# Winterport

# Land Use Ordinance

Adopted: June 11, 2026

Signature of Town Clerk: Maureen Black

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# Article I.

# General

## 1. Title

This ordinance shall be known as and may be cited as the Land Use Ordinance of the Town of Winterport, Maine, and will be referred to herein as the "Ordinance."

## 2. Authority

This Ordinance is adopted pursuant to Municipal Home Rule authority granted by the Maine Constitution, Article VIII, Part 2, Section 1, and Title 30-A M.R.S. § 3001.

## 3. Purpose

The purpose of this Ordinance is the promotion of the health, safety, and general welfare of the present and future inhabitants of the Town of Winterport in a manner that serves to balance the interests of the general public of Winterport and those of individual property owners by:

Protecting and enhancing the natural, cultural, and historic resources of the Town of Winterport;

Lessening the danger and congestion of traffic on the roads and highways, limiting excessive numbers of intersections, driveways, and other friction points, minimizing other hazards, and ensuring the continued usefulness of all elements of the existing highway system for their planned function;

Providing standards to control the intensity of development in areas of sensitive or significant natural resources in order to reduce or eliminate adverse environmental impacts;

Promoting safety from fire, flood, panic, and other dangers;

Providing adequate privacy, light, and air;

Protecting the tax base by facilitating cost-effective development within the Town of Winterport;

Promoting economy in local governmental expenditures; and

Minimizing adverse impacts of development.

## 4. Applicability

This Ordinance shall apply to all land within the Town of Winterport. All future development and divisions of land in the Town of Winterport shall be in conformity with the provisions of this Ordinance.

## 5. Severability

Sections of this Ordinance shall be considered severable. In the event any section, clause, or provision of this Ordinance is declared invalid, such decision shall not invalidate any other section or provision of this Ordinance.

## 6. Availability

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

### 7. Conflicting Ordinances or Laws

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 Town, the more restrictive provision will govern.

### 8. Effective Date

This Ordinance, which was adopted by the Town of Winterport on June 11, 2026, shall not be effective unless and until 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.

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.

### 9. Amendment

#### A. Initiation

The Town Council may, on its own initiative or upon a written request from the Planning Board, or shall, on a written petition from registered voters totaling at least ten percent (10 %) of the number of votes cast in the Town at the last gubernatorial election, but not fewer than ten (10) voters, include an article to amend this Ordinance in the warrant for a regular or special Town Meeting.

#### B. Optional Town Council Hearing

The Town Council may, before inserting such an article in a warrant, hold a public hearing to receive public comment on the advisability of same.

#### C. Optional Planning Board Hearing

The Planning Board may, before requesting the Town Council to insert such an article in a warrant, hold a public hearing to receive public comment on the advisability of same.

#### D. Required Planning Board Hearing

If an article to amend this Ordinance is inserted in the warrant for a regular or special Town Meeting, the Planning Board shall, at least fifteen (15) days prior to such meeting, hold a public hearing on the proposed amendment. Notice of the hearing shall be posted at least ten (10) days prior to such hearing.

#### E. Planning Board Recommendation

Following a hearing conducted pursuant to the preceding paragraph, the Planning Board shall, by majority vote, make a recommendation as to whether the proposed amendment ought to be adopted or ought not to be adopted. Such recommendation shall be printed on the warrant.

**F. Majority Vote**

An amendment to this Ordinance may be adopted by a majority vote at a duly constituted Town Meeting.

**G. State Agency Notification**

Copies of amendments, attested and signed by the Municipal Clerk, shall be submitted to the Commissioner of the Department of Environmental Protection following adoption by Town Meeting and shall not be effective unless approved by the Commissioner. If the Commissioner fails to act on any amendment within forty-five (45) days of his/her receipt of the amendment, the amendment is automatically approved. Any application for a permit submitted to the municipality within the forty-five (45) day period shall be governed by the terms of the amendment, if such amendment is approved by the Commissioner.

# Article II.

# ADMINISTRATION

## 1. Permits

### A. Permits Required

After the effective date of this Ordinance, a written permit from the Code Enforcement Officer shall be required for any activity listed in Article III, Table 3-1 as requiring a permit from the Code Enforcement Officer,

A permit is also required prior to the expansion, change or replacement of an existing use or structure or to renew a discontinued nonconforming use, in the shoreland zone.

### B. Prohibitions

No Activity or use requiring a permit under this section shall be commenced unless and until the property owner has received all required permits from the Code Enforcement Officer.

### C. Procedure

1) Application

All permit applications must be submitted in duplicate to the Code Enforcement Officer on designated forms, accompanied by fees established by the Town Council based upon the Planning Board's recommendation.

2) Submissions.

All applications for a permit shall be accompanied by a plan, accurately drawn to scale or showing actual dimensions or distances, and showing:

a) The actual shape and dimensions of the lot for which a permit is sought.

b) The location and size of all buildings, structures, water bodies, and other significant features currently existing on the lot.

c) The location and building plans of new buildings, structures, or portions thereof to be constructed.

d) The existing and intended use of each building or structure.

e) Where applicable, the location of soil test pits, subsurface sewage disposal system, parking lots and driveways, signs, buffer strips, and private wells.

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

g) Such other information as may be reasonably required by the Code Enforcement Officer to provide for the administration and enforcement of this Ordinance.

h) The signature of the owner(s) of the property or other person authorizing the work, certifying that the information in the application is complete

and correct. If the person signing the application is not the owner or lessee of the property, then that person shall submit a letter of authorization from the owner or lessee.

3) To Whom Issued

No permit shall be issued except to the owner of record or their authorized agent. Written proof of authorization shall be required.

4) Compliance with Land Use Ordinance.

All activities conducted under a permit issued pursuant to this Ordinance must comply with the applicable standards in Articles III, IV, and V. Each permit application and issued permit must include the following conspicuous notation which the applicant must acknowledge in writing on the application:

*"THE UNDERSIGNED APPLICANT ACKNOWLEDGES THAT THEY, AND ANY PERSON ON WHOSE BEHALF THE PERMIT IS SOUGHT ARE RESPONSIBLE FOR ENSURING THE PROPOSED ACTIVITY COMPLIES WITH ALL APPLICABLE STANDARDS OF THE WINTERPORT LAND USE ORDINANCE."*

5) Deadline for Decision

Within thirty (30) days of receiving an application, the Code Enforcement Officer must issue the permit if the proposed construction and uses comply with this Ordinance; refer the applicant to the Planning Board for Site Plan Review under Article IV or subdivision review under Article V; or deny the application. All decisions by the Code Enforcement Officer must be in writing. Failure of the Code Enforcement Officer to act within thirty (30) days constitutes denial of the application.

6) Copies

One (1) copy of the application, along with the permit or other written decision of the Code Enforcement Officer, shall be returned to the applicant. One (1) copy, including a copy of the permit or written decision, shall be retained by the Code Enforcement Officer as a permanent public record. The Code Enforcement Officer must conspicuously post the permit on the lot where the activity will occur, in a location clearly visible from the street.

7) Other Permits Required

No permit may be issued for any structure or use until all required federal, state, and local permits and approvals have been obtained. The issuance of a permit under this section does not constitute a permit under any federal or state statutes or other Town of Winterport ordinances. The landowner or applicant is responsible for complying with all applicable laws and regulations.

## 2. Standard Conditions

All land use activities governed by this Ordinance, whether or not a permit or approval is required, must be conducted in compliance with the following conditions:

### A. Performance Guarantees

No activity or construction shall be commenced until the applicant has provided the Town with performance guarantees sufficient to ensure the installation of improvements required by the Town.

**B. Site Conditions**

During construction, the site shall be maintained and left each day in a safe and sanitary manner, and any condition that could lead to personal injury or property damage shall be immediately corrected by the developer upon order by the Code Enforcement Officer or other authorized personnel. The developer shall make provision for disposal of oil and grease from equipment, and the site area must be regularly sprayed to control dust from construction activity.

Developed areas must be cleared of all stumps, litter, rubbish, brush, weeds, dead and dying trees, roots, and debris. Excess or scrap building materials must be removed or disposed of promptly upon the Code Enforcement Officer's request, to their satisfaction.

No change shall be made in the elevation or contour of any site by the removal of earth to another lot or site other than as shown on an approved site or subdivision plan. Minimal changes in elevations or contours necessitated by field conditions may be made only after approval by the Code Enforcement Officer. All the changes necessitated by field conditions shall be shown on the final plan and indicated as a change from the preliminary, or if final approval has been granted, the changes shall be shown on the as-built plans.

**C. Acceptance not implied**

Planning Board approval of any plan does not constitute or imply acceptance by the Town of any street, easement, or other open space shown on such plan. Approval of a plan that includes park, playground, or other recreation area proposed for dedication to the Town does not constitute an acceptance of such areas. The Planning Board must require the plan to include clear notations to this effect. The Planning Board may also require a written agreement between the applicant and the Municipal Officers addressing future deed, title, dedication, and provisions for the cost of grading, development, equipment, and maintenance of any dedicated area.

**D. Sale of Lots**

1) Prior to the sale of any lot in an approved subdivision, the applicant shall provide the Planning Board with a letter from a registered land surveyor stating that all monumentation shown on the plan has been installed and with proof that the subdivision plan has been recorded in the Waldo County Registry of Deeds.

2) No person, firm, corporation, or other legal entity may sell, lease, develop, build upon or convey for consideration, or offer or agree to sell, lease, develop, or build upon or convey for consideration any land in a subdivision which has not been approved by the Planning Board and recorded in the Registry of Deeds or which is not shown on the approved plan as a separate lot.

3) No lot in a subdivision may be sold, leased, or otherwise conveyed before the street upon which the lot fronts is completed in accordance with this Ordinance. No unit in a multifamily development shall be occupied before the street upon which the unit is accessed is completed in accordance with this Ordinance.

**E. Public Utilities**

No public utility, water district, sanitary district, or any utility company of any kind shall serve any development for which a final plan has not been approved by the Planning Board. No public utility, water district, sanitary district, or any utility company of any kind may install services to any new structure in the shoreland zone unless written authorization attesting to the validity and currency of all local permits required under this and any previous ordinance has been issued by the Code Enforcement Officer. Following the installation of any service, the company or district shall notify the Code Enforcement Officer in writing that the installation has been completed.

**F. Maintenance**

The developer shall be required to maintain all improvements and provide for snow removal on streets and sidewalks until acceptance of the improvements by the Town, or, in the case of a private road, until the creation of a road association.

**G. Modifications**

No changes, erasures, modifications, or revisions may be made to any approved site plan or subdivision plan unless the revised plan is submitted to and approved by the Planning Board. The Planning Board must confirm that the revised plan complies with the standards of this Ordinance. If a plan is recorded without meeting this requirement, it shall be considered null and void, and the Town shall initiate proceedings to have the plan removed from the records of the Registry of Deeds records.

However, if at any time before the construction of any required improvements it is demonstrated to the satisfaction of the Municipal Engineer or appointed engineer that unforeseen conditions make it necessary or preferable to modify the location or design of such required improvements, the Municipal Engineer or appointed engineer may, upon approval of the Planning Board, authorize modifications provided these modifications are within the spirit and intent of the Planning Board's approval and do not extend to the waiver or substantial alteration of the function of any improvements required by the Planning Board.

**H. Inspection**

By undertaking an activity allowed by this Ordinance, an owner implicitly grants to the Code Enforcement Officer, or his/her designee, the right to enter and have access to the premises at which the activity is taking place at all reasonable and proper times during and immediately upon the completion of construction, to ensure compliance with all applicable standards set forth in this Ordinance.

At least five (5) days prior to commencing each major phase of construction of required improvements, the developer or builder shall notify the Code Enforcement Officer in writing of the time when they propose to commence construction of such improvements, so that the Municipal Officers can cause inspection to be made to ensure that all municipal specifications and to ensure the satisfactory completion of improvements and utilities required by the Planning Board.

**I. Time Frames for Completion**

1) Planning Board Approvals.

