers; within 250 feet of the upland edge of freshwater and coastal wetlands; and within 75 feet of the normal high-water line of streams. Such zoning standards must be consistent with or no less restrictive than those in the Guidelines. 38 M.R.S. §§435 & 438-A.

2. The Act specifies that before a locally adopted shoreland zoning ordinance, or amendment to that ordinance, is effective, it must be approved by the Commissioner of the Department of Environmental Protection ("Commissioner"). The Commissioner may approve, approve with conditions, or deny the ordinance or amendment. If denied, or approved with conditions, such action must be preceded by notice to the municipality. If the Commissioner fails to act within 45 days of receipt of the ordinance or amendment, then the ordinance or amendment is automatically approved. 38 M.R.S. § 438-A.

3. On August 26, 2024, the Town of Lubec submitted the following amendments to its Ordinance as adopted on August 7, 2024 to the Department for review:

   A. The Town of Lubec has chosen to pursue Option 1 for timber harvesting,[1] deferring all administration and regulation of all forestry activities within the municipality to the Bureau of Forestry (also commonly referred to as the Maine Forest Service) by adopting the option one minimum requirements of the Chapter 1000 Guidelines.

[1] Title 38, section 438-A provides that, notwithstanding other provisions in the Mandatory Shoreland Zoning Act, the regulation of timber harvesting and timber harvesting activities in shoreland areas must be in accordance with Section 438-B and rules adopted by the Bureau of Forestry. Section 438-B establishes three options from which each municipality may choose. The options are further identified in a Note Relating to Timber Harvesting Standards, located in the Guidelines between Ch. 1000, § 15(N) and § 15(O-1).

B. The amendments make extensive revisions throughout the Ordinance, including minor corrections and clarifications, as well as substantive changes in standards including, but not limited to, expansion of nonconforming structures, shoreline stabilization projects, hazard and storm damaged tree removal, revegetation requirements, and the addition of a photographic records requirement to the application section. The submitted amendments update the Ordinance and are intended to bring it into compliance with the Guidelines as amended on January 26, 2015.

4. The Department's review of the Ordinance has revealed the following significant deficiencies:

A. Section 4.A *Effective Date of Ordinance and Ordinance Amendments,* fails to identify the effective date.

B. Section 9.A *Districts and Zoning Map,* fails to accurately represent applicable Shoreland Zoning districts identified on the Shoreland Zoning map.

C. Section 13 *Establishment of Districts,* fails to accurately represent applicable Shoreland Zoning districts identified on the Shoreland Zoning map.

D. Section 14 *Table of Land Uses,* fails to accurately represent applicable Shoreland Zoning districts identified on the Shoreland Zoning map.

E. Section 14 *Table of Land Uses,* fails to prohibit commercial structures and uses in the Limited Residential district.

F. Section 16.C *Permit Application,* omits the photographic record provision.

G. Sections on Hazard Trees, Storm-Damaged Trees, and Dead Tree Removal, Exemptions to Clearing and Vegetation Removal Requirements, and Revegetation Requirements, are missing from the document.

5. On September 26, 2024, the Town of Lubec was notified by the Department of the above deficiencies, and the proposed conditional approval of the Ordinance.

BASED on the above Findings of Fact, the Commissioner makes the following CONCLUSION:

1. The deficiencies noted in paragraph 4 above can be addressed by the Commissioner approving the Ordinance with conditions. This will result in the Ordinance being

TOWN OF LUBEC	) MANDATORY SHORELAND ZONING ACT
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substantially consistent with the requirements of the Mandatory Shoreland Zoning Act, 38 M.S.R., Section 438-A, and the minimum Guidelines.

THEREFORE, the Commissioner APPROVES the Ordinance, as amended on August 7, 2024, SUBJECT TO THE ATTACHED CONDITIONS:

1. Section 4 *Effective Date of Ordinance and Ordinance Amendments*, shall be amended in part to remove the ~~strike-through~~ language and add the highlighted language:

   Effective Date of Ordinance and Ordinance Amendments. This Ordinance, which was adopted by the municipal legislative body on ~~December 30, 1991~~ August 14, 2023, 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 Commissioner fails to act on this Ordinance or Ordinance Amendment, within forty-five (45) days of his/her receipt of the Ordinance, or Ordinance Amendment, it shall be automatically approved.

2. Section 9.A *Districts and Zoning Map,* shall be amended in part to remove the ~~strike through~~ language:

   9. Districts and Zoning Map

   A. Official Shoreland Zoning Map. The areas to which this Ordinance is applicable are hereby divided into the following districts as shown on the Official Shoreland Zoning Maps which are made a part of this Ordinance:

   (1) Resource Protection (RP)
   (2) Stream Protection (SP)
   (3) Limited Residential (LR)
   ~~(4) Limited Commercial (LC)~~
   (5) General Development
   (6) Waterfront Development (WD)

3. Section 13 *Establishment of Districts,* shall be amended in part to remove the ~~strike through~~ language:

   ~~**Limited Commercial District.** The Limited Commercial District includes areas of mixed, light commercial and residential uses, exclusive of the Stream Protection District, which should not be developed as intensively as the Waterfront Development or General Development Districts. This district includes areas of two or more contiguous acres in size devoted to a mix of residential and low intensity business and commercial uses. Industrial uses are prohibited.~~

~~(1) The Limited Commercial District shall be comprised of the lands withing the shoreland zone running along Seward's Neck and Johnson's Bay, beginning at the current Resource Protection/General Development district line near the northern tip of north Lubec and extending along the shores of Johnson's Day up to the sewer pumping station, situated on County Road just east of South Lubec road.~~

5. Section 14 *Table of Land Uses,* shall be amended in part to remove the Limited Commercial district.

6. Section 14 *Table of Land Uses*, shall be amended to prohibit commercial structures and uses in the Limited Residential district except for commercial uses otherwise listed in the table, such as marinas and campgrounds, that are allowed in the respective district.

7. Section 16.C *Permit Application* shall be amended in part to add the highlighted language:

Photographic record required. A municipal ordinance adopted pursuant to this article must require an applicant for a permit for development within the shoreland zone to provide to the municipal permitting authority preconstruction photographs and, no later than 20 days after completion of the development, postconstruction photographs of the shoreline vegetation and development site.

8. The following sections shall be added as follows (*Italics* is added materials):

P. Hazard Trees, Storm-Damaged Trees, and Dead Tree Removal

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

(a) Within the shoreline buffer, if the removal of a hazard tree results in a cleared opening in the tree canopy greater than two hundred and fifty (250) square feet, replacement with native tree species is required, unless there is new tree growth already present. New tree growth must be as near as practicable to where the hazard tree was removed and be at least two (2) inches in diameter, measured at four and one half (4.5) feet above the ground level. If new growth is not present, then replacement trees shall consist of native species and be at least four (4) feet in height and be no less than two (2) inches in diameter. Stumps may not be removed.

(b) Outside of the shoreline buffer, when the removal of hazard trees exceeds forty (40) percent of the volume of trees four (4) inches or more in diameter, measured at four and one half (4.5) feet above ground level in any ten (10) year period, and/or results in cleared openings exceeding twenty-five (25) percent of the lot

area within the shoreland zone, or ten thousand (10,000) square feet, whichever is greater, replacement with native tree species is required, unless there is new tree growth already present. New tree growth must be as near as practicable to where the hazard tree was removed and be at least two (2) inches in diameter, measured at four and one half (4.5) feet above the ground level. If new growth is not present, then replacement trees shall consist of native species and be at least two (2) inches in diameter, measured at four and one half (4.5) feet above the ground level.

(c) The removal of standing dead trees, resulting from natural causes, is permissible without the need for replanting or a permit, as long as the removal does not result in the creation of new lawn areas, or other permanently cleared areas, and stumps are not removed. For the purposes of this provision dead trees are those trees that contain no foliage during the growing season.

(d) The Code Enforcement Officer may require the property owner to submit an evaluation from a licensed forester or arborist before any hazard tree can be removed within the shoreland zone.

(e) The Code Enforcement Officer may require more than a one–for-one replacement for hazard trees removed that exceed eight (8) inches in diameter measured at four and one half (4.5) feet above the ground level.

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

(a) Within the shoreline buffer, when the removal of storm-damaged trees results in a cleared opening in the tree canopy greater than two hundred and fifty (250) square feet, replanting is not required, but the area shall be required to naturally revegetate, and the following requirements must be met:

(i) The area from which a storm-damaged tree is removed does not result in new lawn areas, or other permanently cleared areas;

(ii) Stumps from the storm-damaged trees may not be removed;

(iii) Limbs damaged from a storm event may be pruned even if they extend beyond the bottom one-third (1/3) of the tree; and

(iv) If after one growing season, no natural regeneration or regrowth is present, replanting of native tree seedlings or saplings is required at a density of one seedling per every eighty (80) square feet of lost canopy.

(b) Outside of the shoreline buffer, if the removal of storm damaged trees exceeds 40% of the volume of trees four (4) inches or more in diameter, measured at four and one half (4.5) feet above the ground level in any ten (10) year period, or results, in the aggregate, in cleared openings exceeding 25% of the lot area within the shoreland zone or ten thousand (10,000) square feet, whichever is greater, and no natural regeneration occurs within one growing season, then native tree seedlings or saplings shall be replanted on a one-for-one basis.

Q. Exemptions to Clearing and Vegetation Removal Requirements

The following activities are exempt from the clearing and vegetation removal standards set forth in Section 15(P), provided that all other applicable requirements of this chapter are complied with, and the removal of vegetation is limited to that which is necessary:

(1) The removal of vegetation that occurs at least once every two (2) years for the maintenance of legally existing areas that do not comply with the vegetation standards in this chapter, such as but not limited to cleared openings in the canopy or fields. Such areas shall not be enlarged, except as allowed by this section. If any of these areas, due to lack of removal of vegetation every two (2) years, reverts back to primarily woody vegetation, the requirements of Section 15(P) apply;

(2) The removal of vegetation from the location of allowed structures or allowed uses, when the shoreline setback requirements of section 15(B) are not applicable;

(3) The removal of vegetation from the location of public swimming areas associated with an allowed public recreational facility;

(4) The removal of vegetation associated with allowed agricultural uses, provided best management practices are utilized, and provided all requirements of section 15(N) are complied with.

(5) The removal of vegetation associated with brownfields or voluntary response action program (VRAP) projects provided that the removal of vegetation is necessary for remediation activities to clean-up contamination on a site in a general development district, commercial fisheries and maritime activities district or other equivalent zoning district approved by the Commissioner that is part of a state or federal brownfields program or a voluntary response action program pursuant 38 M.R.S.A section 343-E, and that is located along:

(a) A coastal wetland; or

(b) A river that does not flow to a great pond classified as GPA pursuant to 38 M.R.S.A section 465-A.

(6) The removal of non-native invasive vegetation species, provided the following minimum requirements are met:

(a) If removal of vegetation occurs via wheeled or tracked motorized equipment, the wheeled or tracked motorized equipment is operated and stored at least twenty-five (25) feet, horizontal distance, from the shoreline, except that wheeled or tracked equipment may be operated or stored on existing structural surfaces, such as pavement or gravel.

(b) Removal of vegetation within twenty-five (25) feet, horizontal distance, from the shoreline occurs via hand tools; and

(c) If applicable clearing and vegetation removal standards are exceeded due to the removal of non-native invasive species vegetation, the area shall be revegetated with native species to achieve compliance.

NOTE: *An updated list of non-native invasive vegetation is maintained by the Department of Agriculture, Conservation and Forestry's Natural Areas Program: http://www.maine.gov/dacf/mnap/features/invasive_plants/invasives.htm*

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(7) The removal of vegetation associated with emergency response activities conducted by the Department, the U.S. Environmental Protection Agency, the U.S. Coast Guard, and their agents.