Activities or uses for which approval of the Planning Board is required shall be

commenced within six (6) months and, except for activities which are by their nature ongoing, shall be substantially completed within twenty-four (24) months of the approval unless the planning board, within the time originally allotted, extends the time for completion by up to twelve (12) months. Any extension shall be granted only upon a finding by the Planning Board that the developer has made progress toward completion or that progress has been prevented by reasons beyond the control of the developer and that any required performance guarantees have been updated accordingly and revised to provide for increased costs. Failure of the developer to abide by the time requirements of this paragraph shall render the approval null and void and require the developer to reapply for Planning Board approval before the activity or use may proceed future. Upon determining that a development's approval has expired under this paragraph, the Planning Board shall have a notice to that effect placed in the Waldo County Registry of Deeds.

2) Phased Development

a) Permissive. Notwithstanding the requirements of Article II Section 2(I)(1) above, the Planning Board, at the time of granting final approval to a plan, upon the written request of an applicant, may permit the development to be completed in two (2) or more phases, subject to such conditions as the Planning Board deems necessary to ensure orderly development and to protect the public health, safety and welfare.

b) Mandatory. Notwithstanding the requirements of Article II Section 2(I)(1), if the head of any municipal or quasi-municipal department notified of a proposed development informs the Planning Board that his or her department or district does not have adequate facilities to service the development, or if the superintendent of schools indicates that there is less than twenty percent (20%) excess classroom capacity existing in the schools which will serve the development, considering previously approved but not built developments, the Planning Board may require the project to be completed in two (2) or more phases, subject to such conditions as the Planning Board deems necessary in order to allow the orderly planning, financing and provision of public services to the development and to prevent classroom overcrowding. The Planning Board shall not, under the terms of this paragraph, require the completion of a development over a period longer than three (3) years.

3) Permits.

Activities or uses for which a permit from the Code Enforcement Officer is required shall be commenced within six (6) months and, except for activities and uses, which are by their nature ongoing, shall be substantially completed within twelve (12) months of the issuance of the permit. Failure of the applicant to abide by the time requirements of this paragraph shall render the permit null and void and require the applicant to obtain a new permit before the activity or use may proceed future.

**J. Transferability**

No approval granted by the Planning Board shall be transferable to any other person or entity until and unless the Planning Board finds, upon the written request of the proposed transferee, that:

1) the proposed transferee has adequate technical and financial capacity to complete the development as initially approved;

2) sufficient performance guarantees have been provided by the proposed transferee to ensure all required improvements will be completed as initially approved.

**3. Enforcement**

**A. Nuisance**

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

**B. Code Enforcement Officer**

1) Authority

The Code Enforcement Officer shall be certified in accordance with 30-A M.R.S. § 4451, as may be amended, and shall have all of the powers and authorities described in 30-A M.R.S. § 4452, as may be amended.

2) Enforcement

The Code Enforcement Officer shall enforce the provisions of this Ordinance. If, after investigation, the Code Enforcement Officer finds that any provision of this Ordinance is being violated, they shall give written notice by certified mail, return receipt requested, of such violation to the owner and to the occupant of such premises, indicating the nature of the violation and demanding that it be abated within some designated reasonable time. A copy of such notice shall be submitted to the Town Council and shall be maintained as a permanent record.

3) Inspection and Investigation

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

4) Records

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 by the Board of Appeals, revocation actions, revocation of permits, appeals, court actions, violations investigated, violations found, and fees collected. On an annual basis, a summary of this record related to the Municipal Officers.

**C. Proceedings and Penalties**

1) Actions

If, after notice given pursuant to the preceding section, the violation is not abated within the specified time, the Code Enforcement Officer shall report same to the Town Council who are hereby authorized to direct the institution of 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 Town.

2) Consent Agreements

The Town Council or their authorized agent is hereby authorized to enter into administrative consent agreements for the purpose of eliminating violations of this Ordinance and recovering fines and costs without court action. Such agreements shall not allow an illegal structure or use to continue in a shoreland district.

3) Fines

a) Any person, firm, corporation, or other legal entity that conveys any land in a subdivision which has not been approved as required by this Ordinance or that continues to violate any other provision of this Ordinance after receiving notice of such violation shall be subject to such fines, penalties, actions and orders as are authorized by 30-A M.R.S. § 4452, as may be amended. Each unauthorized conveyance and each day of violation after notification shall constitute a separate offense with respect to each violation. A fine or penalty shall be imposed for each offense or violation.

b) Any contractor involved in any activity regulated by the provisions of this Ordinance may be held liable for fines violating this Ordinance if the necessary permits for said activity have not been obtained.

4) Suspension or Revocation of Approvals or Permits

a) The Code Enforcement Officer may suspend an approval or permit if:

i) it was granted on incomplete or false information;

ii) continuation of the land use activity authorized would result in the violation of federal or state law or local ordinances;

iii) the work is not in conformance with the approved plan;

iv) the continuation of the land use activity authorized is endangering or may endanger the safety or general welfare of the community during the construction or work for which the approval or permit was granted;

v) the applicant or his/her agent is exceeding the scope of the work for which the permit was issued;

vi) the Code Enforcement Officer determines they are unable to rule on the continued validity of an approval or permit, in which case the Code Enforcement Officer may suspend the approval or permit, without penalty, and require the holder to file an appeal.

b) The Code Enforcement Officer shall suspend an approval or permit by furnishing to the applicant a written notice of suspension stating:

i) the reason for the suspension;

ii) the corrective measures to be taken; and

iii) the period of time given to the applicant to correct the violation or potential violation.

c) A suspension shall cease when the Code Enforcement Officer certifies

that the violation or potential violation ceases to exist. When a cause for suspension has been removed or corrected, the Code Enforcement Officer shall so certify, in writing, and state:

i) the reason for the suspension;

ii) the corrective measures taken;

iii) the period of time which the applicant had to correct the violation; and

iv) A statement that all applicable penalties have been paid.

d) If, within the time specified in a notice of suspension for correction, the violation has not been corrected or removed, the Code Enforcement Officer shall revoke the approval or permit by furnishing to the applicant a written notice of revocation setting forth the reasons therefore.

e) During the period of suspension or revocation, no work shall continue on a project for which an approval or permit was granted except in the interests of public safety and protection of the property in place at the time of revocation, such work having the written approval of the Code Enforcement Officer.

f) The applicant shall pay to the Town all attorneys' fees, court costs, and out of pocket expenses incurred by the Town in any enforcement action undertaken to correct the applicant's violation of this Ordinance.

## 4. Appeals and Variances

### A. Board of Appeals

1) Establishment

Pursuant to the provisions of Title 30-A M.R.S. § 2691, as may be amended, there is hereby established a Board of Appeals for the Town of Winterport.

2) Organization

The Board of Appeals shall consist of seven (7) members and one (1) alternate member, all of whom shall be residents of the Town of Winterport. The members and alternate member of the Board of Appeals shall be appointed by the Town Council for terms of three (3) years. The members of the Board of Appeals shall annually elect one (1) of its members serve as chairperson to preside at all meetings of the Board and one (1) of its members to serve as secretary. A person shall forfeit his or her membership on the Board of Appeals if he or she fails to attend three (3) meetings of the Board in any one calendar year without being excused by the Board.

When a member is unable to act because of interest, physical incapacity, or any other reasons satisfactory to the chairperson, the chairperson shall designate the alternate member to act in his or her stead. When designated by the chairperson to act, the alternate member shall have all the authority and responsibility of a member, but the alternate member may not hold office on the Board.

In the event that a vacancy shall occur with respect to said Board by non-acceptance of appointment, resignation, abandonment, death, disability, incompetency, forfeiture, or failure to qualify after a written demand from the Town Council, the Town Council

shall appoint a resident of the Town of Winterport to fill the unexpired term.

3) Jurisdiction. The Board of Appeals shall have the power to hear and decide any request for a variance or any administrative appeal as set forth below. The Board shall not assert jurisdiction over any matter unless the Town of Winterport has by ordinance specified the precise subject matter that may come before the Board or the official or officials whose action or non-action may be appealed to the Board.

4) Applicability of Law. The Board of appeals shall be governed by the provisions of Title 30-A M.R.S. § 2961 and § 4353, as may be amended, by the provisions of this Ordinance, and all other applicable state and local laws, regulations, and ordinances.

**B. Variances**

1) Authority

Variance may be granted by the Board of Appeals only from the dimensional requirements imposed by this Ordinance or another applicable ordinance of the Town of Winterport, including but not limited to lot size, lot coverage, lot width, structure height and setback, and only (1) where a strict application of such requirements to the petitioner and the petitioner's dwelling would cause undue hardship; or (2) for the purpose of making a dwelling accessible to a person with a disability who is living in the dwelling. A variance shall not be granted to permit a use or structure otherwise prohibited by this Ordinance.

2) Hardship Defined

"Undue hardship" shall mean that the land in question cannot yield a reasonable return unless a variance is granted; the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood; the granting of a variance will not alter the essential character of the locality; and the hardship is not the result of action taken by the applicant or a prior owner.

3) Application

An Application for a variance shall include the following:

a) A completed application on a form prescribed by the Board of Appeals.

b) An administrative fee and a public notice fee, fees shall be set by the Winterport Town Council.

c) If a variance is sought for a project already completed, a late fee which shall be set by the Winterport Town Council.

d) A written statement, which may be accompanied by diagrams or photographs and such other evidence as the petitioner may choose to submit, demonstrating the following:

i) the exact nature of the hardship alleged;

ii) the physical circumstances that create the alleged hardship;

iii) that such physical circumstances are peculiar to the property in question and are not substantially duplicated on other property adjoining or nearby in the same neighborhood or zoning district;

iv) that the relief sought would not adversely affect property adjoining or nearby in the same neighborhood or the same zoning district, and would not endanger the public health, safety or convenience, and would not be contrary to this Ordinance or the Winterport Comprehensive Plan;

v) that all other elements of undue hardship, as defined above, are present;

e) In the case of variance based on disability:

i) the exact nature of the disability as determined by an appropriate professional;

ii) that the disabled person for whom the variance is sought lives on or regularly uses the property;

iii) the exact nature and location of the equipment or structures to be installed or constructed in order to make the dwelling accessible.

4) Submissions Generally

a) At least thirty-five (35) days prior to the Board of Appeals meeting at which a petitioner wishes to be heard, the petitioner shall provide to the Town Clerk ten (10) copies of all application materials, including the decision from which the appeal is taken. Each submission shall be conspicuously labeled "VARIANCE EXHIBIT 1", "VARIANCE 2", and so on, in consecutive fashion.

b) At least two (2) days prior to the public hearing on variance request, any other person wishing to present documentary evidence to the Board of Appeals, shall provide to the Town Clerk six (6) copies of all such evidence. Each submission shall be conspicuously labeled with that person's surname followed by "EXHIBIT 1", "EXHIBIT 2", and so on, in consecutive fashion.

5) Hearing

Within forty-five (45) days of the Town Clerk's receipt of the required copies of a variance application, the Board of Appeals shall conduct a public hearing on said application in accordance with the following:

a) Published Notice. Notice of said hearing shall be published in a newspaper of general circulation in the Town of Winterport at least ten (10) days prior to the hearing date.

b) Mailed Notice. At least twenty (20) days prior to the hearing date, the applicant shall mail written notice of said hearing by certified mail, return receipt requested, to the owners of all property within three hundred feet (300') of the property in question and to the Winterport Town Council and the Winterport Planning Board, each of which shall be parties. The owners of property shall be those shown on the Town's tax list as the persons against whom taxes are assessed. The Board of Appeals shall, in each case, maintain a list of property owners so notified. Notice shall be deemed received if mailed to an owner's last known address according to the Town tax records. Failure of any

property owner to actually receive notice shall not necessitate another hearing or invalidate any actions of the Board of Appeals.

c) Contents of Notice. Notice of said hearing shall identify the petitioner and the property involved, describe the specific nature of the proposal, state the date, time, and place of the hearing, and explain how the recipient of the notice may attend and present evidence.

d) Notice to Department of Environmental Protection. For variances relating to any property located in a shoreland zone, a copy of each variance request, including the application and all supporting information supplied by the petitioner, shall be forwarded by the Town Clerk to the Commissioner of the Department of Environmental Protection at least twenty (20) days prior to the hearing. 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.

e) Rules. Said hearing shall be conducted according to rules adopted by the Board of Appeals.

f) Representation. At any hearing, a party may be represented by an agent or attorney. If the party is not present, the agent or attorney must provide written evidence of their authority to act on the party's behalf.

g) Continuation. Any hearing may be continued or recessed to another time for good cause shown.

h) Staff Support. The Code Enforcement Officer may attend all hearings and present to the Board of Appeals plans, photographs or other materials they deem appropriate for the clearer understanding of a pending application.