R. Revegetation Requirements

When revegetation is required in response to violations of the vegetation standards set forth in Section 15(P), to address the removal of non- native invasive species of vegetation, or as a mechanism to allow for development that may otherwise not be permissible due to the vegetation standards, including removal of vegetation in conjunction with a shoreline stabilization project, the revegetation must comply with the following requirements.

(1) The property owner must submit a revegetation plan, prepared with and signed by a qualified professional, that describes revegetation activities and maintenance. The plan must include a scaled site plan, depicting where vegetation was, or is to be removed, where existing vegetation is to remain, and where vegetation is to be planted, including a list of all vegetation to be planted.

(2) Revegetation must occur along the same segment of shoreline and in the same area where vegetation was removed and at a density comparable to the pre-existing vegetation, except where a shoreline stabilization activity does not allow revegetation to occur in the same area and at a density comparable to the pre-existing vegetation,

in which case revegetation must occur along the same segment of shoreline and as close as possible to the area where vegetation was removed:

(3) If part of a permitted activity, revegetation shall occur before the expiration of the permit. If the activity or revegetation is not completed before the expiration of the permit, a new revegetation plan shall be submitted with any renewal or new permit application.

(4) Revegetation activities must meet the following requirements for trees and saplings:

(a) All trees and saplings removed must be replaced with native noninvasive species;

(b) Replacement vegetation must at a minimum consist of saplings;

(c) If more than three (3) trees or saplings are planted, then at least three (3) different species shall be used;

(d) No one species shall make up 50% or more of the number of trees and saplings planted;

(e) If revegetation is required for a shoreline stabilization project, and it is not possible to plant trees and saplings in the same area where trees or saplings were removed, then trees or sapling must be planted in a location that effectively reestablishes the screening between the shoreline and structures; and

(f) A survival rate of at least eighty (80) percent of planted trees or saplings is required for a minimum five (5) years period.

(5) Revegetation activities must meet the following requirements for woody vegetation and other vegetation under three (3) feet in height:

(a) All woody vegetation and vegetation under three (3) feet in height must be replaced with native noninvasive species of woody vegetation and vegetation under three (3) feet in height as applicable;

(b) Woody vegetation and vegetation under three (3) feet in height shall be planted in quantities and variety sufficient to prevent erosion and provide for effective infiltration of stormwater;

(c) If more than three (3) woody vegetation plants are to be planted, then at least three (3) different species shall be planted;

(d) No one species shall make up 50% or more of the number of planted woody vegetation plants; and

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(e) Survival of planted woody vegetation and vegetation under three feet in height must be sufficient to remain in compliance with the standards contained within this chapter for minimum of five (5) years

(6) Revegetation activities must meet the following requirements for ground vegetation and ground cover:

(a) All ground vegetation and ground cover removed must be replaced with native herbaceous vegetation, in quantities and variety sufficient to prevent erosion and provide for effective infiltration of stormwater;

(b) Where necessary due to a lack of sufficient ground cover, an area must be covered with mulch to prevent erosion and provide for effective infiltration of stormwater; and

(c) Survival and functionality of ground vegetation and ground cover must be sufficient to remain in compliance with the standards contained within this chapter for minimum of five (5) years.

DONE AND DATED AT AUGUSTA, MAINE, THIS 2nd DAY OF OCTOBER 2024.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: Mark Stebbins
For: Melanie Loyzim, Commissioner

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES.

FILED
October 2nd, 2024
State of Maine
Board of Environmental Protection

DEP INFORMATION SHEET

Appealing a Commissioner's Decision on a Shoreland Zoning Ordinance

Dated: August 2021 Contact: (207) 314-1458

SUMMARY

This document provides information regarding a municipality's rights and obligations in filing an administrative or judicial appeal of a shoreland zoning ordinance decision made by the Department of Environmental Protection's (DEP) Commissioner.

There are two methods available to a municipality seeking to appeal a shoreland zoning ordinance decision made by the DEP Commissioner: (1) an administrative process before the Board of Environmental Protection (Board), or (2) a judicial process before Maine's Superior Court.

I. ADMINISTRATIVE APPEALS TO THE BOARD

LEGAL REFERENCES

A municipality filing an appeal to the Board should review 38 M.R.S. §§ 341-D(4) and 346, the Mandatory Shoreland Zoning laws 38 M.R.S. § 438-A(3), and the DEP's *Rule Concerning the Processing of Applications and Other Administrative Matters* (Chapter 2), 06-096 C.M.R. ch. 2.

DEADLINE TO SUBMIT AN APPEAL TO THE BOARD

Not more than 30 days following the filing of a license decision by the Commissioner with the Board, a municipality may appeal to the Board for review of the Commissioner's decision. The filing of an appeal with the Board, in care of the Board Clerk, is complete when the Board receives the submission by the close of business on the due date (5:00 p.m. on the 30th calendar day from which the Commissioner's decision was filed with the Board, as determined by the received time stamp on the document or electronic mail). Appeals filed after 5:00 p.m. on the 30th calendar day from which the Commissioner's decision was filed with the Board will be dismissed as untimely, absent a showing of good cause.

HOW TO SUBMIT AN APPEAL TO THE BOARD

An appeal to the Board may be submitted via postal mail or via electronic mail and must contain all signatures and required appeal contents. An electronic filing must contain the scanned original signature of the appellant(s). The appeal documents must be sent to the following address.

Chair, Board of Environmental Protection
c/o Board Clerk
17 State House Station
Augusta, ME 04333-0017
ruth.a.burke@maine.gov

The DEP may also request the submittal of the original signed paper appeal documents when the appeal is filed electronically. The risk of material not being received in a timely manner is on the sender, regardless of the method used.

At the time an appeal is filed with the Board, the appellant must send a copy of the appeal to the Commissioner of the DEP (Maine Department of Environmental Protection, 17 State House Station, Augusta, Maine 04333-0017). Please contact the DEP at 207-287-7688 with questions or for contact information regarding a specific licensing decision.

REQUIRED APPEAL CONTENTS

A complete appeal must contain the following information at the time the appeal is submitted.

1. *Aggrieved status.* The appeal must demonstrate that it is submitted on behalf of the municipality subject to the Commissioner's decision and must explain how the municipality may suffer a particularized injury as a result of the Commissioner's decision.

2. *The findings, conclusions or conditions objected to or believed to be in error.* The appeal must identify the specific findings of fact, conclusions regarding compliance with the law, conditions, or other aspects of the written decision or of the review process that the appellant objects to or believes to be in error.

3. *The basis of the objections or challenge.* For the objections identified in Item #2, the appeal must state why the appellant believes that the decision is incorrect and should be modified or reversed. If possible, the appeal should cite specific evidence in the record or specific criteria that the appellant believes were not properly considered or fully addressed.

4. *The remedy sought.* This can range from reversal of the Commissioner's decision on the shoreland zoning ordinance to changes in specific conditions imposed on the shoreland zoning ordinance.

5. *All the matters to be contested.* The Board will limit its consideration to those matters specifically raised in the written notice of appeal.

6. *Request for hearing.* If the appellant wishes the Board to hold a public hearing on the appeal, a request for public hearing must be filed as part of the notice of appeal, and it must include an offer of proof regarding the testimony and other evidence that would be presented at the hearing. The offer of proof must consist of a statement of the substance of the evidence, its relevance to the issues on appeal, and whether any witnesses would testify. The Board will hear the arguments in favor of and in opposition to a hearing on the appeal and the presentations on the merits of an appeal at a regularly scheduled meeting. If the Board decides to hold a public hearing on an appeal, that hearing will then be scheduled for a later date.

7. *New or additional evidence to be offered.* If an appellant wants to provide evidence not previously provided to DEP staff during the DEP's review of the ordinance, the request and the proposed supplemental evidence must be submitted with the appeal. The Board may allow new or additional evidence, to be considered in an appeal only under very limited circumstances. The proposed supplemental evidence must be relevant and material, and (a) the person seeking to add information to the record must show due diligence in bringing the evidence to the DEP's attention

at the earliest possible time in the review process; or (b) the evidence itself must be newly discovered and therefore unable to have been presented earlier in the process. Requirements for supplemental evidence are set forth in Chapter 2 § 24.

Other Considerations in Appealing a Decision to the Board

1. *Be familiar with all relevant material in the DEP record.* A municipal shoreland zoning file is public information made accessible by DEP. Upon request, the DEP will make the material available to review and photocopy during normal working hours. There may be a charge for copies or copying services.

2. *Be familiar with the regulations and laws under which the shoreland zoning ordinance was processed, and the procedural rules governing the appeal.* DEP staff will provide this information upon request and answer general questions regarding the appeal process.

3. *The filing of an appeal does not operate as a stay to any decision.* A municipality proceeding with shoreland zoning matters pending the outcome of an appeal runs the risk of the decision being reversed or modified as a result of the appeal.

What to Expect Once You File a Timely Appeal with the Board

The Board will acknowledge receipt of an appeal, and it will provide the name of the DEP shoreland zoning staff member assigned to the specific appeal. The notice of appeal, any materials admitted by the Board Chair as new or supplemental evidence, any materials admitted in response to the appeal, relevant excerpts from the DEP's administrative record for the ordinance review, and the DEP staff's recommendation, in the form of a proposed Board Order, will be provided to Board members. The appellant and parties of record are notified in advance of the date set for Board consideration of an appeal or request for public hearing. The appellant will have an opportunity to address the Board at the Board meeting. The Board will decide whether to hold a hearing on appeal when one is requested before deciding an appeal. The Board's decision on appeal may be to affirm all or part, affirm with conditions, order a hearing to be held as expeditiously as possible, reverse all or part of the decision of the Commissioner, or remand the matter to the Commissioner for further proceedings. The Board will notify the appellant and parties of record of its decision on appeal.

II. Appeals to Maine Superior Court

Maine law generally allows aggrieved persons to appeal final Commissioner or Board decisions to Maine's Superior Court (see 38 M.R.S. § 346(1); 06-096 C.M.R. ch. 2; 5 M.R.S. § 11001; and M.R. Civ. P. 80C). Parties to the shoreland zoning ordinance decision must file a petition for review within 30 days after receipt of notice of the Commissioner's or Board's decision. The laws cited in this paragraph and other legal procedures govern the contents and processing of a Superior Court appeal. The filing of an appeal to the Board is not a prerequisite for a judicial appeal.

Maine's Administrative Procedure Act, DEP statutes governing a particular matter, and the Maine Rules of Civil Procedure must be consulted for the substantive and procedural details applicable to judicial appeals.

ADDITIONAL INFORMATION

If you have questions or need additional information on the appeal process, for administrative appeals contact the Board Clerk at 207-287-2811 or the Board Executive Analyst at 207-314-1458 bill.hinkel@maine.gov, or for judicial appeals contact the court clerk's office in which the appeal will be filed.

Note: This information sheet, in conjunction with a review of the statutory and regulatory provisions referred to herein, is provided to help a person to understand their rights and obligations in filing an administrative or judicial appeal. The DEP provides this INFORMATION SHEET for general guidance only; it is not intended for use as a legal reference. Maine law governs an appellant's rights.

SHORELAND ZONING ORDINANCE

for the

TOWN OF LUBEC

Attested: Penny L Sprague
Penny L. Sprague, Town Clerk

Enacted: 30 December 1991
Revised: August 4, 2009
Revised: August 14, 2014
Revised: August 2, 2023
Revised: August 7, 2024

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SECTION 1. PURPOSES

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

SECTION 2. AUTHORITY

This Ordinance has been prepared in accordance with the provisions of Title 38 Sections 435-449 of the Maine Revised Statutes Annotated (M.R.S.A.)

SECTION 3. APPLICABILITY

This Ordinance applies to all land areas within 250 feet, horizontal distance, of the upland edge of a coastal or freshwater wetland; and within 75 feet, horizontal distance, of the normal high-water line of a stream. This ordinance also applies to any structure built on, over or abutting a dock, wharf or pier, or other structure extending below the normal high-water line of a water body or within a wetland.