6) Deliberation and Decision

a) Within thirty-five (35) days after the public hearing on an application for a variance, the Board of Appeals shall deliberate to determine whether to grant the variance. If the Board of Appeals finds that the petitioner has demonstrated (1) an undue hardship as defined above or (2) that a variance is necessary for the purpose of making the dwelling accessible to a person with a disability who is living in the dwelling or uses it regularly, it shall issue an order granting the variance requested. If the Board of Appeals finds that the petitioner has not demonstrated (1) an undue hardship or (2) that a variance is necessary for the purpose of making the dwelling accessible to a person with a disability who is living in the dwelling or using it regularly, it shall issue an order denying the variance. In either case the Board of Appeals shall, within seven (7) working days after the completion of its deliberations, mail or hand deliver to the petitioner, the petitioner's representative, the Chairperson of the Winterport Planning Board and Town Council, and if a variance is granted for property located within a shoreland zone, to the Department of Environmental Protection, a written copy of its decision, including specific written findings of fact supporting the decision.

b) The Board of Appeals may make any variance subject to such terms and conditions it considers advisable to protect the public's health, safety and general welfare. The Board of Appeals shall limit any variance granted as strictly as possible to ensure conformance with the purposes and provisions of this Ordinance to the greatest extent possible. Any variance granted to make a dwelling accessible to a person with a disability living thereon or using it regularly shall be restricted 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. For purposes of this section, the term "structures necessary for access to or egress from the dwelling" includes railing, wall or roof systems necessary for the safety or effectiveness of the structure. The Board of Appeals may limit the variance to the duration of the disability or to the time that the person with the disability lives in the dwelling or uses it regularly.

7) Certificate of Variance. If the Board of Appeals grants a variance under this section, a certificate indicating the current property owner, identifying the property by reference to the last recorded deed in its chain of title, and indicating the fact that a variance, including any conditions thereof, has been granted, and the date of the granting, shall be prepared in recordable form. The certificate must be signed by the Chairperson of the Board of Appeals or his/her designee and recorded in the Waldo County Registry of Deeds within ninety (90) days of the final written approval of the variance or the variance is void. A variance is not valid until a certificate thereof has been recorded in accordance with this section. For the purpose of this section, the date of final written approval shall be the date stated on the written approval.

**C. Administrative Appeals**

1) Authority. The Board of Appeals may, upon written application of an aggrieved party received by the Town Clerk within thirty (30) days of a decision of the Planning board or Code Enforcement officer, hear appeals from such decision.

2) Application. An application for an administrative appeal shall include the following;

a) A completed application on a form prescribed by the Board of Appeals;

b) An administrative fee and a public notice fee, which fees shall be set by the Winterport Town Council.

c) A transcript of any proceeding before the Planning Board, which transcript shall be prepared at the expense of the applicant;

d) Copies of all relevant submissions previously presented to the Planning Board or Code Enforcement officer;

e) A written statement setting forth the appellant's position as to the basis for the appeal and the relief requested;

f) Copies of any written findings issued by the Planning Board or the Code Enforcement Officer;

g) Such other materials as the appellant believes will be of assistance to the

Board of Appeals in making its decision.

3) Submissions Generally

a) Upon applying for an administrative appeal, the appellant shall provide to the Town Clerk copies of all application materials in the form and quantity described in Article II Section 4(B)(4) except that each submission shall be conspicuously labeled "APPELLANT'S EXHIBIT 1", "APPELLANT'S EXHIBIT 2", and so on, in consecutive fashion.

b) At least two (2) days prior to the public hearing on an appeal, any other person wishing to present documentary evidence to the Board of Appeals, shall provide to the Town Clerk copies of all such evidence in form and quantity described in Article II Section 4(B)(4) except that each submission shall be conspicuously labeled with that person's surname followed by "EXHIBIT 1", "EXHIBIT 2", and so on, in consecutive fashion.

4) Hearing.

Within thirty (30) days of the Town Clerk's receipt of the required application copies for an administrative appeal, the Board of Appeals shall conduct a public hearing. This hearing shall be appellate, not de novo, and must comply with Article II Section 4(B)(5), The Planning Board and Town Council are not considered parties to the proceeding.

5) Deliberation and Decision.

Within thirty (30) days after the public hearing on an application for an administrative appeal, the Board of Appeals shall deliberate to determine whether the decision appealed is clearly contrary to the specific provisions of this Ordinance. If the Board of Appeals finds that the decision is, in fact, clearly contrary to the specific provisions of this Ordinance it may reverse the decision, subject to such terms and conditions it considers advisable to protect the public's health, safety and general welfare, or it may vacate the decision and may remand it to the Planning Board or Code Enforcement Officer for future proceedings consistent with the Board of Appeal's decision. If the Board of Appeals does not find that the decision appealed is clearly contrary to the specific provision of this Ordinance, it shall deny the appeal. In either case the Board of Appeals shall, within seven (7) working days after the completion of its deliberations, mail or hand deliver to the appellant, the appellant's representative, the Code Enforcement officer, the Chairperson of the Winterport Planning Board, and Town Council a written copy of its decision, including specific written findings of fact supporting the decision.

6) Recording

All Board of Appeals proceedings, including public hearings and deliberations, except those lawfully conducted in executive session, must be electronically or stenographically recorded.

7) Failure to Act

Failure of the Board of Appeals to act within any of the time requirements set forth herein shall constitute a denial.

8) Reconsideration

Upon the written request and the payment of such fee as may be established by the Winterport Town Council, by any party made within forty-five (45) days of a decision made pursuant to this section the Board of Appeals may reconsider such decision and, in doing so, may conduct additional hearings and receive additional evidence or testimony. A request for reconsideration shall set forth in detail the reasons that the request should be granted, and shall specify the exact nature of any additional evidence or testimony the party intends to present. Within fifteen (15) days of a request for reconsideration, the Board of Appeals shall meet to decide whether it shall grant the request and to establish the procedural guidelines for any reconsideration. In no event shall the procedures associated with a reconsideration, including any hearing and the time for deliberation, extend beyond forty-five (45) days from the date of the request for reconsideration. In the event of a request for reconsideration, the time for taking an appeal to Superior Court shall be extended to thirty (30) days from the date of the Board of Appeals' ultimate decision on such request.

9) Appeal to Superior Court

Any party may, within forty-five (45) days of a decision made pursuant to this section, take an appeal to Superior Court in accordance with Rule 80B of the Maine Rules of Civil Procedure.

# Article III.

# Shoreland Zoning

## 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.

## 2. Authority

This Article of the 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.).

## 3. Applicability

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

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

**NOTE**: Coastal wetlands, by definition, include all areas affected by tidal action, not just those areas where salt marshes and salt meadows exist. Cobble and sand beaches, mudflats, and rocky ledges, stairsbelow the highest annual tide are all considered to be coastal wetlands.

**NOTE**: Pursuant to 38 M.R.S.A. section 440, municipalities may extend or adopt zoning controls beyond the limits established in Section 3, above, in order to protect the public health, safety, and welfare and to avoid problems associated with floodplain development.

## 4. Effective Date

### A. Effective Date of Ordinance and Ordinance Amendments

This Ordinance, which was adopted by Town Meeting on June 11, 2026, 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.

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.

**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.

**6. Severability**

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

**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.

**8. Amendments**

See Article I, Section 9. Copies of amendments, attested and signed by the Municipal Clerk, shall be submitted to the Commissioner of the Department of Environmental Protection following adoption by the municipal legislative body and shall not be effective unless approved by the Commissioner. If the Commissioner fails to act on any amendment within forty-five (45) days of his/her receipt of the amendment, the amendment is automatically approved. Any application for a permit submitted to the municipality within the forty-five (45) day period shall be governed by the terms of the amendment, if such amendment is approved by the Commissioner.

**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 Map of the Town of Winterport which is made a part of this Ordinance:

(1) Resource Protection District

Certain sections of the west bank of the Penobscot River from the Winterport/Hampden town line at Bald Hill Cove southerly to the Winterport/Frankfort town line near US Route 1A to the Winterport/Frankfort town line near Fisher Road.

In addition, the following wetlands and a two hundred, fifty (250) foot buffer are designated inland waterfowl and wading bird habitat:

-The wetland between the Sunken Bridge Road and Rt 69,

-The south and western portion of the wetland southwest of the intersection of the Clark Road and the Goshen Road,

-The wetland east of the intersection of the Kendall Road and the Goshen Road, and

-The wetland northwest of the intersection of the Goshen Road and the Kendall Road halfway

between the Goshen Road and the Monroe Road.

(2) Limited Residential District

Certain sections of the west bank of the Penobscot River, beginning at a point near Bald Hill Cove and ending at the Winterport/Frankfort town line.

Certain sections of the north bank of the Marsh Stream, beginning at the Winterport/Frankfort town line near US 1A westerly to the Winterport/Frankfort town line near the Fisher Road,

Also, the following freshwater wetlands:

-Wetland south of the Monroe Road intersected by the Clark Road.

-Wetland at the confluence of the Meadow Brook and Cove Brook and bisected by the Cove Road and Meadow Road.

-Wetland on Clements Brook north of Route 139.

-The northern and eastern portion of the wetland southwest of the intersection of the Clark Road and the Goshen Road.

(3) Limited Commercial District

-Aa section surrounding the cove south of Steamboat Avenue.

(5) Commercial Fisheries/Maritime Activities District.

-Two sections of the west bank of the Penobscot River where such activity currently exists.

-A section on Tax Map U-3 lot 60 at the end of Commercial Street

-A section on Tax Map U-2 lots 59 and 60.

(6) Stream Protection District

-A portion of Cove Brook from its emergence from Wetland 257 to its terminus at the Penobscot River.

-The southern portion of Meadow Brook that flows from the crossing of the B&A Railroad to its merger with Cove Brook.

-A portion of an unnamed brook that flows into Marsh Stream from south of Route 139,

-A portion of Littlefield Stream from between Monroe and Goshen roads to its terminus at Marsh Stream.

**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 on the map.

**C. Certification of Official Shoreland Zoning Map**

The Official Shoreland Zoning Map shall be certified by the attested signature of the Municipal Clerk and shall be located in the municipal office. 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 Commissioner of the Department of Environmental Protection.

**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.

**11. Land Use Requirement**

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.

**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, and uses may be transferred, and the new owner may continue the non-conforming use or continue to use the non-conforming structure or lot, subject to the provisions of this Ordinance.

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. A non-conforming structure may be added to or expanded after obtaining a permit from the same permitting authority as that for a new structure, if such addition or expansion does not increase the non-conformity of the structure and is in accordance with subparagraphs (a) and (b) below.

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

structure shall not be expanded, as measured in floor area or volume, by 30% or more, during the lifetime of the structure. If a replacement structure conforms with the requirements of Section 12(C)(2), and is less than the required setback from a water body, tributary stream or wetland, the replacement structure may not be expanded if the original structure existing on January 1, 1989 had been expanded by 30% in floor area and volume since that date.

b) Whenever a new, enlarged, or replacement foundation is constructed under a non-conforming structure, the structure and new foundation must be placed such that the setback requirement is met to the greatest practical extent as determined by the Planning Board or its designee, basing its decision on the criteria specified in Section 12(C)(3) Relocation, below. If the completed foundation does not extend beyond the exterior dimensions of the structure, except for expansion in conformity with Section 12(C)(1)(a) above, and the foundation does not cause the structure to be elevated by more than three (3) additional feet, as measured from the uphill side of the structure (from original ground level to the bottom of the first floor sill), it shall not be considered to be an expansion of the structure. 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.

2) 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. In no case shall a structure be reconstructed or replaced so as to increase its non-conformity. If the reconstructed or replacement structure is less than the required setback it shall not be any larger than the original structure, except as allowed pursuant to Section 12(C)(1)(a) above, as determined by the non-conforming floor area and volume of the reconstructed or replaced structure at its new location. If the total amount of floor area and volume of the original structure can be relocated or reconstructed beyond the required setback area, no portion of the relocated or reconstructed structure shall be replaced or constructed at less than the setback requirement for a new structure. When it is necessary to remove vegetation in order to replace or reconstruct a structure, vegetation shall be replanted in accordance with Section 12(C)(3) below.