SECTION 4. EFFECTIVE DATE

A. Effective Date of Ordinance and Ordinance Amendments

This Ordinance, which was adopted by the municipal legislative body on December 30, 1991, shall not be effective unless approved by the Board 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 of the Department of Environmental Protection for approval. If the Commissioner fails to act on this Ordinance or Ordinance Amendment, within forty-five (45) days of its receipt of the Ordinance, it shall be deemed approved.

Any application for a permit submitted to the municipality within the forty-five (45) day period shall be governed by the terms of this Ordinance, or Ordinance Amendment, if the Ordinance or Ordinance Amendment, is approved by the Commissioner.

B. Sections 15(O) and 15(O-1).

Section 15(O) is repealed on the statutory date established under 38 M.R.S.A. section 438-B(5) at which time Section 15(O-1) shall become effective. Until such time as Section 15(O) is repealed, Section 15(O-1) is not in effect.

SECTION 5. AVAILABILITY

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

SECTION 6. SEVERABILITY

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

SECTION 7. CONFLICTS WITH OTHER ORDINANCES

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

SECTION 8. AMENDMENTS

This Ordinance may be amended by majority vote of the legislative body. Copies of amendments, attested and signed by the Municipal Clerk, shall be submitted to the Board of Environmental Protection following adoption by the municipal legislative body and shall not be effective unless approved by the Board of Environmental Protection. If the Board of Environmental Protection fails to act on any amendment within forty-five (45) days of the Board's receipt of the amendment, the amendment is automatically approved. Any application for a permit submitted to the municipality within the forty-five (45) day period shall be governed by the terms of the amendment, if such amendment is approved by the Board.

SECTION 9. DISTRICTS AND ZONING MAP

A. Official Shoreland Zoning Map - The areas to which this Ordinance is applicable are hereby divided into the following districts as shown on the Official Shoreland Zoning Maps which are made a part of this Ordinance:

1. Resource Protection (RP)
2. Stream Protection (SP)
3. Limited Residential (LR)
4. Limited Commercial (LC)
5. General Development (GD)
6. Waterfront Development (WD)

B. Scale of Map

The Official Shoreland Zoning Map shall be drawn at a scale of not less than: 1 inch = 2000 feet. District boundaries shall be clearly delineated and a legend indicating the symbols for each district shall be placed the map.

C. Certification of Official Shoreland Zoning Map

The Official Shoreland Zoning Map shall be certified by the attested signature of the Municipal Clerk and shall be located in the municipal office. In the event the municipality does not have a municipal office, the Municipal Clerk shall be the custodian of the map.

D. Changes to the Official Shoreland Zoning Map

If amendments, in accordance with Section 8, are made in the district boundaries or other matter portrayed on the Official Shoreland Zoning Map, such changes shall be made on the Official Shoreland Zoning Map within thirty (30) days after the amendment has been

approved by the Board of Environmental Protection,

SECTION 10. INTERPRETATION OF DISTRICT BOUNDARIES

Unless otherwise set forth on the Official Shoreland Zoning Map, district boundary lines are property lines, the centerlines of streets, roads and rights of way, and the boundaries of the Shoreland area as defined herein. Where uncertainty exists as to the exact location of district boundary lines, the Board of Appeals shall be the final authority as to location.

SECTION 11. LAND USE REQUIREMENTS

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

SECTION 12. NON-CONFORMANCE

A. Purpose

It is the intent of this Ordinance to promote land use conformities, except that non-conforming conditions that existed before the effective date of this Ordinance or amendments thereto shall be allowed to continue, subject to the requirements set forth in section 12. Except as otherwise provided in this Ordinance, a non-conforming condition shall not be permitted to become more non-conforming.

B. General

1. Transfer of Ownership: Non-conforming structures, lots, uses and permits may be transferred, and the new owner may continue the non-conforming use or continue to use the non-conforming structure or lot, subject to the provisions of this Ordinance.

2. Repair and Maintenance: This Ordinance allows, without a permit, the normal upkeep and maintenance of non-conforming uses and structures including repairs or renovations that do not involve expansion of the non-conforming use or structure, and such other changes in a non-conforming use or structure as federal, state, or local building and safety codes may require.

C. Non-conforming Structures

(1) Expansions: All new principal and accessory structures, excluding functionally water-dependent uses, must meet the water body, tributary stream, or wetland setback requirements contained in Section 15(B)(1). A non-conforming structure may be added to or expanded after obtaining a permit from the same permitting authority as that for a new structure, if such addition or expansion does not increase the non-conformity of the structure and is in accordance with sub paragraphs (a) and (b) below.

(a) Expansion of any portion of a structure within 25 feet of the normal high-water line of a water body, tributary stream, or upland edge of a wetland is prohibited, even if the expansion will not increase nonconformity with the water body, tributary stream or wetland setback requirement. Expansion of an accessory structure that is located closer to the normal high-water line of a water body, tributary stream or upland edge of a wetland than the principal structure is prohibited, even if the expansion will not increase nonconformity with the water body, tributary stream, or wetland setback requirement.

(b) Notwithstanding paragraph (a), above, if a legally existing nonconforming principal structure is entirely located less than 25 feet from the normal high-water line of a water body, tributary stream, or upland edge of a wetland, that structure may be expanded as follows, as long as all other applicable land use standards are met and the expansion is not prohibited by Section (C)(1).

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

(c) All other legally existing nonconforming principal and accessory structures that do not meet the water body, tributary stream, or wetland setback requirements may be expanded or altered as follows, as long as other applicable municipal land use standards are met and the expansion is not prohibited by Section 12(C)(1) or Section 12(C)(a), above.

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

(ii) For structures located less than 100 feet from the normal high-water line of a great pond classified as GPA or a river flowing to a great pond classified as a GPA, the maximum combined total footprint for all structures may not be expanded to a size greater than 1,500 square feet or 30% larger than the footprint that existed on January 1, 1989, whichever is greater. The maximum height of any structure may not be made greater than 25 feet, or the height of the existing structure, whichever is greater. Any portion of those structures located less than 75 feet from the normal high-water line of a water body, tributary stream, or upland edge of a wetland must meet the footprint and height limits in Section 12(C)(1)(b)(i) and Section 12(C)(1)(c)(i), above.

(iii) In addition to the limitations in subparagraphs (i) and (ii), for structures that are legally nonconforming due to their location within the Resource Protection District

when located at less than 250 feet from the normal high-water line of a water body or the upland edge of a wetland, the maximum combined total footprint for all structures may not be expanded to a size greater than 1,500 square feet or 30% larger than the footprint that existed at the time the Resource Protection District was established on the lot, whichever is greater. The maximum height of any structure may not be made greater than 25 feet, or the height of the existing structure, whichever is greater, except that any portion of those structures located less than 75 feet from the normal high-water line of a water body, tributary stream, or upland edge of a wetland must meet the footprint and height limits in Section 12(C)(1)(b)(i) and Section 12(C)(1)©(I), above.

(d) An approved plan for expansion of a nonconforming structure must be recorded by the applicant with the registry of deeds, within 90 days of approval. The recorded plan must show the existing and proposed footprint of the nonconforming structure, the existing and proposed structure height, the footprint of any other structures on the parcel, the shoreland zone boundary and evidence of approval by the municipal review authority.

(2) FOUNDATIONS. Whenever a new, enlarged, or replacement foundation is constructed under a non-conforming structure, the structure and new foundation must be placed such that the setback requirement is met to the greatest practical extent as determined by the Planning Board, basing its decision on the criteria specified in Section 12(C)(3) Relocation, below.

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

In determining whether the building relocation meets the setback to the greatest practical extent, the Planning Board or its designee shall consider the size of the lot, the slope of the land, the potential for soil erosion, the location of other structures on the property and on adjacent properties, the location of the septic system and other on-site's 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.

4. Reconstruction or Replacement: Any non-conforming structure which is located less than the required setback from a water body, tributary stream, or wetland and which is removed, or damaged or destroyed, regardless of the cause, by more than 50% of the market value of the structure before such damage, destruction or removal, may be reconstructed or replaced provided that a permit is obtained within eighteen (18) months of the date of said damage, destruction, or removal, and provided that such reconstruction or replacement is in compliance with the water body, tributary stream, or wetland setback requirement to the greatest practical extent as determined by the Planning Board or its designee in accordance with the purposes of this Ordinance. 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 12(C)(1) above, as determined by the non-conforming footprint of the reconstructed or replaced structure at its new location. If the total amount of footprint of the original structure can be relocated or reconstructed beyond the required setback area, no portion of the relocated or reconstructed structure shall be replaced or constructed at less than the setback requirement for a new structure. When it is necessary to remove vegetation in order to replace or reconstruct a structure, vegetation shall be replanted in accordance with Section 12(C)(3) above.

In no case shall a structure be reconstructed or replaced so as to increase its nonconformity.

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 reconstruction or replacement meets the setback to greatest practical extent the Planning Board or its designee shall consider in addition to the criteria in Section 12(C)(3) above, physical condition and type of foundation present, if any.

5. 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 ho greater adverse impact on the water body, tributary stream, or wetland, or on the subject or adjacent properties and resources than the existing use.

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

D. Non-conforming Uses

1. Expansions: Expansions of non-conforming uses are prohibited, except that non-conforming residential uses may, after obtaining a permit from the Planning Board, be expanded within existing residential structures or within expansions of such structures as allowed in Section 12(C) (l) (a) above.

2. Resumption Prohibited: A lot, building or structure in or on which a non-conforming use is discontinued for a period exceeding one year, or which is superseded by a conforming use, may not again be devoted to a non-conforming use except that the Planning Board may, for good cause shown by the applicant, grant up to a one year extension to that time period. This provision shall not apply to the resumption of a use of a residential structure provided that the structure has been used or maintained for residential purposes during the preceding five (5) year period.

3. Change of Use: An existing non-conforming use may be changed to another non-conforming use provided that the proposed use has no greater adverse impact on the subject and adjacent properties and resources, including water dependent uses in the CFMA district, than the former use, as determined by the Planning Board. The determination of no greater adverse impact shall be made according to criteria listed in Section 12 (C) (5) above.

E. Non-conforming Lots

1. Non-conforming Lots: A non-conforming lot of record as of the effective date of this Ordinance or amendment thereto may be built upon, without the need for a variance, provided that such lot is in separate ownership and not contiguous with any other lot in the same ownership, and that all provisions of this Ordinance except lot area, lot width, and shore frontage can be met. Variances relating to setback or other requirements not involving lot size or 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 Ordinance, if all or part of the lots do

not meet the dimensional requirements of this Ordinance, and if a principal use or structure exists on each lot, the non-conforming lots may be conveyed separately or together, provided that the State Minimum Lot Size Law (12 M.R.S.A. 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 ordinance, each may be sold on a separate lot provided that the above referenced law and rules are complied with. When such lots are divided each lot thus created must be as conforming as possible to the dimensional requirements of this Ordinance.

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 Ordinance, if any of these lots do not individually meet the dimensional requirements of this Ordinance or subsequent amendments, and if one or more of the lots are vacant or contain no principal structure the lots shall be combined to the extent necessary to meet the dimensional requirements.

This provision shall not apply to 2 or more contiguous lots, at least one of which is nonconforming, owned by the same person or persons on December 30, 1991 and recorded in the registry of deeds if the lot is served by a public sewer or can accommodate a subsurface sewage disposal system in conformance with the State of Maine Subsurface Wastewater Disposal Rules; and

(a) Each lot contains at least 100 feet of shore frontage and at least 20,000 square feet of lot area; or

(b) Any lots that do not meet the frontage and lot size requirements of Section 12(E)(3)(a) are reconfigured or combined so that each new lot contains at least 100 feet of shore frontage and 20,000 square feet of lot area.