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

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 (Rules), or that a new system can be installed in compliance with the law and said Rules. In no case shall a structure be relocated in a manner that causes the structure to be more non-conforming.

In determining whether the building relocation meets the setback to the greatest practical extent, the Planning Board or its designee shall consider the size of the lot, the slope of the land, the potential for soil erosion, the location of other structures on the property and on adjacent properties, the location of the septic system and other on-site soils suitable for septic systems, and the type and amount of vegetation to be removed to accomplish the relocation. When it is necessary to remove vegetation within the water or wetland setback area in order to relocate a structure, the Planning Board shall require replanting of native vegetation to compensate for the destroyed vegetation. In 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) Change of Use of a Non-conforming Structure. The use of a non-conforming structure may not be changed to another use unless the Planning Board, after receiving a written application, determines that the new use will have no greater adverse impact on the water body, tributary stream, or wetland, or on the subject or adjacent properties and resources than the existing use.

In determining that no greater adverse impact will occur, the Planning Board shall

require written documentation from the applicant, regarding the probable effects on public health and safety, erosion and sedimentation, water quality, fish and wildlife habitat, vegetative cover, visual and actual points of public access to waters, natural beauty, floodplain management, archaeological and historic resources, and commercial fishing and maritime activities, and other functionally water-dependent uses.

**D. 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)(1)(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)(4) 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 area, lot width or shore frontage shall be obtained by action of the Board of Appeals.

2) Contiguous Built Lots: If two or more contiguous lots or parcels are in a single or joint ownership of record at the time of adoption of this 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 non-conforming, owned by the same person or persons on March 17, 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.

## 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 that areas which are currently developed and areas which meet the criteria for the Limited Commercial or Commercial Fisheries/Maritime Activities Districts need not be included within the Resource Protection District.

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

Following the review of existing Maine Department of Inland Fisheries and Wildlife (IF&W) data and/or new documentation submitted to the IF&W regarding a moderate or high value habitat, the IF&W may modify the rating or boundary of the habitat. A landowner submitting documentation will receive written determination from either the IF&W or Department of Environmental Protection (DEP). Upon determination that the habitat rating or boundary has changed, the landowner may then proceed to request

an amendment to the Official Shoreland Zoning Map by contacting the Planning Board Chair. Determination of habitat rating or boundary may be done by any of the following methods:

a) Desktop review. A re-examination by DEP of the aerial photography and other GIS data available may be sufficient documentation for determination. Should DEP find evidence that the habitat rating or boundary should be changed, DEP will submit documentation to IF&W for determination.

b) Field verification by DEP. A landowner may submit to the DEP evidence that the wetland rating or boundary is incorrect, such as photographs showing that the wetland is either not a wetland as defined by this Ordinance or is an altered wetland. Should the evidence be convincing that the rating or boundary may be incorrect, the DEP may then conduct a field visit using the criteria in Section 13(A)(1)(d). Following a field visit, DEP will write an advisory opinion regarding the presence or absence of a wetland with a moderate or high value to the IF&W for determination.

c) Field verification by a professional. A landowner may submit documentation regarding the presence or absence of a wetland with a moderate or high value to the IF&W for determination. Such documentation must be completed by an individual who has experience and training in either wetland ecology or wildlife ecology and therefore has qualifications sufficient to identify and document a moderate or high value habitat based on the criteria in Section 13(A)(1)(d).

d) Moderate or high value habitat criteria. A moderate or high value inland habitat is an inland wetland complex, and a 250-foot wide zone surrounding the wetland complex, that through a combination of dominant wetland type, wetland diversity, wetland size, wetland type interspersion, and percent open water, meets the IF&W guidelines or is an inland wetland complex that has documented outstanding use of waterfowl or wading birds. Determination of moderate or high value habitat is based on the following:

i) Dominant wetland type is rated by the assigned score for wetland type of greatest area in the wetland. Wetland type is determined using classification system published by IF&W based on McCall, 1972, for waterfowl and wading bird habitat rating. A score for the value to waterfowl and wading birds is assigned to each type using the IF&W rating procedure.

ii) Wetland diversity is rated by assigning the wetland to one of the diversity categories based on the number of wetland types present in the wetland using the IF&W rating procedure.

iii) Wetland size is rated by assigning the wetland to one of three size categories based on the total area of the wetland using the IF&W rating procedure.

iv) Wetland type interspersion is rated by assigning the wetland to one of three interspersion categories using the Golet (1974) system, as modified for Maine in the IF&W rating procedure.

v) Percent open water is rated by assigning the wetland one of four categories, based on the percent of the wetland in open water using the IF&W rating procedure.

2) Floodplains along rivers and floodplains along artificially formed great ponds along rivers, defined by the 100 year floodplain as designated on the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps or Flood Hazard Boundary Maps, or the flood of record, or in the absence of these, by soil types identified as recent floodplain soils. This district shall also include 100 year floodplains adjacent to tidal waters as shown on FEMA's Flood Insurance Rate Maps or Flood Hazard Boundary Maps.

3) Areas of two or more contiguous acres with sustained slopes of 20% 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 river bed movement, and lands adjacent to tidal waters which are subject to severe erosion or mass movement, such as steep coastal bluffs.

**B. Limited Residential District**

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 Districtor the Commercial Fisheries/Maritime Activities District.

**C. Limited Commercial District**

The Limited Commercial District includes areas of mixed, light commercial and residential uses, exclusive of the Stream Protection District. This district includes areas of two or more contiguous acres in size devoted to a mix of residential and low intensity business and commercial uses. Industrial uses are prohibited.

**D. Commercial Fisheries and Maritime Activities District**

The Commercial Fisheries/Maritime Activities District includes areas where the existing predominant pattern of development is consistent with the allowed uses for this district as indicated in the Table of Land Uses, Section 14, and other areas which are suitable for functionally water-dependent uses, taking into consideration such factors as:

1) Shelter from prevailing winds and waves;

2) Slope of the land within 250 feet, horizontal distance, of the shoreline;

3) Depth of the water within 150 feet, horizontal distance, of the shoreline;

4) Available support facilities including utilities and transportation facilities; and

5) Compatibility with adjacent upland uses.

**E. 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 normal high-water line of a great pond, or river, or 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 water bodies or wetlands, that land area shall be regulated under the terms of the shoreland district associated with that water body or wetland.

## 14. Table of Land Uses

All land use activities, as indicated in Table 1, Land Uses in the Shoreland Zone, shall conform with all of the applicable land use standards in Section 15. The district designation for a particular site shall be determined from the Official Shoreland Zoning Map.

Key to Table 1:

Yes - Allowed (no permit required but the use must comply with all applicable land use standards.)

No - Prohibited

PB - 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

CF- Commercial Fisheries/Maritime Activities

LC - Limited Commercial

SP - Stream Protection

**Table 3-1. Land Uses in the Shoreland Zone**

| ***LAND USES*** | ***DISTRICT*** | | | | |
|---|---|---|---|---|---|
| | **SP** | **RP** | **LR** | **LC** | **CFMA** |
| **1. Non-intensive recreational uses not requiring structures such as hunting, fishing and hiking** | yes | yes | yes | yes | yes |
| **2. Motorized vehicular traffic on existing roads and trails** | yes | yes | yes | yes | yes |
| **3. Clearing or removal of vegetation for activities other than timber harvesting** | CEO | CEO[1] | yes | yes | yes |
| **4. Fire prevention activities** | yes | yes | yes | yes | yes |
| **5. Wildlife management practices** | yes | yes | yes | yes | yes |
| **6. Soil and water conservation practices** | yes | yes | yes | yes | yes |
| **7. Mineral exploration** | no | yes[2] | yes[2] | yes[2] | yes[2] |
| **8. Mineral extraction including sand and gravel extraction** | no | PB[3] | PB | PB | PB |
| **9. Surveying and resource analysis** | yes | yes | yes | yes | yes |
| **10. Emergency operations** | yes | yes | yes | yes | yes |
| **11. Agriculture** | yes | PB | yes | yes | yes |
| **12. Aquaculture** | PB | PB | PB | yes | yes |
| **13. Principal structures and uses** | | | | | |
| **A. One and two family residential, including driveways** | PB[4] | PB[9] | CEO | CEO | no |
| **B. Multi-unit residential** | no | no | PB | PB | no |
| **C. Commercial** | no | no[10] | no[10] | PB | PB[5] |
| **D. Industrial** | no | no | no | no | PB[5] |
| **E. Governmental and institutional** | no | no | PB | PB | PB[5] |
| **F. Small non-residential facilities for educational, scientific, or nature interpretation purposes** | PB[4] | PB | CEO | CEO | PB[5] |
| **14. Structures accessory to allowed uses** | PB[4] | PB | CEO | CEO | yes |

| | | | | | | |
|---|---|---|---|---|---|---|
| **15.** | **Piers, docks, wharfs, bridges and other structures and uses extending over or below the normal high-water line or within a wetland** | | | | | |
| | **a. Temporary** | **CEO[11]** | **CEO[11]** | **CEO[11]** | **CEO[11]** | **CEO[11]** |
| | **b. Permanent** | **PB** | **PB** | **PB** | **PB** | **PB[5]** |
| **16.** | **Conversions of seasonal residences to year-round residences** | **LPI** | **LPI** | **LPI** | **LPI** | **no** |
| **17.** | **Home occupations** | **PB** | **PB** | **PB** | **CEO** | **yes** |
| **18.** | **Private sewage disposal systems for allowed uses** | **LPI** | **LPI** | **LPI** | **LPI** | **LPI** |
| **19.** | **Essential services** | **PB[6]** | **PB[6]** | **PB** | **PB** | **PB** |
| | **A. Roadside distribution lines (34.5kV and lower)** | **CEO[6]** | **CEO[6]** | **yes[12]** | **yes[12]** | **yes[12]** |
| | **B. Non-roadside or cross-country distribution lines involving ten poles or less in the shoreland zone** | **PB[6]** | **PB[6]** | **CEO** | **CEO** | **CEO** |
| | **C. Non-roadside or cross-country distribution lines involving eleven or more poles in the shoreland zone** | **PB[6]** | **PB[6]** | **PB** | **PB** | **PB** |
| | **D. Other essential services** | **PB[6]** | **PB[6]** | **PB** | **PB** | **PB** |
| **20.** | **Service drops, as defined, to allowed uses** | **yes** | **yes** | **yes** | **yes** | **yes** |
| **21.** | **Public and private recreational areas involving minimal structural development** | **PB** | **PB** | **PB** | **CEO** | **CEO[5]** |
| **22.** | **Individual, private campsites** | **CEO** | **CEO** | **CEO** | **CEO** | **CEO** |
| **23.** | **Campgrounds** | **no** | **no[7]** | **PB** | **PB** | **no** |
| **24.** | **Road construction** | **PB** | **no[8]** | **PB** | **PB** | **PB[5]** |
| **25.** | **Parking facilities** | **no** | **no[7]** | **PB** | **PB** | **PB[5]** |
| **26.** | **Marinas** | **PB** | **no** | **PB** | **PB** | **PB** |
| **27.** | **Filling and earth moving of <10 cubic yards** | **CEO** | **CEO** | **yes** | **yes** | **yes** |
| **28.** | **Filling and earth moving of >10 cubic yards** | **PB** | **PB** | **CEO** | **CEO** | **CEO** |
| **29.** | **Signs** | **yes** | **yes** | **yes** | **yes** | **yes** |
| **30.** | **Uses similar to allowed uses** | **CEO** | **CEO** | **CEO** | **CEO** | **CEO** |
| **31.** | **Uses similar to uses requiring a CEO permit** | **CEO** | **CEO** | **CEO** | **CEO** | **CEO** |
| **32.** | **Uses similar to uses requiring a PB permit** | **PB** | **PB** | **PB** | **PB** | **PB** |

**[1]In RP not allowed within 75 feet horizontal distance, of the normal high-water line of great ponds, except to remove safety hazards.**

**[2]Requires permit from the Code Enforcement Officer if more than 100 square feet of surface area, in total, is disturbed.**

**[3]In RP not allowed in areas so designated because of wildlife value.**

**[4]Provided that a variance from the setback requirement is obtained from the Board of Appeals.**

**[5]Functionally water-dependent uses and uses accessory to such water dependent uses only (See note on previous page).**

**[6]See further restrictions in Section 15( L)(2).**

**[7]Except when area is zoned for resource protection due to floodplain criteria in which case a permit is required from the PB.**

**[8]Except as provided in Section 15(H)(4).**

**[9]Single family residential structures may be allowed by special exception only according to the provisions of Section 16(E), Special Exceptions. Two-family residential structures are prohibited.**

**[10]Except for commercial uses otherwise listed in this Table, such as marinas and campgrounds, that are allowed in the respective district.**

**[11]Excluding bridges and other crossings not involving earthwork, in which case no permit is required.**

**12Permit not required but must file a written "notice of intent to construct" with *CEO*.**

**NOTE: A person performing any of the following activities shall require a permit from the Department of Environmental Protection, pursuant to 38 M.R.S.A. section 480-C, if the activity occurs in, on, over or adjacent to any freshwater or coastal wetland, great pond, river, stream or brook and operates in such a manner that material or soil may be washed into them:**

**A. Dredging, bulldozing, removing or displacing soil, sand, vegetation or other materials;**

**B. Draining or otherwise dewatering;**

**C. Filling, including adding sand or other material to a sand dune; or**

**D. Any construction or alteration of any permanent structure.**

A. Dredging, bulldozing, removing or displacing soil, sand, vegetation or other materials;

B. Draining or otherwise dewatering;

C. Filling, including adding sand or other material to a sand dune; or

D. Any construction or alteration of any permanent structure.

## 15. Land Use Standards

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

**A. Minimum Lot Standards**

| | Minimum Lot Area (sq ft.) | Minimum Shore Frontage (ft). |
|---|---|---|
| a) Residential per dwelling unit | | |
| i) Within the Shoreland Zone adjacent to Tidal Areas | 40,000 | 150 |
| ii) Within the Shoreland Zone adjacent to Non-Tidal Area | 40,000 | 200 |
| b) Governmental, Institutional, Commercial or Industrial per principal structure | | |
| i) Within the Shoreland Zone adjacent to Tidal Areas, Exclusive of Those Areas Zoned for Commercial Fisheries and Maritime Activities | 40,000 | 200 |
| ii) Within the Shoreland Zone adjacent to Tidal Areas Zoned for Commercial Fisheries and Maritime Activities | NONE | NONE |
| iii) Within the Shoreland Zone adjacent to Non-tidal Area | 60,000 | 300 |
| c) Public and Private Recreational Facilities 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 one hundred (100) feet, horizontal distance, from the normal high-water line of great ponds classified GPA and rivers that flow to great ponds classified GPA, and seventy-five (75) feet, horizontal distance, from the normal high-water line of other water bodies, tributary streams, or the upland edge of a wetland,

except that in the Commercial Fisheries/Maritime Activities District there shall be no minimum setback. In the Resource Protection District the setback requirement shall be 250 feet, horizontal distance, except for structures, roads, parking spaces or other regulated objects specifically allowed in that district in which case the setback requirements specified above shall apply.

**NOTE**: The *Natural Resources Protection Act*, 38 M.S.R.A. sections 480-A through 480-HH, requires the Department of Environmental Protection to designate areas of "significant wildlife habitat."

Permitting under the *Natural Resources Protection Act* for activities adjacent to significant wildlife habitat areas may require greater setbacks. Contact your local Department of Environmental Protection office to see if additional permitting is required.

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 (see Appendix A), 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.

e) The Planning Board may increase the required setback of a proposed

structure as a condition to permit approval, if necessary to accomplish the purposes of this Ordinance. Instances where a greater setback may be appropriate include, but are not limited to: areas of steep slope; shallow or erodible soils; or where an adequate vegetative buffer does not exist.

f) All tidal land which is subject to tidal action during the highest annual tide is coastal wetland.

g) A tributary stream may be perennial or intermittent. Where a tributary stream is present within the shoreland zone, setback standards from that tributary stream are applicable.

2) Principal or accessory structures and expansions of existing structures which are permitted in the Resource Protection, Limited Residential, Limited Commercial, and Stream Protection Districts, shall not exceed 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) The total footprint area of all structures, parking lots and other non-vegetated surfaces, within the shoreland zone shall not exceed twenty (20) percent of the lot or a portion thereof, located within the shoreland zone, including land area previously developed, in the Commercial Fisheries/Maritime Activities District, where lot coverage shall not exceed seventy (70) percent.

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

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

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

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

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

e) Retaining walls are located outside of the 100-year floodplain on rivers, streams, coastal wetlands, and tributary streams, as designated on the

Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps or Flood Hazard Boundary Maps, or the flood of record, or in the absence of these, by soil types identified as recent flood plain soils.

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

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

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

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

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

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

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

h) If the wall and associated soil disturbance occurs within 75 feet, horizontal distance, of a water body, tributary stream or coastal wetland, a permit pursuant to the *Natural Resource Protection Act* is required from the Department of Environmental Protection.

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

NOTE: New permanent structures, and expansions thereof, projecting into or over water bodies shall require a permit from the Department of Environmental Protection pursuant to the Natural Resources Protection Act, 38 M.R.S.A. section 480-C. Permits may also be required from the Army Corps of Engineers if located in navigable waters.

### C. 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 one hundred (100) feet, horizontal distance, from the normal high-water line of a great pond classified GPA or a river flowing to a great pond classified GPA, and seventy-five (75) feet, horizontal distance, from the normal high-water line of other water bodies, tributary streams, or the upland edge of a wetland.

**D. Individual Private Campsites**

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

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

b) Campsite placement on any lot, including the area intended for a recreational vehicle or tent platform, shall be set back one hundred (100) feet, horizontal distance, from the normal high-water line of a great pond classified GPA or river flowing to a great pond classified GPA, and seventy-five (75) feet, horizontal distance, from the normal high-water line of other water bodies, tributary streams, or the upland edge of a wetland.

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

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

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

f) When a recreational vehicle, tent or similar shelter is placed on-site for more than one hundred and twenty (120) days per year, all requirements for residential structures shall be met, including the installation of a subsurface sewage disposal system in compliance with the State of Maine Subsurface Wastewater Disposal Rules unless served by public sewage facilities.

**E. Commercial and Industrial Uses**

The following new commercial and industrial uses are prohibited within the shoreland zone adjacent to great ponds classified GPA, and rivers and streams which flow to great ponds classified GPA:

1) Auto washing facilities

2) Auto or other vehicle service and/or repair operations, including body shops

3) Chemical and bacteriological laboratories

4) Storage of chemicals, including herbicides, pesticides or fertilizers, other than amounts normally associated with individual households or farms

5) Commercial painting, wood preserving, and furniture stripping

6) Dry cleaning establishments

7) Electronic circuit assembly

8) Laundromats, unless connected to a sanitary sewer

9) Metal plating, finishing, or polishing

10) Petroleum or petroleum product storage and/or sale except storage on same property as use occurs and except for storage and sales associated with marinas

11) Photographic processing

12) Printing

**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, except that in the Commercial Fisheries/Maritime Activities District parking areas shall be set back at least twenty-five (25) feet, horizontal distance, from the shoreline. The setback requirement for parking areas serving public boat launching facilities in Districts other than the General Commercial Fisheries/Maritime Activities District shall be no less than fifty (50) feet, horizontal distance, from the shoreline or tributary stream if the Planning Board finds that no other reasonable alternative exists further from the shoreline or tributary stream.

2) Parking areas shall be adequately sized for the proposed use and shall be designed to prevent stormwater runoff from flowing directly into a 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/or driveways and drainage systems, culverts and other related features.

1) Roads and driveways shall be set back at least one-hundred (100) feet, horizontal distance, from the normal high-water line of a great pond classified GPA or a river that flows to a great pond classified GPA, and seventy-five (75) feet, horizontal distance from the normal high-water line of other water bodies, tributary streams, or the upland edge of a wetland unless no reasonable

alternative exists as determined by the Planning Board. If no other reasonable alternative exists, the 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 stream due to an operational necessity, excluding temporary docks for recreational uses. Roads and driveways providing access to permitted structures within the setback area shall comply fully with the requirements of 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 their setback from a water body, tributary stream or wetland.

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

4) Road and driveway banks shall be no steeper than a slope of two (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 channelized flow of the drainage through the buffer strip.

7) Ditch relief (cross drainage) culverts, drainage dips and water turnouts shall be installed in a manner effective in directing drainage onto unscarified buffer

strips before the flow gains sufficient volume or head to erode the road, driveway, or ditch. To accomplish this, the following shall apply:

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

| Road 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 downslope from a line perpendicular to the centerline of the road or driveway.

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

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

**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 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 shall not exceed twelve (12) square feet in the 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 stormwaters.

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

(3) The *Stormwater Management Law* (38 M.R.S.A. section 420-D) requires a full permit to be obtained from the DEP prior to construction of a project consisting of 20,000 square feet or more of impervious area or 5 acres or more of a developed area in an urban impaired stream watershed or most-at-risk lake watershed, or a project with 1 acre or more of developed area in any other stream, coastal or wetland watershed. A permit-by-rule is necessary for a project with one acre or more of disturbed area but less than 1 acre impervious area (20,000 square feet for most-at-risk lakes and urban impaired streams) and less than 5 acres of developed area. Furthermore, a Maine Construction General Permit is required if the construction will result in one acre or more of disturbed area.

**J. Septic Waste Disposal**

1) All subsurface sewage disposal systems shall be installed in conformance with the State of Maine Subsurface Wastewater Disposal Rules, and the following: i) 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 ii) a holding tank is not allowed for a first-time residential use in the shoreland zone.

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

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

**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 (L)(5) 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 severnty-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.

   d) The *State of Maine Solid Waste Laws*, 38 M.R.S.A., section 1301 and the solid waste management rules, Chapters 400-419 of the Department of Environmental Protection's regulations may contain other applicable

provisions regarding disposal of such materials.

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 in conformance with the Manure Utilization Guidelines published by the Maine Dept. 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 one hundred (100) feet, horizontal distance, of a great pond classified GPA or a river flowing to a great pond classified GPA, or within seventy-five (75) feet horizontal distance, of other water bodies, tributary streams, or wetlands. All manure storage areas within the shoreland zone must be constructed or modified such that the facility produces no discharge of effluent or contaminated storm water.

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. Assistance in preparing a Conservation Plan may be available through the local Soil and Water Conservation District office.

4) There shall be no new tilling of soil within one-hundred (100) feet, horizontal distance, of the normal high-water line of a great pond classified GPA; within seventy-five (75) feet, horizontal distance, from other 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 one hundred (100) feet, horizontal distance, of the normal high-water line of a great pond classified GPA; within seventy-five (75) feet, horizontal distance, of other 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 Winterport.**

**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 subsection P below.

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 O(1), above, and except to allow for the development of permitted uses, 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, and 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 footpath not to exceed six (6) feet in width as measured between tree trunks and/or shrub stems is allowed 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 O(2) 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(O)(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 (O)(2) 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, diseased, unsafe, or dead trees results in the creation of cleared openings, these openings shall be replanted with native tree species unless existing new tree growth is present.

Section O(2) does not apply to those portions of public recreational facilities adjacent to public swimming areas as long as cleared areas are limited to the minimum area necessary.

3) At distances greater than 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 shall not apply to the 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 O.

**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 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.

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**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) year 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

(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 supplemented with a minimum four (4) inch depth of leaf mulch and/or bark mulch to prevent erosion and provide for effective infiltration of stormwater; 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.

**S. Erosion and Sedimentation Control**

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

a) Mulching and revegetation of disturbed soil.

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

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

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

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

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

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

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

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

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

**T. Soils**

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

**U. 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.

**V. Archaeological Site**

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

## 16. Administration

**A. Administering Bodies and Agents**

1) Code Enforcement Officer. A Code Enforcement Officer shall be appointed or reappointed annually by July 1st.

2) Board of Appeals. A Board of Appeals shall be created in accordance with the provisions of 30-A M.R.S.A. section 2691.

3) Planning Board. A Planning Board shall be created in accordance with the provisions of 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) A permit is not required for the replacement of an existing road culvert as long as:

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

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

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

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

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

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

6) 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.

**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 14, 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, 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.