SECTION 13. ESTABLISHMENT OF DISTRICTS

A. Resource Protection District

The Resource Protection District includes areas in which development would adversely affect water quality, productive habitat, biological ecosystems, or scenic and natural values. This district shall include the following areas when they occur within the limits of the Shoreland zone, exclusive of the Stream Protection District, except those areas which are currently developed and areas which meet the criteria for the Limited Commercial, Waterfront Development, or General Development need not be included within the Resource Protection District.

(1) Areas within 250 feet, horizontal distance, of the upland edge of freshwater wetlands, salt marshes and salt meadows, 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 Coastal wetlands rated as of January 1, 1973 and Freshwater wetlands rated as of December 31,

2008.

(2) This district shall also include 100 year flood-plains adjacent to tidal waters as shown on FEMA's Flood Insurance Rate Maps or Flood Hazard Boundary Maps.

(3) Areas of two or more contiguous acres with sustained slopes of 20% 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.

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

The Resource Protection District includes the following:
(Note: *Map and Lot references are to Tax Maps of the Town of Lubec for 20231991.*)

a. CARRYING PLACE COVE AND WEST QUODDY HEAD:
All of that area south of the road leading to West Quoddy Head between the road leading to Carrying Place Cove from the south Lubec Road, or an extension thereof, to the sea and West Quoddy Head Light.
Also all of that area north of the road leading to West Quoddy Head between the West Quoddy Head Light and the easterly line of land of Map 3, Lot 38. Exclude that area starting at the intersection of the northerly boundary of Map 3, Lot 16, and the upland edge of the coastal wetland on Carrying Place Cove, then proceeding in a southerly direction, then in an easterly direction along Carrying Place Cove, then in a southwesterly direction along the Atlantic Ocean to the intersection at the east side of Carrying Place Cove Road, then in a northerly direction along the east side of said road to the intersection of the northern boundary of Map 3, Lot 17, then in an easterly direction to the intersection of the westerly boundary of Lot 17, Map 3, then northerly to the aforementioned northern boundary of Map 3, Lot 16, then easterly to the point of beginning.

b. MARSTON'S DIKE & THE CARRYING PLACE: SOUTH LUBEC, (THE BAR):
All of that area north and east of the South Lubec road leading to West Quoddy Head beginning at the west line of land of Map 3, Lot 3, thence westerly and then northerly to the southerly line of Map 24, Lot 14. From the southern line Map 24, Lot 14, to the southern line of Map 23, Lot 20, and 75 feet back from the upland edge of the coastal wetland shall be Resource Protection District. Land lying north of that area and south of the road leading to West Quoddy Head shall be Limited Residential and Recreation district. From the southerly line of Map 23, Lot 20, to the southerly side of the so-called Bar Road, leading to Marston's Dike, including all that area comprising the "Bar" so-called, and 25 feet back from the upland edge of the coastal wetland to be Resource Protection District. Land lying north of the above described area that area and south of the road leading to West Quoddy Head is designated to be in the General Development District.

c. CROW BROOK - SOUTH LUBEC:

An area comprising all land 250 feet north and 250 feet south measured from mid-stream of Crow Brook, beginning at a point midstream in Crow Brook 2,000 feet, west of the bridge (midstream measurement) and extending easterly to the sea.

d. MYERS MARSH - SOUTH LUBEC:
An area comprising all land east of the road leading to South Lubec beginning at the northern line of land of Map 21, Lot 6 and extending northeasterly and easterly to the westerly line of Map 20, Lot 11.

e. THE SEA SHORE - LUBEC:
An area 250 feet in depth inland of the normal high water mark, measured from the shoreline beginning at a point 500 feet west of the center of Lower Water Street, coursing south and west along the normal high water mark to the westerly line of Map 17, Lot 4. south at the sea shore and extending along the shore westerly to the westerly line of Lot 4, Map 17. excluding that area east of Water Street and north of Commercial Street beginning at Main Street Extension, thence northerly and westerly to the eastern line Lot 12, Map 15; the latter area to be zoned General Development.

f. SPRING BROOK "PIRATES CREEK" - NORTH LUBEC:
An area comprising all land 250 feet north and 250 feet south measured from mid stream of Spring Brook and beginning at a point midstream in Spring Brook 1,500 feet from the westerly edge of the bridge, midstream measurement, and extending easterly to the sea.

g. MILL CREEK - NORTH LUBEC:
All that area comprising all land 250 feet north and 250 feet south measured from midstream of Mill Creek and beginning at a point midstream, 750 feet westerly of bridge, midstream measurement, and extending easterly to the bridge.

h. PIKE'S SHORE - NORTH LUBEC:
All that area 250 feet inland of the normal high water mark and in depth as measured from the shoreline extending from the southerly to northerly boundary of land of Map 14, Lot 42.

i. MCCURDY BROOK MARSH - WEST LUBEC:
All that area within the Shoreland zone comprising the tidal marsh east of Crow Neck Road, West Lubec, between the east boundary of land of Map 37, Lot 11 and the northern boundary of Map 37, Lot 10.

j. MORANG COVE - WEST LUBEC.
All of that area 250 feet inland of the normal high water mark beginning at a point where the westerly line of Map 40, Lot 74 extends to the normal high water mark of Morang Cove, thence easterly, southerly and westerly coursing along said high water mark to a point that is opposite and ending directly 180 ° south of the point of beginning on the northerly shore at the normal high water mark of Map 10, Lot 5. in depth as measured from the shoreline along that portion of Morang Cove, beginning at a point where the westerly line of Lot 21, Map 10, extends to the shore of Morang Cove, thence easterly,

southerly and westerly along said shore to a point of the opposite shore directly south from the point of beginning.

k. All the islands in the waters of the Municipality excepting Rogers Island in Johnson's Bay and Long Island in South Bay.

B. Stream Protection District

The Stream Protection District includes all land areas within seventy-five (75) feet, *horizontal distance*, of the normal high-water line of a stream, exclusive of those areas within two hundred and fifty (250) feet, horizontal distance, of the upland edge of a freshwater or coastal wetland. Where a stream and its associated Shoreland area are located within two-hundred and fifty (250) feet, *horizontal distance*, of the above wetlands, that land area shall be regulated under the terms of the Shoreland district associated with that wetland.

C. Limited Residential District

The Limited Residential District includes those areas suitable for residential and recreational development. It includes areas other than those in the Resource Protection District, or Stream Protection District, and areas which are used less intensively than those in the Limited Commercial, Waterfront Development, or General Development District.

D. Limited Commercial District

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

(1) The Limited Commercial District shall be comprised of the lands within the Shoreland zone running along Seward's Neck and Johnson's Bay, beginning at the current Resource Protection/General Development district line near the northern tip of north Lubec and extending along the shores of Johnson's Bay up to the sewer pumping station, situated on County road just east of South Lubec road.

E. General Development District

The General Development District includes the following types of existing, intensively developed areas:

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

(a). Areas devoted to manufacturing, fabricating or other industrial activities;

(b). Areas devoted to wholesaling, warehousing, retail trade and service activities, or other commercial activities; and

(c). Areas devoted to intensive recreational development and activities, such as, but not limited to amusement parks, race tracks and fairgrounds.

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

Portions of the General Development District may also include residential development. *However*, no area shall be designated as a General Development District based solely on residential use.

3. The General Development District shall include:

(a). All of that area 250 feet in depth as measured from the shoreline beginning at a point 500 feet west of Water Street, south at the seashore and extending easterly to the Lubec Narrows, thence northerly along Lubec Narrows to the extension of Main Street east at the Lubec Narrows.

(b). Lubec Marina - All of that area within the Shoreland zone east of Water Street and North of Commercial Street beginning at Main Street Extension, thence northerly and westerly to the eastern line of land known as Johnson's Bay Marine, formerly American Can Co., also known as the former Eastern Steamship wharf and warehouse.

F. Waterfront Development District

Allows for dense residential development with reduced water frontage, lot area and lot width requirements. This district will require each newly-created lot to possess a minimum of seventy (70) feet of water frontage and include at least seven thousand (7,000) square feet of lot area. Additionally, there is a thirty five (35) foot height restriction for structures and maximum lot coverage is not to exceed fifty (50) percent. The required setback from the shoreline is twenty five (25) feet.

This zone shall include the following portion of Town:

a). All land area within the Shoreland zone beginning at the western boundary of the old Booth's factory *(Lubec tax map 15 lot #307)* and extending easterly on the water side of Johnson Street to the breakwater property *(lot 9A)* and then southerly on the waterside of Water Street to the southern boundary of Lubec tax map 15 lot #9.

SECTION 14. TABLE OF LAND USES

All land use activities, as indicated in Table 1, *Land Uses in the Shoreland Zone*, shall conform to all of the applicable land use standards in Section 15. **If a use is not specifically listed in Table 1 as being permitted, that use is prohibited.**

The district designation for a particular site shall be determined from the Official Shoreland Zoning Map and text contained within this ordinance.

Key to Land Uses Table:

Yes - A permit is not required however must comply with applicable land use standards.
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

Abbreviations:

RP - Resource Protection
LR - Limited Residential
LC – Limited Commercial
GD - General Development
SP - Stream Protection
WD – Waterfront Development

Table 1 LAND USES IN THE SHORELAND ZONE

Land Uses	SP	RP	LR	LC	GD	WD
1. Non-intensive recreational uses not requiring structures such as hunting, fishing and hiking	Yes	Yes	yes	yes	Yes	Yes
2. Motorized vehicular traffic on existing roads and trails	yes	Yes	Yes	Yes	Yes	yes
3. Clearing or removal of vegetation for activities other than timber harvesting	CEO	CEO	yes	Yes	Yes	Yes
4. Fire prevention activities	Yes	Yes	yes	Yes	Yes	yes
5. Wildlife management practices	Yes	Yes	yes	Yes	Yes	yes
6. Soil and Water conservation practices	Yes	Yes	yes	Yes	Yes	yes
7. Mineral exploration	No	yes (1)	yes (l)	Yes(1)	Yes(1)	yes (l)
8. Mineral extraction including sand and gravel	No	PB(2)	PB	PB	PB	PB
9. Surveying and resource analysis	Yes	Yes	yes	Yes	yes	yes
10. Emergency operations	Yes	Yes	yes	Yes	yes	yes
11. Agriculture	Yes	PB	yes	Yes	yes	yes
12. Aquaculture	PB	PB	PB	PB	yes	yes
13. Principal structures and uses:						
A. Single and two family residences, driveways	PB(3)	No	CEO	CEO	CEO	CEO
B. Multi-unit residence	no	No	PB	PB	PB	PB
C. Commercial	No(8)	No(8)	PB	PB	PB	PB
D. Industrial	no	No	no	No	PB	PB
E. Governmental & Institutional	no	No	PB	PB	PB	PB
F. Small non-residential facilities for educational, scientific or nature interpretation purposes	PB(3)	PB	CEO	CEO	CEO	CEO
14. Structure accessory to allowed use	PB(3)	PB	CEO	CEO	yes	CEO
15. Piers, docks, bridges or other structures extending over or below normal high water line or within a wetland						
A. Temporary	CEO	CEO	CEO	CEO	CEO	CEO
B. Permanent	PB	PB	PB	PB	PB	PB
16. Conversions of seasonal residences to year-round residences	LPI	No	LPI	LPI	LPI	LPI
17. Home occupations	PB	No	PB	CEO	yes	yes
18. Private sewage disposal systems for allowed use	LPI	No	LPI	LPI	LPI	LPI
19. Essential services						
a. Roadside distribution lines (34.5 kV and lower)	CEO(4)	CEO(4)	Yes(7)	Yes(7)	Yes(7)	Yes(7)
b. non-roadside distribution lines <11 poles in SZ	PB(4)	PB(4)	CEO	CEO	CEO	CEO
c. non-roadside distribution lines >10 poles in SZ	PB(4)	PB(4)	PB	PB	PB	PB
d. other essential services	PB(4)	PB(4)	PB	PB	PB	PB
20. Service drops, as defined, to allowed uses	yes	Yes	yes	Yes	yes	yes