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 not adversely affect existing commercial fishing or maritime activities in a Commercial Fisheries/Maritime Activities district;

8) Will avoid problems associated with floodplain development and use; and

9) 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. Special Exceptions**

In addition to the criteria specified in Section 16(D) above, excepting structure setback requirements, the Planning Board may approve a permit for a single family residential structure in a Resource Protection District provided that the applicant demonstrates that all of the following conditions are met:

1) There is no location on the property, other than a location within the Resource Protection District, where the structure can be built.

2) The lot on which the structure is proposed is undeveloped and was established and recorded in the registry of deeds of the county in which the lot is located before the adoption of the Resource Protection District.

3) All proposed buildings, sewage disposal systems and other improvements are:

   a) Located on natural ground slopes of less than 20%; and

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

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

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

6) All structures, except functionally water-dependent structures, are set back from the normal high-water line of a water body, tributary stream or upland edge of a wetland to the greatest practical extent, but not less than 75 feet, horizontal distance. In determining the greatest practical extent, the Planning

Board shall consider the depth of the lot, the slope of the land, the potential for soil erosion, the type and amount of vegetation to be removed, the proposed building site's elevation in regard to the flood-plain, and its proximity to moderate-value and high-value wetlands.

**F. 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.

**G. Installation of Public Utility Service**

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

**H. 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 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, within 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:

      i) 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

ii) The strict application of the terms of this Ordinance would result in undue hardship. The term "undue hardship" shall mean:

(1) That the land in question cannot yield a reasonable return unless a variance is granted;

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

(3) That the granting of a variance will not alter the essential character of the locality; and

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

d) Notwithstanding Section 16(H)(2)(c)(ii) 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 ensure 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 the action by the Board of Appeals shall be made part of the record and shall be taken into consideration by the Board of Appeals.

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 are inadequate, the Board of Appeals may remand the matter to the Planning Board for additional fact finding.

4) Appeal Procedure

a) Making an Appeal

i) An administrative or variance appeal may be taken to the Board of Appeals by an aggrieved party from any decision of the Code Enforcement Officer or the Planning Board, except for enforcement-related matters as described in Section 16(H)(1)(a) above. Such an appeal shall be taken within thirty-five (35) 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-five (35) day requirement.

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

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

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

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

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

b) Decision by Board of Appeals

i) A majority of the full voting membership of the Board shall constitute a quorum for the purpose of deciding an appeal.

ii) The person filing the appeal shall have the burden of proof.

iii) 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.

iv) 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.

## I. 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 insure 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, revocation

actions, revocation of permits, appeals, court actions, violations investigated, violations found, and fees collected. On a biennial basis, a summary of this record shall be submitted to the Director of the Bureau of Land and Water Quality within the Department of Environmental Protection.

d) 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 or hazard to public health and safety or will result in substantial environmental damage.

e) 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. Current penalties include fines of not less than $100 nor more than $2500 per violation for each day that the violation continues. However, in a resource protection district the maximum penalty is increased to $5000 (30-A M.R.S.A. section 4452).

# Article IV.

# SITE PLAN REVIEW

## 1. Purpose

Site plan review regulations are established to promote the public health, safety, and general welfare by requiring Planning Board review of development plans with significant community or environmental impact. These regulations ensure that such developments are compatible with the community and the environment, and their surroundings. The purpose of this review is to facilitate orderly, beneficial development in compliance with these regulations.

## 2. Site Plan Review Required

Site plan review and approval by the Planning Board shall be required for:

1) Any development in any Shoreland District which, pursuant to Article III, Section 14 and Table 3-1, requiring Planning Board approval;

2) Creation of any subdivision, as defined by the laws of the State of Maine, provided that such review shall be modified in accordance with the provisions of Article V, generally.

3) The construction, operation or use within the Town of Winterport of a waste facility, as herein defined.

4) The construction of any structure greater than five thousand (5,000) square feet.

5) Any activity classified as a major development as defined in Article IV, Section 6(E)(1).

6) Uses for which site plan approval is required under any other Town ordinance.

## 3. Prohibition

No activity or use described in Article IV Section 2 may begin until the property owner obtains site plan approval from the Planning Board and provides all required performance guarantees to the Town.

## 4. Preapplication Meeting with Planning Board

Prior to submitting a formal application, the applicant or their representative may request a pre-application conference with the Planning Board. A pre-application conference is strongly advised. The pre-application conference shall be informal and informational in nature. There shall be no fee for a pre-application review, and such review shall not cause the plan to be a pending application or proceeding under Title 1 M.R.S. §302, and no decisions regarding the application's completeness or the plan's will be made.

### A. The purposes of the pre-application conference are to:

1) Allow the Planning Board to understand the nature of the proposed use and the issues involved in the proposal,

2) Allow the applicant to understand the development review process and required submissions,

3) Identify issues that need to be addressed in future submissions, and

4) Make the applicant aware of any opportunities for coordinating the development with community policies, programs, or facilities.

5) In addition, the Board may schedule a site inspection if deemed necessary and discuss any requests for waivers.

**B. Information that may be submitted**

There are no formal submission requirements for a pre-application conference. However, the applicant should be prepared to discuss the following with the Board:

1) A sketch plan that identifies the proposed site, including its location, size, and general characteristics,

2) The nature of the proposed use and potential development,

3) Any issues or questions about existing municipal regulations and their applicability to the project, and

4) Any requests for waivers.

**5. Attendance Required**

The applicant or the applicant's duly authorized representative must attend Planning Board meetings to present the site plan application. Failure to attend will delay the Board's review or action on the application until the next regular meeting the applicant or a representative attends. The applicant or representative must also attend any public hearing to present the application and address questions of the Board and the public. Failure to attend a public hearing shall result in cancellation of the hearing with prejudice and the applicant will be responsible for all costs associated with a cancelled hearing.

**6. Review Procedure**

**A. Application Deadline**

All application materials must be received by the Town Office at least fifteen (15) days prior to the Planning Board meeting at which the application is to be considered.

**B. Submissions Generally**

Before an application will be considered by the Planning Board, the applicant shall pay all fees required by Article IV Section 8. The applicant must submit ten (10) copies of all application materials, including plans and supporting documentation, to the Town Clerk or their designee. Alternatively, the applicant may submit a digital copy for distribution, plus one paper copy for public inspection, to be maintained at the town office. Each submission must be clearly labeled APPLICANT'S EXHIBIT 1, APPLICANT'S EXHIBIT 2, and so on, in consecutive order, with pages numbered sequentially. Initial application materials that are provided in hard copy must be bound in a 3-ring binder of appropriate size. All subsequent submissions during the review process must be provided in the same quantity, similarly labeled, paginated, and punched for three (3) ring binding.

**C. Notice of Abutters**

Upon receipt of all required fees and the requisite number of application material copies, the Town Clerk or their designee will issue the applicant a dated receipt and will submit the application to the Planning Board to be placed on the agenda at its next regular meeting, scheduled between fifteen days (15) and thirty (30) days later. The applicant must notify by mail, with such notification including the description and location of the project:

1) all property owners within three hundred feet (300') of the proposed project site; and

2) the clerk and reviewing authorities (e.g. planning board) of any other municipality that abuts or includes any portion of the project site.

**D. Completeness Review**

The Planning Board shall conduct an initial review for the sole purposes of determining whether the application is complete and establishing the initial amount of any technical assistance fee to be assessed pursuant to Article IV Section 8(D). If the application is deemed complete, it shall be deemed pending and the Planning Board may set the matter for a public hearing to take place within forty-five (45) days of this initial review. If the application is deemed incomplete, the Planning Board shall, within fifteen (15) days, notify the applicant, in writing, of the specific additional material needed to complete the application. Upon the applicant's submission of such additional material, this step shall be repeated.

**E. Classification of Projects**

Projects subject to Site Plan Review shall be classified by the Planning Board into one (1) of the following classes:

1) Major Developments

Projects involving any of the following shall be classified by the Planning Board as a Major Development:

a) Any project involving drilling for or excavating natural resources, including mineral extraction, on land or under water where the area affected is in excess of thirty thousand (30,000) square feet;

b) Hazardous activities involving the consumption, generation, or handling of:

i) Hazardous wastes, as defined in Title 38, M.R.S. Section 1303;

ii) Hazardous materials, as defined in Title 38, M.R.S. Section 1317;

iii) Oils, as defined in Title 38 M.R.S. Section 542; and

iv) Low-level radioactive wastes, as defined in Title 38 M.R.S., Section 1451.

c) Any activity in a wellhead protection zone

d) Any building or buildings on a single parcel constructed or erected with a fixed location on or in the ground or attached to something on or in the ground which contains a ground area more than twenty thousand (20,000) square feet;

e) Any project where parking lots, roads, paved areas, or other areas to be stripped or graded and not to be revegetated causes the total project, including any buildings, to occupy a ground area in excess of sixty thousand (60,000) square feet;

f) Any project which is a conversion of an existing project meeting the description in paragraphs c) and d), above; and

g) Any multi-unit housing development involving a building or buildings built for the purpose of providing ten (10) or more housing units located

on a single parcel of land.

h) The creation of a subdivision involving more than five (5) lots or dwelling units. Or,

i) any development or subdivision that involves the construction of a new street.

2) Minor Developments

a) Projects not classified as a Major Development shall be considered a Minor Development under this Section.

Projects classified as Minor Developments are required to submit the information specified in Article IV, Section 9 (A), (B), (C). Projects classified as Major Developments, in addition to submitting the information required of Minor Developments, are required to submit the information specified in Article IV, Section 9 (D).

**F. Waivers**

1) Waiver of submission requirements. The Planning Board may, for good cause shown, upon the written request of an applicant or on its own motion, specifically stating the reasons therefore, waive any of the application requirements set forth in Article IV Section 9. The Planning Board may condition such a waiver on the applicant's compliance with alternative requirements. Good cause may include a finding that certain submissions are inapplicable, unnecessary, or inappropriate for a complete review. Notwithstanding the waiver of a submission requirement, the Planning Board may later rescind such waiver if it appears that the submission previously waived is necessary for an adequate review. A request for a submission previously waived shall not affect the application's pending status.

2) Waiver of Standards. Upon an applicant's written request specifying the reasons, the Planning Board may modify the site plan review standards contained in Section 12 when necessary to protect the public health, safety or welfare or to address particular site characteristics. No waiver may be granted that would alter or nullify the purpose or intent of any state law, municipal ordinance, or comprehensive plan.

**G. Deliberation and Decision**

Within thirty (30) days after a public hearing, or within sixty (60) days after an application is deemed complete if no hearing is held, the Planning Board shall determine whether the proposed plan complies with all applicable review standards set forth in Article IV Section 10.

If the plan complies with all standards, the Planning Board shall issue an order granting site plan approval, subject to the applicant providing a performance guarantee in accordance with Article IV, Section 11, and any other terms or conditions the Board deems necessary to ensure compliance with site plan review standards or to protect public health, safety, or welfare. If the plan does not meet all review standards, the Board shall issue an order denying site plan approval and, within fifteen (15) days after the completion of its deliberations, issue specific written findings of fact supporting its decision.

**H. Other Permits**

Site plan approval does not exempt the applicant from obtaining other permits or approvals required before commencing any activity or use outlined in Article IV, Section 2. These may include, but are not limited to, subdivision approval, building, plumbing and electrical permits, and licenses granted pursuant to 38 M.R.S.§ 1022, Maine Department of Environmental Protection and United States Army Corps of Engineers approvals, subsurface wastewater disposal permits, sewer connection permits, and Maine Department of Transportation approvals. The fact that the applicant may have obtained or may have been granted such permits or approvals prior to site plan review may be considered by the Planning Board as evidence as to the plan's compliance with applicable review standards, but shall not be deemed conclusive evidence as to compliance.

**I. Failure to Act**

Failure of the Planning Board to act within any of the time requirements set forth herein shall constitute a denial of the application.

**7. Standard Conditions**

All activities, uses, or developments approved pursuant to Article IV must comply with the standard conditions set forth in Article II Section 2.

**8. Fees**

**A. General**

No application for site plan review shall be deemed complete until the applicant has paid all fees as required by this section. All fees shall be payable to the Town of Winterport and shall be for the cost of processing the site plan review application and, except as otherwise specifically provided, shall not be refundable regardless of the final decision to grant or deny site plan approval.

**B. Administrative and Notice Fees**

Each application for site plan review shall be accompanied by an administrative fee and a public notice fee which fees shall be set by the Winterport Town Council upon the recommendation of the Planning Board.

**C. Late fees**

Any application for site plan review submitted after a violation of this Ordinance has occurred on the property in question shall be accompanied by a late fee which shall be set by the Winterport Town Council upon the recommendation of the Planning Board.

**D. Technical Assistance Fees**

Due to the complexity of modern development projects, to the Town may engage independent experts to assist in reviewing a development. The developer is responsible for covering the associated costs.

In addition to other fees required by this Ordinance, the Town shall assess the applicant fees to cover one hundred percent (100%) of its costs for independent geotechnical, engineering, planning, architectural, legal, and similar professional consulting services. Such fees are subject to the following limitations:

1) Consultation services shall be limited to reasonable and necessary review or

inspection that exceeds the Planning Board's expertise or capacity to evaluate the application materials or inspect the project within reasonable timeframes, as established by this Ordinance or by law.

2) Results of any consultations funded by the applicant shall be publicly accessible, but are intended solely for the benefit of the Town of Winterport and remain its property.

3) Fees for professional consultation are assessed for pursuing an activity requiring site plan approval and must be paid regardless of the application's outcome or the consultation results.

4) Within fifteen (15) days of an application for site plan review being determined complete, an applicant shall establish with the Town a non-interest-bearing escrow account to guarantee payment of actual fees pursuant to this section. If the balance of the account shall be drawn down to less than twenty-five-percent (25%), the Town shall notify the applicant and require that an additional amount, reasonably estimated by the Planning Board to cover the costs of the remaining review or inspection, be deposited therein. The Town shall continue to notify the applicant and require an addition amount to be deposited each time the account is drawn down to less than twenty-five percent (25%) of the original deposit.

5) Upon the denial of site plan approval, or upon an applicant's completion of a project, the Town shall provide the applicant with an accounting of expenditures from said escrow account and shall return to the applicant any unused portion of the funds originally deposited. In the event that the amount originally deposited in said escrow account is insufficient to cover all costs incurred by the Town,the applicant shall pay to the Town the difference between the amounts the applicant has already paid and the amount ultimately expended.. The sum that an applicant shall originally deposit into said escrow account shall be determined by the Planning Board, and may consider estimates provided by the applicant and other consultants retained by the town.

6) Instead of an escrow account, the Planning Board may accept an unconditional, irrevocable letter of credit from the applicant, in form and content satisfactory to the Town Attorney. To ensure payment of one hundred percent (100%) of the costs incurred by the Town, the LOC amount shall be twice the estimated costs.

7) If, at any time, an applicant refuses to pay any amount required under this section, the Planning Board shall take one or more of the following actions:

   a) Refuse to grant site plan approval.

   b) Refuse to sign or release any plat or mylar.

And the Planning board may recommend to the Council one of the following.

   a) Issue a stop work order for the project.

   b) Lien the subject property for all amounts due.

   c) Institute legal action to recover all amounts due together with all reasonable costs of collection, including attorney's fees.

**9. Application**

An application for site plan review shall include plan(s) and accompanying documents, as applicable, showing existing conditions and the proposed development. All maps or plans shall be drawn to a scale no smaller than one inch (1") equals one hundred feet (100'), unless otherwise indicated. The application shall include the following information:

**A. Information required on all developments: Preliminary Information**

1) Application Form. Evidence of sufficient right, title, or interest in the premises to permit the applicant to undertake the activity or use for which site plan approval has been requested including, but not limited to, a copy of the current deed to the tract being developed and copies of all deed restrictions, easements, rights-of-way or other encumbrances currently affecting the property. A fully executed and signed copy of the application form is required accompanied by together with evidence of right, title and interest in the property. The applicant shall submit one (1) original of all maps and drawings on durable permanent transparency material;

2) Fees. Evidence of payment of all applicable fees as set forth in Section 8;

3) Copies. Ten (10) copies of written materials plus ten (10) sets of maps or drawings containing the information required in this section, or a complete electronic copy plus one hard copy. All written materials shall be organized and bound in a three-ring binder;

4) Covenants and Agreements. Any restrictive covenants or maintenance agreements intended to run with the land, or any portion thereof, or any dwelling unit;

5) Declaration. If a condominium, as defined by the Maine Revised Statutes as amended, is to be created, a copy of the proposed declaration, development rights, special declarant rights, and bylaws of the unit owners' association;

6) Location Map. Location map showing the general location of the site and showing the boundaries of all contiguous property under the control of the owner or applicant regardless of whether all or part is being developed at this time;

7) Names and Seals. The name(s), registration number(s), and seal(s) of the land surveyor, architect, engineer, and/or similar professionals assisting with the preparation of the plan;

8) Neighbors. The names and addresses of all other property owners within three hundred feet (300') of the property in question;

9) Permit. Because of the special expertise of other reviewing authorities, the Planning Board shall require, as part of an application, all applicable permits or approvals from the Maine Department of Environmental Protection, Department of Transportation and the United States Army Corps of Engineers, and may require any other permits or approvals referred to in Section 6(H);

10) Performance Guarantees. The form of any proposed performance guarantee;

11) Soils. A medium intensity soils survey, unless a high intensity is required by the

Planning Board, identifying the soil boundaries and names in the proposed development with soils information superimposed on a plot plan in accord with the USDA Soil Conservation Service National Cooperative Soil Classification;

12) Standards for Soils. No activity shall be permitted in any area where the soil is rated severe or very severe for the proposed activity according to the County Soil Survey of the U.S.D.A. Soil Conservation Service, unless satisfactory evidence is presented that construction methods will overcome soil inadequacies.

13) Survey. Perimeter survey of the parcel made and certified by a registered land surveyor licensed in Maine, relating to reference points, showing true North point, graphic scale, corners of the parcel, the date of the survey and the total acreage;

14) Taxes and Assessments. Evidence that the applicant is not in arrears in the payment of any local taxes or assessments;

15) Technical and Financial Capacity. Evidence of the applicant's technical and financial capacity to complete the project as presented, including, but not limited to a list of all construction materials (including estimated quantities and costs), an estimate of all anticipated labor costs and all other projected costs associated with the project, and the applicant's proposed method of meeting such costs;

16) Standards for Technical and Financial Capacity. A letter from a bank, or other satisfactory documentation, that demonstrates that the applicant has adequate financial capacity to pay costs associated with the site development to meet the standards set forth in this Ordinance.

17) Written Permission. Written permission from the owner of the property allowing the Code Enforcement Officer, or his/her designee, to enter and have access to the property at all reasonable proper times during and immediately upon completion of construction to ensure compliance with all applicable standards set forth in this Ordinance.

**B. Information required of all developments: Existing Conditions**

The following information regarding existing conditions is required to be shown on an existing condition plan or plans:

1) Abutting buildings. The location of buildings on abutting properties and within 300 feet of the property line of the proposed developments;

2) Drainage facilities. Location of existing natural drainageways, storm drainage facilities, including dimensions of culverts, pipes, etc., open drainage courses, wetlands, on site and within 300 feet of the site;

3) Driveways, parking areas. The location and dimensions of existing driveways, parking and loading areas, and walkways on the site;

4) Exterior lighting. The location and type of all existing exterior lighting;

5) Floodplains. The location of any floodplain as shown on the Town's Flood Insurance Rate Maps. The clear identification of any portion of the site subject to storm flooding as indicated by standing water occurring on saturated soils

after a heavy rain, or land inundated when a surface water body overflows its bank;

6) Standards for Floodplains. If the proposed development, or any part of it, is determined to be in a flood-prone area based on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps, and Flood Insurance Rate Maps, or applicant-provided information, the site plan shall not be approved until the applicant obtains any required Flood Hazard Development Permit. Additionally, any plat or map to be recorded must include a written condition stating that principal structures constructed in the flood-prone area will be constructed with their lowest floors, including basements, at least one foot (1') above the 100-year flood level. The plat or map shall show the 100-year flood elevation.

7) Intersections. Location of intersecting roads or driveways within three hundred (300) feet of the site;

8) Legend. An indication on each map or plat of magnetic north, the date, a graphic map scale, the names and addresses of the record owner and any developer, designer, the names and seals of surveyor or engineer, the proposed name of any development and the address at which the development is located;

9) Natural historic and aesthetic features. Location of all existing physical and natural features on the site and within three hundred feet (300') thereof, including streams, brooks, rivers, or other watercourses, and existing woodlands, freshwater and saltwater wetlands, spawning grounds, wildlife habitat, and trees at least twenty-four inches (24") in diameter as measured four and one-half feet (4-½') above grade. When the proposed site is located within two hundred fifty feet (250') horizontal distance of the normal high water mark of any pond, river or salt water body, the location of public points of access to such waters;

10) Property lines. The bearings and distance of all property lines of the property to be developed and the source of this information, prepared by a registered land surveyor as a Standard Boundary Survey;

11) Sewer and water mains. Location and size of any existing sewer and water mains, culverts, and drains on the property to be developed and of any that will serve the development from abutting streets or land;

12) Streets. Location, names, and present widths of existing streets and right-of-way within or adjacent to the proposed development;

13) Surface water flow. The direction of existing surface water drainage flow across the site;

14) Topography. Topography showing existing contours of five foot (5') intervals for slopes averaging five percent (5%) or greater, and two foot intervals for land of lesser slope with a bench mark clearly designated;

15) Utility poles. The location of all existing utility poles.

**C. Information required of all developments: Proposed development activity**

The following information regarding the proposed development activity is required to be shown on the proposed development plan or in accompanying documents, as

appropriate:

1) Compliance with Plans and Ordinances.

   a) All site plans shall conform with the duly adopted comprehensive plan and with any other applicable municipal ordinances. In making this determination, the Planning Board may interpret the plan or ordinances.

   b) Any proposed use must be a permitted use for each district in which it is proposed.

   c) The proposed development shall not be approved by the Winterport Planning Board as long as the applicant is in violation of this Ordinance or of any previously approved subdivision or site plan in the Town of Winterport or is arrears in the payment of any local taxes or assessments.

2) Buildings. The location and dimensions of all proposed building on the site, including heights, footprints and ground floor elevations and the uses of all proposed buildings on the site and proposed use thereof;

3) Contours. All proposed contours and proposed finished grade elevations of the entire site and the systems of drainage proposed to be constructed. Contour intervals shall be specified by the Planning Board.

4) Dimensional requirements. Location and dimensions of all proposed buildings, structures, streets, easements, driveways, entrances and exits on the lot of the proposed site and within two hundred feet (200') of said lot (see standards for streets, sidewalks and access, Article IV, Section 10(C);

5) Driveways and curb cuts. The location and dimensions and materials to be used in the construction of proposed access drives and curb cuts to the lot from public streets (see standard for streets, sidewalks and access, Article IV, Section 10(C) and Section 9(D)(7), Standards for fire protection);

6) Utility poles. The location of all planned utility poles.

7) Landscaping. All landscaped areas and features (including without limitations fencing, walls and open spaces), and size and type of planted materials;

8) Standards for landscaping: All site plans shall provide for the landscape to be preserved in its natural state, insofar as practicable, by minimizing tree and soil removal and grade changes. And should conform to shoreland zoning standards if applicable.

9) Municipal Services. The impact of the proposed development on the municipal services;

10) Standards for Off-Site Improvements. When necessary to serve the needs of the proposed development or to protect the health, safety, and general welfare of the community, the Planning Board may require that off-site improvements of streets, sewer, and/or water systems be completed at the developer's expense. Existing unpaved streets shall, whenever necessary, reasonable, and practical, be widened and improved to the standards required by this Ordinance. Utilities shall be designed and built or improved to the standards of this Ordinance.

11) Standards for Other Municipal Services. All site plans shall demonstrate that the proposed development will not cause an unreasonable burden on the Town's

ability to deliver other necessary services not otherwise described above, including, but not limited to, police protection, road maintenance, snow removal, and schools.

12) Natural, Historic, and Aesthetic Features. The locations of all natural and historic features to be preserved, the conditions of such preservation and the manner in which same shall be enforced;

13) Standards for Natural, Historic and Aesthetic Features.