21. Public and private recreational areas Involving minimal structural development	PB	PB	PB	CEO	CEO	CEO
22. Individual private campsites	CEO	CEO	CEO	CEO	CEO	CEO
23. Campgrounds	No	no(5)	PB	PB	PB	PB
24. Road construction	PB	no(6)	PB	PB	PB	PB
25. Parking facilities	No	no(5)	PB	PB	PB	PB
26. Marinas	PB	no	PB	PB	PB	PB
27. Filling and earthmoving <10 cu. Yards	CEO	CEO	yes	Yes	yes	yes
28. Filling find earthmoving >10 cu. Yards	PB	PB	CEO	CEO	CEO	CEO
29. Signs	Yes	yes	yes	Yes	yes	yes
30. Uses similar to allowed uses	CEO	CEO	CEO	CEO	CEO	CEO
31. Uses similar to uses requiring CEO Permit	CEO	CEO	CEO	CEO	CEO	CEO
32. Uses similar to uses requiring PB permit	PB	PB	PB	PB	PB	PB

Notes for Land Use table above:

1. Requires permit from CEO if more than 100 sq. ft of surface, in total, is disturbed.
2. In RP not allowed in areas so designated because of wildlife value.
3. Provided that a variance from setback requirement is obtained from the Board of Appeals
4. See further restrictions in Section 15(K)
5. Except when area is zoned for Resource Protection due to floodplain criteria in which case a permit is required from the PB.
6. Except as provided in Section 15(G)(3).
7. Permit not required but must file a written "notice of intent to construct" with CEO
8. Except commercial uses otherwise listed in this table, such as campgrounds and marinas that are allowed in the respective district.

Note:
Pursuant to Title 38 MRSA Sec. 480-C, a person performing the following activity in, on, over or adjacent to a freshwater or coastal wetland, stream or brook that may result in soil or material being washed into them requires a permit from the Department of Environmental protection.

A. Dredging, Bulldozing, removing or displacing soil, sand, vegetation or other materials;
B. Draining or otherwise dewatering;
C. Filling, including adding sand or other material to a sand dune;
D. Any construction or alteration of any permanent structure.

SECTION 15. LAND USE STANDARDS

All land use activities within the Shoreland zone shall conform to the following provisions, if applicable.

A. Minimum Lot Standards

(1)	Minimum Lot Area (sq ft)	Minimum Shore Frontage (feet)
A. Residential Per Dwelling Unit		
(a). Within the Shoreland zone Adjacent to Tidal Areas	30,000	150
(b). Within the Shoreland Zone Adjacent to Non-Tidal Areas	40,000	200
(c). Within the Waterfront Development District	7,000	70
B. Governmental, Institutional, Commercial or Industrial Principal Structure		
(a). Within the Shoreland Zone Adjacent to Tidal Areas	40,000	200
(b). Within the Shoreland Zone Adjacent to Non-tidal Areas	60,000	300
(c). Within the Waterfront Development District	7,000	70
C. Public and Private Recreational Facilities		
(a). Within the Shoreland Zone Adjacent to Tidal and Non-Tidal Areas	40,000	200

(2) Land below the normal high-water line of a water body or upland edge of a wetland and land beneath roads serving more than two (2) lots shall *not* be included toward calculating minimum lot area.

(3) Lots located on opposite sides of a public or private road shall be considered each a separate tract or parcel of land unless such road was established by the owner of land on both sides thereof after September 22, 1971.

(4) The minimum width of any portion of any lot within one hundred (100) feet, horizontal distance, of the normal high-water line of a water body or upland edge of a wetland shall be equal to or greater than the shore frontage requirement for a lot with the proposed use.

(5) If more than one residential dwelling unit, principal governmental, institutional, commercial or industrial structure or use, or combination thereof, is constructed or established on a single parcel, all dimensional requirements shall be met for each additional dwelling unit, principal structure, or use.

B. Principal and Accessory Structures

(1) All new principal and accessory structures shall be set back at least 75 feet, horizontal distance, from the normal high-water line of water bodies, tributary streams, or the upland edge of a wetland, except that in the Waterfront Development or General Development District the setback from the shoreline 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.

In addition:

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

(b) All principal structures along Significant River Segments as listed in 38 M.R.S.A. section 437, shall be set back a minimum of one hundred and twenty-five (125) feet, horizontal distance, from the normal high-water line and shall be screened from the river by existing vegetation. This provision does not apply to structures related to hydropower facilities.

(c) For principal structures, water and wetland setback measurements shall be taken from the top of a coastal bluff that has been identified on Coastal Bluff maps as being "highly unstable" or "unstable" by the Maine Geological Survey pursuant to its "Classification of Coastal Bluffs" and published on the most recent Coastal Bluff map. If the applicant and the permitting official(s) are in disagreement as to the specific location of a "highly unstable" or "unstable" bluff, or where the top of the bluff is located, the applicant may at his or her expense, employ a Maine Registered Professional Engineer, a Maine Certified Soil Scientist, a Maine State Geologist, or other qualified individual to make a determination. If agreement is still not reached, the applicant may appeal the matter to the board of appeals.

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

(2) Principal or accessory structures and expansions of existing structures which are permitted in the Resource Protection, Limited Residential, Limited Commercial, Waterfront Development, and Stream Protection Districts shall not exceed thirty-five (35) feet in height. This provision shall not apply to structures such as transmission towers, windmills, antennas, and similar structures having no floor area.

(3) The lowest floor elevation or openings of all buildings and structures, including basements, shall be elevated at least 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.

(4) With the exception of General Development Districts located adjacent to coastal wetlands and rivers that do not flow to great ponds, and Commercial Fisheries/Maritime Activities Districts, non-vegetated surfaces shall not exceed a total of twenty (20) percent of the portion of the lot located within the shoreland zone. This limitation does not apply to public boat launching facilities regardless of the district in which the facility is located.

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

a. The site has been previously altered and an effective vegetated buffer does not exist;

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

c. The site where the retaining wall will be constructed is legally existing lawn or is a site eroding from lack of naturally occurring vegetation, and which cannot be stabilized with vegetative plantings;

d. The total height of the wall(s), in the aggregate, is/are no more than 24 inches;

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

f. The area behind the wall is revegetated with grass, shrubs, trees, or a combination thereof, and no further structural development will occur within the setback area, including patios and decks; and

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

characteristics:

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

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

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

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

v. A footpath not to exceed the standards in Section 15(P)(2) subsections (a) and (b) may traverse the buffer.

(6) Notwithstanding the requirements stated above, stairways or similar structures may be allowed with a permit from the Code Enforcement Officer, to provide shoreline access in areas of steep slopes or unstable soils 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, Title 38, Section 48.0-C); and that the applicant demonstrates that no reasonable access alternative exists on the property.

C. Piers, Docks, Wharfs, Bridges and Other Structures and Uses Extending Over or Below the Normal High-Water Line of a Water Body or Within Wetland.

(1) No more than one pier, dock, wharf or similar structure extending or located below the normal high-water line of a water body or within a wetland is allowed on a single lot; except that when a single lot contains at least twice the minimum shore frontage as specified in Section 15(A), a second structure may be allowed and may remain as long as the lot is not further divided.

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

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

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

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

(6) No new structure shall be built on, over or abutting a pier, wharf, dock or other structure extending beyond the normal high-water line of a water body or within a

wetland unless the structure requires direct access to the water body or wetland as an operational necessity.

(7) 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*.

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

(9) Except in the General Development Districts and Commercial Fisheries/Maritime Activities District, structures built on, over or abutting a pier, wharf, dock or other structure extending beyond the normal high-water line of a water body or within a wetland shall not exceed twenty (20) feet in height above the pier, wharf, dock or other structure.

(10) Vegetation may be removed in excess of the standards in Section 15(P) of this ordinance in order to conduct shoreline stabilization of an eroding shoreline, provided that a permit is obtained from the Planning Board. Construction equipment must access the shoreline by barge when feasible as determined by the Planning Board.

(a) When necessary, the removal of trees and other vegetation to allow for construction equipment access to the stabilization site via land must be limited to no more than 12 feet in width. When the stabilization project is complete the construction equipment accessway must be restored.

(b) Revegetation must occur in accordance with Section 15(S).

(11) A deck over a river may be exempted from the shoreland setback requirements if it is part of a downtown revitalization project that is defined in a project plan approved by the legislative body of the municipality, and may include the revitalization of structures formerly used as mills that do not meet the structure setback requirements, if the deck meets the following requirements:

(a) The total deck area attached to the structure does not exceed 700 square feet;

(b) The deck is cantilevered over a segment of a river that is located within the boundaries of the downtown revitalization project;

(c) The deck is attached to or accessory to an allowed commercial use in a structure that was constructed prior to 1971 and is located within the downtown revitalization project;

(d) The construction of the deck complies with all other applicable standards, except

the shoreline setback requirements in section 15(B); and

(e) The construction of the deck complies with all other state and federal laws.

D. Campgrounds

Campgrounds shall conform to the minimum requirements imposed under State licensing procedures and the following:

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

2. The areas intended for placement of a recreational vehicle, tent or shelter, and utility and service buildings shall be set back a minimum of seventy-five (75) feet, horizontal distance, from the normal high-water line of water bodies, tributary streams, or the upland edge of a wetland.

E. Individual Private Campsites

Individual private campsites not associated with campgrounds are allowed provided the following conditions are met:

1. One campsite per lot existing on the effective date of this Ordinance, or thirty thousand (30,000) square feet of lot area within the Shoreland zone, whichever is less, may be permitted.

2. Campsite placement on any lot, including the area intended for a recreational vehicle or tent platform, shall be set back seventy-five (75) feet, horizontal distance, from the normal high-water line of water bodies, tributary streams, or the upland edge of a wetland.

3. Only one recreational vehicle shall be allowed on a campsite. The recreational vehicle shall not be located on any type of permanent foundation except for a gravel pad, and no structure except a canopy shall be attached to the recreational vehicle.

4. The clearing of vegetation for the setting of the recreational vehicle, tent or similar shelter in a Resource Protection District shall be limited to one thousand (1000) square feet.

5. A written sewage disposal plan describing the proposed method and location of sewage disposal shall be required for each campsite .and shall be approved by the Local Plumbing Inspector. Where disposal is off-site, written authorization from the receiving facility or land owner is required.

6. When a recreational vehicle, tent or similar shelter is placed on-site for more than one

hundred and twenty (120) days per year, all requirements for residential structures shall be met, including the installation of a subsurface sewage disposal system in compliance with the State of Maine Subsurface Wastewater Disposal Rules unless served by public sewage facilities.

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

F. Parking Areas

1. Parking areas shall meet the shoreline and tributary stream setback requirements for structures for the district in which such areas are located. The setback requirement for parking areas serving public boat launching facilities, in Districts other than the Waterfront Development District or the General Development District may be reduced to 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.

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

3. In determining the appropriate size of proposed parking facilities the following shall apply.
   a. Typical parking space: Approximately ten (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.

G. Roads and Driveways

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

1. Roads and driveways shall be set back at least seventy-five (75) feet, horizontal distance, from the normal high-water line of water bodies, tributary steams, 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 road and/or driveway setback requirement shall be no less than fifty (50) feet, horizontal distance, upon clear showing by the applicant that appropriate techniques will be used to prevent sedimentation of the water body, tributary stream, or wetland. Such techniques may include, but are not limited to, the installation of settling basins, and/or the effective use of additional ditch relief culverts and turnouts placed so as to avoid sedimentation of the water body, tributary stream, or wetland.

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

Section 15 (G)(1) does not apply to approaches to water crossings or to roads or driveways that provide access to permitted structures, and facilities located nearer to the shoreline or tributary steam due to an operational necessity, excluding temporary docks for recreational uses. Roads and driveways providing access to permitted structures within the setback area shall comply fully with the requirements of Section 15(G)(1) 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 setback from a water body, tributary stream, or wetland.

3. New roads and driveways are prohibited in a RP district except that the Planning Board may grant a permit to construct a road or driveway to provide access to permitted uses within the district. A road or driveway may also be approved by the Planning Board in a Resource Protection District, upon a finding that no reasonable alternative route or location is available outside the district. When a road or driveway is permitted in an RP District the road and/or driveway shall be set back as far as possible from the normal high-water line of a water body, tributary stream, or upland edge of a wetland.

4. Road and driveway banks shall be no steeper than a slope of two (2) horizontal to one (1) vertical, and shall be graded and stabilized in accordance with the provisions for erosion and sedimentation control contained in Section 15(P).

5. Road and driveway grades shall be no greater than ten (10) percent except for segments of less than two hundred (200) feet.

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

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

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

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

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

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

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

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

9. New permanent roads are not allowed within the shoreland zone along Significant River Segments except:

(a) To provide access to structures or facilities within the zone; or

(b) When the applicant demonstrates that no reasonable alternative route exists outside the shoreland zone. When roads must be located within the shoreland zone they shall be set back as far as practicable from the normal high-water line and screened from the river by existing vegetation.

H. Signs

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

1. Signs relating to goods and services sold on the premises shall be allowed, provided that such signs shall not exceed six (6) square feet in area and shall not exceed two (2) signs per premises. In the Limited Commercial (LC) 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. Name signs are allowed, provided such signs shall not exceed two (2) signs per premises

and do not exceed twelve (12) square feet in aggregate.

3. Residential users may display a single sign not over three (3) square feet in area relating to the sale, rental, or lease of the premises.

4. Signs relating to trespassing and hunting shall be allowed without restriction as to number provided that no such sign shall exceed two (2) square feet in area.

5. Signs relating to public safety shall be allowed without restriction.

6. No sign shall extend higher than twenty (20) feet above the ground.

7. Signs may be illuminated only by shielded, non-flashing lights.

I. Storm Water Runoff

1. All new construction and development shall be designed to minimize storm water runoff from the site in excess of the natural predevelopment conditions. Where possible, existing natural runoff control features, such as berms, swales, terraces and wooded areas shall be retained in order to reduce runoff and encourage infiltration of storm waters.

2. Storm water runoff control systems shall be maintained as necessary to ensure proper functioning.

J. Septic Waste Disposal

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.

NOTE: 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.

K. Essential Services

1. Where feasible, the installation of essential services shall be limited to existing public ways and existing service corridors.

2. The installation of essential services, other than roadside distribution lines, is not allowed in a Resource Protection or Stream Protection District, except to provide services to a permitted use within said district, or except where the applicant demonstrates that no reasonable alternative exists. Where allowed, such structures and facilities shall be located so as to minimize any adverse impacts on surrounding uses and resources, including visual impacts.

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

L. Mineral Exploration and Extraction

Mineral exploration to determine the nature or extent of mineral resources shall be accomplished by hand sampling, test boring, or other methods which create minimal disturbance of less than one hundred (100) square feet of ground surface. A permit from the Code Enforcement Officer shall be required for mineral exploration which exceeds the above limitation. All excavations, including test pits and holes, shall be immediately capped, filled or secured by other equally effective measures to restore disturbed areas and to protect the public health and safety.

Mineral extraction may be permitted under the following conditions:

(1) A reclamation plan shall be filed with, and approved, by the Planning Board before a permit is granted. Such plan shall describe in detail procedures to be undertaken to fulfill the requirements of Section 15 (M)(4) below.

(2) No part of any extraction operation, including drainage and runoff control features, shall be permitted within one hundred (100) feet, horizontal distance, of the normal high-water line of a great pond classified GPA or a river flowing to a great pond classified GPA, and within seventy-five (75) feet, horizontal distance, of the normal high-water line of any other water body, tributary stream, or the upland edge of a wetland. Extraction operations shall not be permitted within fifty (50) feet, horizontal distance, of any property line without written permission of the owner of such adjacent property.

(3) Developers of new gravel pits along Significant River Segments shall demonstrate that no reasonable mining site outside the shoreland zone exists. When gravel pits must be located within the zone, they shall be set back as far as practicable from the normal high-water line and no less than seventy-five (75) feet and screened from the river by existing vegetation.

(4) Within twelve (12) months following the completion of extraction operations at any extraction site, which operations shall be deemed complete when less than one hundred (100) cubic yards of materials are removed in any consecutive twelve (12) month period, ground levels and grades shall be established in accordance with the following:

(a) All debris, stumps, and similar material shall be removed for disposal in an approved location, or shall be buried on-site. Only materials generated on-site may be buried or covered on-site.

(b) The final graded slope shall be two and one-half to one (2 1/2:1) slope or flatter.

(c) Top soil or loam shall be retained to cover all disturbed land areas, which shall be reseeded and stabilized with vegetation native to the area. Additional topsoil or loam shall be obtained from off-site sources if necessary to complete the stabilization project.

(5) In keeping with the purposes of this Ordinance, the Planning Board may impose such conditions as are necessary to minimize the adverse impacts associated with mineral extraction operations on surrounding uses and resources.

M. Agriculture

1. All spreading of manure shall be accomplished in conformance with the Manure Utilization Guidelines published by the Maine Department of Agriculture on November 1, 2001 and the Nutrient Management Law (7 M.R.S.A. Sections 4201-4209)

2. Manure shall not be stored or stockpiled within seventy-five (75) feet horizontal distance, of 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.

3. Agricultural activities involving tillage of soil greater than forty thousand (40,000) square feet in surface area, within the Shoreland zone shall require a Conservation Plan to be filed with the Planning Board. Non-conformance with the provisions of said plan shall be considered to be a violation of this Ordinance.

4. There shall be no new tilling of soil within seventy-five (75) feet, horizontal distance, from water bodies 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 this ordinance and not in conformance with this provision may be maintained.

5. Newly established livestock grazing areas shall not be permitted within seventy-five (75) feet, horizontal distance of water bodies 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 the above setback provisions may continue, provided that such grazing is conducted in accordance with a Conservation Plan.

N. Timber Harvesting

– REPEALED – Bureau of Forestry will administer all Timber Harvesting regulations in the

Town of Lubec.

O. Clearing or Removal of Vegetation for Activities other than Timber Harvesting

(1) In a Resource Protection District abutting a great pond, there shall be no cutting of vegetation within the strip of land extending 75 feet, horizontal distance, inland from the normal high-water line, except to remove hazard trees as described in section Q.

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

(2) Except in areas as described in Section P(1), above, within a strip of land extending one-hundred (100) feet, horizontal distance, inland from the normal high-water line of a great pond classified GPA or a river flowing to a great pond classified GPA, or within a strip extending seventy-five (75) feet, horizontal distance, from any other water body, tributary stream, or the upland edge of a wetland, a buffer strip of vegetation shall be preserved as follows:

(a) There shall be no cleared opening greater than 250 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 single footpath not to exceed six (6) feet in width as measured between tree trunks and/or shrub stems is allowed for accessing the shoreline provided that a cleared line of sight to the water through the buffer strip is not created.

(b) Selective cutting of trees within the buffer strip is allowed provided that a well-distributed stand of trees and other natural vegetation is maintained. For the purposes of Section 15(P)(2)(b) a "well-distributed stand of trees" adjacent to a great pond classified GPA or a river or stream flowing to a great pond classified GPA, shall be defined as maintaining a rating score of 24 or more in each 25-foot by 50-foot rectangular (1250 square feet) area as determined by the following rating system.

Diameter of Tree at 4-1/2 feet Above Ground Level (inches)	**Points**
2 - < 4 in.	1
4 – <8 in.	2
8-< 12 in.	4
12 in. or greater	8

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

NOTE: As an example, adjacent to a great pond, if a 25-foot x 50-foot plot contains four (4) trees between 2 and 4 inches in diameter, two trees between

4 and 8 inches in diameter, three trees between 8 and 12 inches in diameter, and two trees over 12 inches in diameter, the rating score is:

(4x1)+(2x2) + (3x4) + (2x8) = 36 points

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

The following shall govern in applying this point system:

(i) The 25-foot by 50-foot rectangular plots must be established where the landowner or lessee proposes clearing within the required buffer;

(ii) Each successive plot must be adjacent to, but not overlap a previous plot;

(iii) Any plot not containing the required points must have no vegetation removed except as otherwise allowed by this Ordinance;

(iv) Any plot containing the required points may have vegetation removed down to the minimum points required or as otherwise allowed by is Ordinance;

(v) Where conditions permit, no more than 50% 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 Section 15(P)(2)(b) "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 above provisions, no more than 40% of the total volume of trees four (4) inches or more in diameter, measured at 4 1/2 feet above ground level may be removed in any ten (10) year period.

(c) 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 Section 15(P) paragraphs (2) and (2)(a) above.

(d) Pruning of tree branches, on the bottom 1/3 of the tree is allowed.

(e) In order to maintain a buffer strip of vegetation, when the removal of storm-

damaged, dead or hazard trees results in the creation of cleared openings, these openings shall be replanted with native tree species in accordance with Section Q, below, unless existing new tree growth is present.

(f) In order to maintain the vegetation in the shoreline buffer, clearing or removal of vegetation for allowed activities, including associated construction and related equipment operation, within or outside the shoreline buffer, must comply with the requirements of Section 15.P(2).

(3) At distances greater than one hundred (100) feet, horizontal distance, from a great pond classified GPA or a river flowing to a great pond classified GPA, and seventy-five (75) feet, horizontal distance, from the normal high-water line of any other water body, tributary stream, or the upland edge of a wetland, there shall be allowed on any lot, in any ten (10) year period, selective cutting of not more than forty (40) percent of the volume of trees four (4) inches or more in diameter, measured 4 1/2 feet above ground level. Tree removal in conjunction with the development of permitted uses shall be included in the forty (40) percent calculation. For the purposes of these standards volume may be considered to be equivalent to basal area.

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

(4) Legally existing nonconforming cleared openings may be maintained, but shall not be enlarged, except as allowed by this Ordinance.

(5) Fields and other cleared openings which have reverted to primarily shrubs, trees, or other woody vegetation shall be regulated under the provisions of Section 15(P).

P. Erosion and Sedimentation Control

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

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

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

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

4. Any exposed ground area shall be temporarily or permanently stabilized within one (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. All drainage ways 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.

Q. 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, and 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.

R. Water Quality

No activity shall deposit on or into the ground or discharge to the waters of the state any pollutant that, by itself or in combination with other activities or substances will impair designated uses or the water classification of the water body, tributary stream, or wetland.

S. Archaeological Sites

Any proposed land use activity involving structural development or soil disturbance on or adjacent to sites listed on, or eligible to be listed on the National Register of Historic Places, as determined by the permitting authority, shall be submitted by the applicant to the Maine Historic Preservation Commission for review and comment, at least 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.

SECTION 16. ADMINISTRATION

A. Administering Bodies and Agents

1. Code Enforcement Officer

A Code Enforcement Officer shall be appointed or reappointed by the municipal officers annually by July 1st.

2. Board of Appeals

A Board of Appeals has been created in accordance with the provisions of 30-A M.R.S.A. Section 2691.

3. Planning Board

A Planning Board has been created in accordance with the provisions of Maine State law.

B. Permits Required

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

1. No permit is required for the replacement of an existing road culvert 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 water-

course.

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

3 Any permit required by this Ordinance shall be in addition to any other permit required by other law or ordinance.

C. Permit Application

1. Every applicant for a permit shall submit a written application, including a scaled site plan, on a form provided by the municipality, to the appropriate official as indicated in Section 14.

2. All applications shall be signed by an owner or individual who can show evidence of right, title, or interest in the property or by an agent, representative, tenant, or contractor of the owner with authorization from the owner to apply for a permit hereunder, certifying that the information in the application is complete and correct.

3. All applications shall be dated, and the Code Enforcement Officer or Planning Board, as appropriate, shall note upon each application the date and time of its receipt.

4. If the property is not served by a public sewer, a valid plumbing permit or a completed application for a plumbing permit, including the site evaluation approved by the Plumbing Inspector, shall be submitted whenever the nature of the proposed structure or use would require the installation of a subsurface sewage disposal system.

5. All applicants for land-use permits shall pay a fee of $20.00.

D. Procedure for Administering Permits

Within 35 days of the date of receiving a written application, the Planning Board or Code Enforcement Officer, as indicated in Section 3, shall notify the applicant in writing either that the application is a complete application, or, if the application is incomplete, that specified additional material is needed to make the application complete. The Planning Board or the Code Enforcement officer, as appropriate, shall approve, approve with conditions, or deny all permit applications in writing within 35 days of receiving a completed application. However, if the Planning Board has a waiting list of applications, a decision on the application shall occur within 35 days after the first available date on the Planning Board's agenda following receipt of the completed application, or within 35 days of the public hearing. Permit shall be approved if the proposed use or structure is found to be in conformance with the purposes and provisions of this Ordinance.

The applicant shall have the burden of proving that the proposed land use activity is in conformity with the purposes and provisions of this Ordinance.

All applicants for a building permit or other approval under this Ordinance shall provide, as part of the application, preconstruction photographs of both (i) the development site, and (ii) shoreline vegetation at the time of the application and prior to the start of any work under the approval or permit. No later than twenty (20) days after the completion of the work, the applicant shall provide the Code Enforcement Officer with pre-construction photographs of (i) the development site, and (ii) shoreline vegetation following completion of the work under the approval or permit.

After the submission of a complete application to the Planning Board, the Board shall approve an application or approve it with conditions if it makes a positive finding based on the information presented that the proposed use:

1. Will maintain safe and healthful conditions;

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

3. Will adequately provide for the disposal of all wastewater;

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

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

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

7. Will avoid problems associated with floodplain development and use; and

8. Is in conformance with the provisions of Section 15, Land Use Standards.

If a permit is either denied or approved with conditions, the reasons as well as conditions shall be stated in writing. No approval shall be granted for an application involving a structure if the structure would be located in an unapproved subdivision or would violate any other local ordinance, or regulation, or statute administered by the municipality.

E. Expiration of Permit

Permits shall expire one year from the date of issuance if a substantial start is not made in construction or in the use of the property during that period. If a substantial start is made within one year of the issuance of the permit, the applicant shall have one additional year to complete the project, at which time the permit shall expire. With regard to permits issued under the Town's prior Shoreland Zoning Ordinance, the permits shall continue in full force and effect according to the terms under which they were issued.

F. Installation of Public Utility Service

No public utility, water district, sanitary district or any utility company of any kind may install services to any new structure located in the Shoreland zone unless written authorization attesting to the validity and currency of all local permits required under this or any previous ordinance has been issued by the appropriate municipal officials.

Following installation of service, the company or district shall forward the written authorization to the municipal officials, indicating that installation has been completed.

G. Appeals

1. Powers and Duties of the Board of Appeals

The Board of Appeals shall have the following powers:

(a). Administrative Appeals: To hear and decide administrative appeals, on an appellate basis, where it is alleged by an aggrieved party that there is an error in any order, requirement, decision, or determination made by, or failure to act by the Planning Board in the enforcement or administration of this Ordinance; and to hear and decide administrative appeals on a de novo basis where it is alleged by an aggrieved party that there is an error in any order, requirement, decision or determination made by, or failure to act by, the Code Enforcement Officer in his or her review of and action on a permit application under this Ordinance. Any order, requirement, decision or determination made, or failure to act, in the enforcement of this ordinance is not appealable to the Board of Appeals.

(b). Variance Appeals: To authorize variances upon appeal, with in the limitations set forth in this Ordinance.

2. Variance Appeals

Variances may be granted only under the following conditions:

(a). Variances may be granted only from dimensional requirements including but not limited to, lot width, structure height, percent of lot coverage, and setback requirements.

(b). Variances shall not be granted for establishment of any uses otherwise prohibited by this Ordinance.

(c). The Board shall not grant a variance unless it finds that:

(1) The proposed structure or use would meet the provisions of Section 15 except for the specific provision which has created the non-conformity and from which relief is sought; and

(2) The strict application of the terms of this ordinance would result in undue hardship. The term "undue hardship" shall mean:

i. That the land in question cannot yield a reasonable return unless a variance is granted;

ii. That the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;

iii. That the granting of a variance will not alter the essential character of the locality; and

iv. That the hardship is not the result of action taken by the applicant or a prior owner.

(d) Notwithstanding Section l6(G)(2)(c)(2) above,

The Board of Appeals may grant a variance to an owner of a residential dwelling for the purpose of making that dwelling accessible to a person with a disability who resides in or regularly uses the dwelling. The board shall restrict any variance granted under this subsection solely to the installation of equipment or the construction of structures necessary for access to or egress from the dwelling by the person with the disability. The board may impose conditions on the variance, including limiting the variance to the duration of the disability or to the time that the person with the disability lives in the dwelling. The term "structures necessary for access to or egress from the dwelling" shall include railing, wall, or roof systems necessary for the safety or effectiveness of the structure.

(e). The Board of Appeals shall limit any variances granted as strictly as possible in order to insure conformance with the purposes and provisions of this ordinance to the greatest extent possible, and in doing so may impose such conditions to a variance as it deems necessary. The party receiving the variance shall comply with any conditions imposed.

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

3. Administrative Appeals

When the Board of Appeals reviews a decision of the Code Enforcement Officer the Board of Appeals shall hold a "de novo" hearing. At this time the Board may receive and consider new evidence and testimony, be it oral or written. When

acting in a "de novo" capacity the Board of Appeals shall hear and decide the matter afresh, undertaking its own independent analysis of evidence and the law, and reaching its own decision.

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

4. Appeal Procedure

(a). Making an Appeal

1. An administrative or variance appeal may be taken to the Board of Appeals by an aggrieved party from any decision of the Code Enforcement Officer or the Planning Board, except for enforcement related matters as described in Section 16 (G)(1)(a) above. Such an appeal shall be taken within thirty (30) days of the date of the official, written decision appealed from, and not otherwise, except that the Board, upon a showing of good cause, may waive the thirty (30) day requirement.

2. Applications for appeals shall be made by filing with the Board of Appeals a written notice of appeal which includes:

a. A concise written statement indicating what relief is requested and why the appeal or variance should be granted.

b. A sketch drawn to scale showing lot lines, location of existing buildings and structures and other physical features of the lot pertinent to the relief sought.

3. Upon receiving an application for an administrative appeal or a request for a variance, the Code Enforcement Officer or Planning Board, as appropriate, shall transmit to the Board of Appeals all of the papers constituting the record of the decision appealed from.

4. The Board of Appeals shall hold a public hearing on an administrative appeal or a request for a variance within thirty-five (35) days of its receipt of a complete written application, unless this time period is extended by the parties.

(b). Decision by Board of Appeals

1. A majority of the full voting membership of the Board shall constitute a quorum for the purpose of deciding an appeal.
2. The person filing the appeal shall have the burden of proof.

3. The Board shall decide all administrative appeals and variance appeals within thirty five (35) days after the close of the hearing, and shall issue a written decision on all appeals.

4. The Board of Appeals shall state the reasons and basis for its decision, including a statement of the facts found and conclusions reached by the Board. The Board shall cause written notice of its decision to be mailed or hand-delivered to the applicant and to the Department of Environmental Protection within seven (7) days of the Board's decision. Copies of written decisions of the Board of Appeals shall be given to the Planning Board, Code Enforcement Officer, and the municipal officers.

5. Appeal to Superior Court

Except as provided by 30-A M.R.S.A. section 2691(3)(F), any aggrieved party who participated as a party during the proceedings before the Board of Appeals may take an appeal to Superior Court in accordance with State laws within forty-five (45) days from the date of any decision of the Board of Appeals.

6. Reconsideration

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

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

H. Enforcement

1. Nuisances

Any violation of this Ordinance shall be deemed to be a nuisance.

2. Code Enforcement Officer

a. It shall be the duty of the Code Enforcement Officer to enforce the provisions of this Ordinance.
If the Code Enforcement Officer shall find that any provision of this Ordinance is being violated, he or she shall notify in writing the person responsible for such violation, indicating the nature of the violation and ordering the action necessary to correct it, including discontinuance of illegal use of land, buildings or structures, or work being done, removal of illegal buildings or structures, and abatement of nuisance conditions. A copy of such notices shall be submitted to the municipal officers and be maintained as a permanent record.

b. The Code Enforcement Officer shall conduct on-site inspections to ensure compliance with all applicable laws and conditions attached to permit approvals. The Code Enforcement Officer shall also investigate all complaints of alleged violations of this Ordinance.

c. 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, appeals, court action, violations investigated, violations found, and fees collected. On an annual 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.

d. The Code Enforcement Officer's duties incorporate the Memorandum of Agreement between Maine Department of Agriculture, Conservation & Forestry Bureau of Forestry and the Town of Lubec relating to Timber Harvesting and Related Activities in Shoreland Areas in the Town of Lubec. (See Appendix A)

3. Legal Actions

When the above action does not result in the correction or abatement of the violation or nuisance condition, the Municipal Officers, upon notice from the Code Enforcement Officer, are hereby directed to institute any and all actions and proceedings, either legal or equitable, including seeking injunctions of violations and the imposition of fines, that may be appropriate or necessary to enforce the provisions of this Ordinance in the name of the municipality. The municipal officers, or their authorized agent, are hereby authorized to enter into administrative consent agreements for the purpose of eliminating violations of this Ordinance and recovering fines without Court action. Such agreements shall not allow an illegal structure or use to continue unless there is clear and convincing evidence that the illegal structure or use was constructed or conducted as a direct result of erroneous advice given by an authorized municipal official and there is no evidence that the owner acted in bad faith or unless the removal of the structure or use will result in a threat, hazard to public health and safety, or will result in substandard environmental damage.

4. Fines

Any person, including but not limited to a landowner, a landowner's agent or a contractor, who violates any provision or requirement of this Ordinance shall be penalized in accordance with 30-A, M.R.S.A. section 4452.

SECTION 17. DEFINITIONS

Terms not defined herein shall have the customary dictionary meaning. "As" used in this Ordinance, the following definitions apply:

Accessory dwelling unit – a self-contained dwelling unit located within, attached to or detached from a single-family dwelling unit located on the same parcel of land. An accessory dwelling unit must be a minimum of 190 square feet. An accessory dwelling unit must independently comply with the dimensional requirements contained in Section 15(A)(1)(a) of this Ordinance in order to be permitted.

Accessory structure or use - a use or structure which is incidental and subordinate to the principal use or structure. Accessory uses, when aggregated shall not subordinate the principal use of the lot. A deck or a 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.

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

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

Aquaculture - 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 ½ feet above ground level and inclusive of bark.

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

Boat Launching Facility - a facility designed primarily for the launching and landing of water craft, and which may include an access ramp, docking area, and parking spaces for vehicles and trailers.

Bureau – State of Maine Department of Conservation's Bureau of Forestry

Campground - any area or tract of land to accommodate two (2) or more parties in temporary living quarters, including, but not limited to tents, recreational vehicles or other shelters.

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

Coastal wetland - all tidal and sub-tidal lands; all lands with vegetation present that is tolerant of salt water and occurs primarily in a salt water or estuarine habitat; and any swamp, marsh, bog, beach, flat or other contiguous low land that is subject to tidal action during the 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.

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

Conditioned floor area. The horizontal projection of the floors associated with the conditioned space.

Conditioned space. This term shall have the same meaning as set forth in the then-current building code applicable to one and two-family dwellings.

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

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

Development - a change in land use involving alteration of the land, water or vegetation, or the addition or alteration of structures or other construction not naturally occurring

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

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

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

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

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

Expansion of use - the addition of one or more months to a use's operating season; additional hours of operation; or the use of more floor area or ground area devoted to a particular use.

Family - one or more persons occupying premises and living as a single housekeeping unit.

Floor area - 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.

Footprint - the entire area of ground covered by the structure(s) on a lot, including but not limited to cantilevered or similar overhanging extensions, as well as unenclosed structures, such as patios and decks.

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

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

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

Forested wetland - a freshwater wetland dominated by woody vegetation that is six (6) meters (approx. 20 ft.) tall or taller.

Foundation - 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.

Freshwater wetland - freshwater swamps/ marshes, bogs and similar areas which are:

1. Of ten or more contiguous acres; or of less than 10 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 (10) acres; and

2. Inundated or saturated by surface or ground water at a frequency and for 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.

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

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

Harvest Area - 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.

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

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

Home occupation - an occupation or profession which is customarily conducted on or in a residential structure or property and which is:

1. clearly incidental to and compatible with the residential use of the property and surrounding residential uses; and which
2. employs no more than two (2) persons other than family members residing in home.

Increase in nonconformity of a structure – 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. Included in this allowance are expansions which in-fill irregularly shaped structures.

Individual private campsite - an area of land which is not associated with a campground, but which is developed for repeated camping by only one group not to exceed ten (10) individuals and which involves site improvements which may include but not be limited to a gravel pad, parking area, fire place, or tent platform.

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

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

Land Management Road - 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 - a forester licensed under 32 M.R.S.A. Chapter 76

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

Marina - 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 - 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.

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

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

Minimum lot width - 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.

Multi-unit residential - a residential structure containing three (3) or more residential dwelling units.

Native – indigenous to the local forests.

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

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

Non-conforming structure - 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 Ordinance or subsequent

amendments took effect.

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

Normal high-water line(non-tidal waters) - 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.

Person - 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, wharfs, bridges and other structures and uses extending over or below the normal high-water line or within a wetland-

Temporary: Structures which remain in or over the water for less than seven (7) months in any period of twelve (12) consecutive months.

Permanent: Structures which remain in or over the water for seven (7) months or more in any period of twelve (12) consecutive months.

Principal structure - a structure other than one which is used for purposes wholly incidental or accessory to the use of another building or use on the same premises.

Principal use - a use other than one which is wholly incidental or accessory to another use on the same premises.

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

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

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

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

Recreational vehicle - a vehicle or an attachment to a vehicle designed to be towed, and

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

Replacement system - a system intended to replace:

1. an existing system which is either malfunctioning or being upgraded with no significant change of design flow or use of the structure, or

2. any existing overboard wastewater discharge.

Residential dwelling unit - 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.

Residual basal area - the sum of the basal area of trees remaining on a harvested site.
Residual Stand – a stand of trees remaining in the forest following timber harvesting and related activities

Riprap - rocks, irregularly shaped, and at least six (6) inches in diameter, used for erosion control and soil stabilization, typically used on ground slopes of two (2) units horizontal to one (1) unit vertical or less

Road - 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 - 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 salt marsh cordgrass (Spartina alterniflora). More open areas often support widgeon grass, eelgrass, and Sago pondweed.

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

Service drop - 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

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 - the nearest horizontal distance from the normal high-water line of a waterbody, 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 - 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 - the land area located within two hundred and fifty (250) feet, *horizontal distance*, of the normal high-water line of the upland edge of a coastal wetland, including all areas affected by tidal action; within 250 feet of the upland edge of a freshwater wetland; or within seventy-five (75) feet, horizontal distance, of the normal high water line of a stream.

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

Skid Road or Skid Trail - 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 - the residue e.g., treetops and branches, left on the ground after a timber harvest

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

Stream – a free-flowing body of water from the outlet of a great pond or the confluence of two (2) perennial streams as depicted on the most recent, highest resolution version of the national hydrography dataset available from the United States Geological Survey on the website of the United States Geological Survey or national map to the point where the stream becomes a river to where the stream meets the shoreland zone of another water body or wetland. When a stream meets the shoreland zone of a water body or wetland and a channel is also a stream.

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

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

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

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

Tidal waters – all waters affected by tidal action during the highest annual tide.

Timber harvesting - the cutting and removal of timber for the primary purpose of selling or processing forest products. The cutting or removal of trees in the shoreland zone on a lot that has less than two (2) acres within the Shoreland zone shall not be considered timber harvesting. Such cutting or removal of trees shall be regulated pursuant to Section 15 (O), Clearing or Removal of Vegetation for Activities Other Than Timber Harvesting.

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

Tributary stream - 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 vegetation or presence of aquatic vegetation and by the presence of a bed devoid of topsoil containing waterborne deposits on exposed soil, parent material or bedrock, and which flows to a water body or wetland as defined. This definition does not include the term "stream" as defined elsewhere in this Ordinance, and only applies to that portion of the tributary stream located within the Shoreland zone of the receiving water body or wetland.

Upland edge of a wetland - the boundary between upland and wetland. For purposes of a coastal wetland, this boundary is the line formed by the landward limits of the salt tolerant vegetation and/or the highest annual tide level, 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 (approx. twenty (20) ft) tall or taller.

Vegetation - all live trees, shrubs, 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 – 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.

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

Water body - any great pond, river, or stream.

Water Crossing - any project extending from one bank to the opposite bank of a river, stream, tributary stream, or wetland whether under, through, or over the water or wetland. Such projects include but may not be limited to roads, fords, bridges, culverts, water lines, sewer lines, and cables as well as maintenance work on these crossings.

Wetland - a freshwater or coastal wetland.

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

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

Appendix A

MEMORANDUM OF AGREEMENT

between

MAINE DEPARTMENT OF AGRICULTURE, CONSERVATION & FORESTRY
BUREAU OF FORESTRY

and

the Town of Lubec

relating to

TIMBER HARVESTING AND RELATED ACTIVITIES IN SHORELAND AREAS
IN THE Town of Lubec

I. PURPOSE

The purpose of this Memorandum of Agreement (Agreement) is to establish a joint working relationship between the Department of Agriculture, Conservation and Forestry, Maine Forest Service (MFS) and the Town of Lubec that results in improved compliance with Chapter 21 of the MFS rules, Statewide Standards for Timber Harvesting and Related Activities in Shoreland Areas, and promotes the efficient use of interagency resources in the organized territories of Maine, cities and towns (municipality). This agreement covers preventive training and counseling, remediation planning and execution, and informal and formal law enforcement related to potential and actual violations of the timber harvesting provisions of the Chapter 21, Statewide Standards for Timber Harvesting and Related Activities in Shoreland Areas and 38 M.R.S. §§435-449.

II. GEOGRAPHIC SCOPE

This Agreement is limited to the municipality of Lubec.

III. JOINT PREVENTION, REMEDIATION, AND ENFORCEMENT ACTIVITIES

A. Municipal adoption of an ordinance identical to the statewide standards. A municipality that adopts an ordinance that is identical to the statewide standards

(SWS) option 2: 38 M.R.S. §438-B (3) may request the director of the MFS (director) to administer and enforce the ordinance or to participate in joint administration and enforcement of the ordinance with the municipality beginning January 1, 2013, or within 60 days of the director's receipt of a written request from the municipality. When a municipality requests joint administration and enforcement of its ordinance, the director and the municipality shall enter into a memorandum of agreement that delineates the administrative and enforcement duties. In order to continue to receive this assistance, a municipality must amend its ordinance as necessary to maintain provisions that are identical to the statewide standards. It will be the municipality's responsibility and not that of the MFS under Option 2 to administer and enforce any municipal permitting requirements.

B. The MFS enforcement of the SWS will require the collection of evidence for activities within the shoreland zone that document potential or actual violations of Chapter 21. Municipalities that have chosen joint enforcement of the SWS, option 2: 38 M.R.S. §438-B (3) will retain the authority to prosecute alleged violations and will have access, upon written request, to MFS case files. The MFS will keep the municipality informed of enforcement actions via the Code Enforcement Officer. If a municipality fails to commence an enforcement action for alleged violations of the SWS within a reasonable period of time from receiving the case files (90 days), the MFS will be authorized to take any action it deems necessary to pursue the case and to prosecute the responsible party for the alleged violation.

C. Education and Information. Within the limits of its resources, the MFS will organize, arrange, and conduct technical training sessions/workshops for landowners, loggers, and foresters. Course content will focus on the prevention of violations through education about applicable laws and the presentation of technical information to prevent and preclude environmental damage.

D. Inspection and Technical Assistance. As part of their routine inspections of timber harvest operations for their agency's purposes, MFS Rangers and District Foresters will monitor for potential and actual incidents of environmental damage, and potential and actual violations of Chapter 21, and advise and assist the loggers,

landowners, and foresters in obtaining knowledge about preventing and minimizing environmental damage as well as avoiding violations of the SWS. The MFS will distribute copies of its booklet on Forestry Best Management Practices, *Field Handbook*, to all interested parties subject to budgetary constraints.

E. Investigations and Complaint Response. MFS Rangers and District Foresters will, upon discovery through routine inspections, requests from towns, or from local citizen complaints, investigate complaints of environmental damage and/or violations. As part of their investigation, MFS Rangers and District Foresters may:

1. Visit the site and assess the situation;

2. If the complaint is determined to be valid, encourage the responsible party to perform any necessary remedial work and assist the responsible party in an advisory role in accomplishing remediation;

3. Promptly report the violation to the Regional Enforcement Coordinator (REC) giving an assessment of what occurred, the degree of environmental damage, the degree of cooperation extended by the violator, the identity and address of the responsible party and/or landowner, and the past enforcement record of the violator if known; and

5. Monitor and re-inspect the site as needed to assure that any remediation is adequate, complete, timely, effective, and maintained.

F. Informal Enforcement. The MFS will contact the responsible party orally and/or in writing and explain the potential benefits of cooperation and the potential consequences of non-cooperation. If this communication fails to result in cooperation by the responsible party, the MFS will consider more formal enforcement actions.

G. Formal Enforcement. The MFS will institute formal enforcement action through one or more of the following: a letter of warning, formal intervention, formal enforcement action, administrative settlement agreement or referral to the Attorney General's Office for litigation. The decision regarding what enforcement options to

pursue will be based upon: the degree and scope of environmental damage, the degree of cooperation demonstrated by the violator, whether there is a repetitive and/or chronic record of violations by the violator, the level of severity of the overall violation, and/or the need to deter violations in the future.

'. AUTHORIZATION

A. MFS Responsibilities. Through this agreement, MFS Rangers and District Foresters are authorized to take the following actions based upon the severity of violations:

1. Violations. For timber harvesting activities, including road construction and maintenance, that are not in compliance with Chapter 21 of the MFS rules and which are minor or technical in nature, easily rectified, and have not caused serious environmental damage, MFS Rangers and District Foresters have authority to request that the site be brought into full compliance using the following procedures:

(a) MFS Rangers will issue a Forest Service inspection notice describing the violation and the required corrective action. The notice will specify the time allowed for the responsible party to complete the required corrective action and inform the responsible party that the MFS will re-inspect the site after the deadline for the completion of the required corrective action has passed;

(b) The MFS will maintain a record of inspections on each case or incident;

(c) In the cases where the required corrective actions are not completed by the date established by the MFS, the MFS Ranger will promptly inform the District Forester and REC of the problems and outstanding issues; and

(d) Upon successful application of corrective actions and verification by the MFS Ranger or District Forester that the site is in compliance, the REC will close the case consistent with established enforcement policies.