All plans will demonstrate that the proposed development will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, rare and irreplaceable natural areas, or any public rights for physical or visual access to the shoreline. Such rights of access shall be maintained by means of easements or rights-of-way, or should be included in any reserved open space, with provisions made for continued public access. If the proposed development contains any identified historical or archeological sites, or any areas identified in the Comprehensive Plan or by the Maine Natural Areas Program as rare and irreplaceable natural areas, these areas shall be included as open space, and suitably protected by appropriate covenants and management plans. With respect to subdivisions:

a) The plan shall by notes on the final plan and deed restrictions, limit the clearing of trees or to those areas designated on the plan.

b) The Planning Board may require the reservation up to ten percent (10%) of the area of a subdivision as common open space in order to provide for the recreational needs of the occupants of the development or to maintain the scenic or natural beauty of the area. In determining the need for open space, the Planning Board shall consider the proximity of the subdivision to neighboring dedicated open space or recreation facilities; the needs identified in the Winterport Comprehensive Plan or recreation plan for open space or recreation facilities in the neighborhood surrounding the subdivision; the type of development and the demographic characteristics of potential residents in the subdivision; and the density or lot sizes of the development.

c) Land reserved for open space purposes shall be of a character, configuration and location suitable for the particular use intended. A site intended to be used for active recreation purposes, such as a playground or a playfield, should be relativity level and dry, have a total frontage on one or more streets of at least two hundred feet (200'), and have no major dimensions of less than two hundred feet (200').

d) Sites selected primarily for scenic or passive recreation purposes shall have such access as the Planning board may deem suitable and no less than twenty-five feet (25') of road frontage. The configuration of such sites shall be deemed adequate by the Planning Board with regard to scenic attributes to be preserved, together with sufficient areas for trails, lookouts, and the like where necessary and appropriate.

e) Where the proposed subdivision is located on a lake, pond, river, stream or the seacoast, a portion of the waterfront area, when feasible, shall be included as reserved open space. The land so reserved shall be at least two

hundred feet (200') wide measured perpendicularly from the normal high water mark.

f) Reserved land acceptable to the Planning Board and developer may be dedicated to the Town as a condition of approval.

g) Where land within the subdivision is not suitable or is insufficient in amount, or where the applicant prefers, a payment-in-lieu of dedication shall be calculated at the market value of the developed land at the time of the subdivision, as determined by the municipal tax assessor, and deposited by the applicant into a municipal land acquisition or improvement fund, which fund shall be used exclusively for the purchase and development of neighborhood sites for parks, playgrounds and other recreational purposes.

h) All site or subdivision plans will demonstrate that the proposed development will not have an undue adverse effect on significant spawning grounds or wildlife habitat identified by the Department of Inland Fisheries and Wildlife, Department of Marine Resources, or the Town of Winterport.

i) Reserved Areas. The locations and legal descriptions of all areas existing and proposed to be dedicated to or reserved for public use, open space or recreation areas, the conditions of such dedication or reservation, and the manner in which same shall be enforced;

14) Noise. The type, size and location of all machinery or equipment likely to generate appreciable noise at the lot lines;

15) Outdoor lighting. The size, location and direction and intensity of illumination of all major outdoor lighting apparatus and signs;

16) Parking. Location and arrangement of proposed off-street parking and loading areas and their appurtenant drives and maneuvering areas;

17) Public Sewer Capacity: When sanitary waste disposal is to be accomplished by connection to the public sewer, an affidavit from the Sewer District stating that municipal sewer facilities have the capacity to collect and treat the wastewater and approving any plans for extension of or connection to the municipal sewer facilities;

18) Standards for Public Sewer Capacity: All developments shall demonstrate in the form of signed affidavits from the Town Water and Sewer District that the proposed development shall not cause an unreasonable burden on the municipal sewage waste disposal facilities, if such facilities are to be utilized, and that the District has approved the design specifications for any new sewer facilities to be connected to the municipal facilities. And the municipal sewer facilities have the capacity to collect and treat the wastewater and approving any plans for extension of or connection to the municipal sewer facilities;

19) Public Water Capacity: When water is to be supplied by public water supply, an affidavit from the Water District indicating there is adequate supply and pressure and approving and plans for extension of or connection to the public water supply system;

20) Standards for Public Water Capacity: All developments shall demonstrate in the form of signed affidavits from the Water District the proposed development shall not cause an unreasonable burden on the municipal water supply and that said water company has approved the design specifications of any water supply system that shall be connected to the municipal water supply;

21) Right-of-way, easements. All proposed right-of-way, easements and other legal restrictions which may affect the premises in question;

22) Signs. Location, front view, dimensions, materials, and size of all proposed signs, together with the material for securing the signs, and all permanent outdoor fixtures;

23) Solid Waste. Methods and locations of waste storage and disposal, together with a written statement from the appropriate municipal official stating that the proposed development will not cause an unreasonable burden on municipal waste disposal services if such services are to be utilized;

24) Standards for Solid Waste: All developments must demonstrate, in accordance with the following standards, that they have adequate and environmentally sound methods for disposing of the waste reasonably expected to be generated by the proposed development.

    a) The site plan must show that all waste reasonably expected to be generated will be disposed of in a timely manner and in accordance with applicable federal, and state, and local regulations. Waste must not be stored on site for unreasonable periods.

    b) If Town services are to be used, the applicant shall demonstrate by means of an affidavit from an appropriate Town Official that the proposed development will not cause an unreasonable burden on the Town's ability to dispose of.

    c) If Town services are not used, the site plan must demonstrate that the developer has arranged for efficient and environmentally sound disposal of all wastes reasonably expected to be generated.

25) Storm drainage. The location, type and size of all proposed catch basins, storm drainage facilities, streams and watercourses. When stormwater disposal is to be accomplished by connection to the public stormwater disposal system, an affidavit from the Sewer Superintendent or the Code Enforcement Officer stating that municipal stormwater disposal facilities have adequate additional capacity and approving any plans for extension of or connection to the municipal wastewater disposal system:

26) Maintenance of stormwater, sanitary waste, and potable water systems. Maintenance requirements and responsibilities of existing and proposed stormwater disposal, sanitary waste disposal, and potable water supply systems shall be certified by a licensed civil engineer and approved by the Sewer and Water Districts;

27) Subsurface Wastewater Disposal. When sanitary waste disposal is to be accomplished by subsurface wastewater disposal systems, an on-site investigation report by a site evaluator, certified by the Maine Department of

Human Services, and containing the types of soils, locations of test sites, and proposed locations and designs of the most appropriate and suitable subsurface wastewater disposal systems and evidence of the cumulative impact of the proposed systems when considered in conjunction with other subsurface wastewater disposal systems in the vicinity;

Standards for Subsurface Wastewater Disposal. All developments shall provide for adequate sewage disposal, subject to the following standards:

a) All developments shall be connected to municipal sewage waste disposal facilities when required by the Town of Winterport.

b) Industrial or commercial waste waters may be discharged to municipal sewers only in such quantities or of such quality as to be compatible with municipal sewage treatment operations. Such wastes may require pretreatment at the industrial or commercial site in order to render them amenable to municipal treatment processes.

c) When a development will produce sewage and when the development will not be serviced by municipal sewage waste disposal facilities, the applicant shall present copies of a preliminary soils test, completed by a Licensed Site Evaluator, evidencing adequate soil conditions for sufficient subsurface wastewater disposal, and shall also present sufficient evidence that the proposed subsurface wastewater facilities, when considered with other such facilities in the vicinity, will not have an undue adverse environmental effect. The Planning Board shall not approve any development that employs a subsurface wastewater disposal system and is located on soils rated poor or very poor by the Soil Suitability Guide for Land Use Planning in Maine. Where soils are rated fair for septic disposal, the minimum lot size shall be forty thousand (40,000) square feet.

d) When two or more lots or buildings in different ownership share a common subsurface disposal system, the system shall be owned and maintained in common by an owner's association. Covenants in the deeds for each lot shall require mandatory membership in the association and provide for adequate funding of the association to assure proper maintenance of the system.

28) Utilities. Location and dimensions of all proposed utilities and easements, including sanitary sewerage, water, electricity, and fire protection systems;

29) Wastes. The amount and type of any waste materials to be stored outside of roofed buildings, including their physical and chemical properties;

30) Legend. An indication on each map or plat of magnetic north, a graphic map scale, the names and addresses of the record owner and any developer, the name and seal of surveyor or engineer, the proposed name of any development and the address at which the development is located;

31) Construction schedule. A schedule of construction, including anticipated start and completion dates;

32) Water Supply. Information on the type of water supply proposed, if it is other

than a connection to the public water supply system;

33) Standards for Water Supply. All site plans shall demonstrate that the proposed development shall have sufficient water available for the reasonably foreseeable needs of the development, in accordance with the following:

a) The developer shall demonstrate by actual test or by a signed affidavit from an authorized representative of the servicing water company that water meeting State standards can be supplied to the development at the rate of at least 350 gallons per day per dwelling unit and at a minimum pressure of twenty (20) PSI.

b) The Minimum size of a water main connected to a public water supply shall be six inches (6").

c) Because they are difficult to maintain in a sanitary condition, dug wells shall be permitted only if it is not economically or technically feasible to develop other groundwater sources.

d) The water supply system shall be designed and installed in accordance with requirements of the Maine Department of Human Services.

e) If a central water supply system is provided by the developer, location and protection of the source, and design, construction, and operation of the distribution system, appurtenances and treatment facilities shall conform to State standards.

**D. Additional Proposed Plan Information required of major developments**

1) Air Emissions. Specifications on any air emissions to be generated by the proposed development.

2) Standards for Air Emissions. All developments shall demonstrate that the proposed development will not result in undue air pollution and that it will comply with the following standards:

a) No emission of dust, ash, smoke or other particulate matter or gasses and chemicals shall be allowed which can cause damage to human or animal health or safety, vegetation, or property by reason of concentration or toxicity, which can cause soiling beyond the property boundaries, or which fail to meet or cannot meet the standards set by the Maine Department of Environmental Protection.

3) Construction drawings. Construction drawings for streets, sanitary sewers, water supply storm drainage systems and structures, designed and prepared by a design professional registered in the State of Maine;

4) Dedication of public areas. Written offers of dedication or conveyance to the municipality, in a form satisfactory to the Town Attorney, of all land included in the streets, highways, easements, parks, or other open space dedicated for public use, and copies of agreements or other documents showing the manner in which spaces, title to which is reserved by the developer, are to be maintained;

5) Environmental assessment. An assessment of the impact of the development on wetlands, streams, ponds, flood plains, archaeological resources and significant wildlife habitats, including review letters from appropriate State Officials,

Environmental assessments shall in conducted in compliance with ASTM (American Society of Testing materials) E 1527;

6) Erosion and Sedimentation. A soil erosion and sedimentation control plan prepared by a qualified licensed professional;

7) Standards for Erosion and Sedimentation. All site plans shall demonstrate that the proposed development will not cause unreasonable soil erosion or a reduction in the land's capacity to hold water so that a dangerous or unhealthy condition results and further that the following standards will be met during construction and after completion:

   a) Stripping of vegetation, regarding or other development shall be done in such a way as to minimize erosion;

   b) Development shall preserve salient natural features, keep cut and fill operations to a minimum and ensure conformity with topography so as to create the least erosion potential and adequately handle the volume and velocity of surface water runoff;

   c) The top of a cut or the bottom of a fill section shall not be closer than ten feet (10') to an adjoining property, unless otherwise specified in this ordinance, and no cut or fill shall exceed a 3 to 1 slope;

   d) The development shall not increase the rate or volume of surface water runoff from the proposed site;

   e) Whenever feasible, natural vegetation shall be retained, protected and supplemented;

   f) The disturbed area and the duration of exposure shall be kept to a practical minimum;

   g) Disturbed soils shall be stabilized as quickly as practicable;

   h) Dust control methods shall be employed during dry conditions;

   i) Temporary vegetation or mulching shall be used to protect exposed areas during development;

   j) The permanent vegetation shall be installed as soon as practicable on the site, but no later than six (6) months after completion of construction;

   k) Until the disturbed area is stabilized, sediment in the runoff water shall be trapped by the use of debris basins, sediment basins, silt traps or other acceptable methods;

   l) Whenever sedimentation is caused by stripping vegetation, regrading or other development, it shall be the responsibility of the developer causing such sedimentation to remove it from all adjoining surfaces, drainage systems and water courses and to repair any damage at his expense as quickly as possible;

   m) It is the responsibility of any person doing any act on or across a communal stream, watercourse or swale or upon the floodway right-of-way thereof to maintain as nearly as possible in its present state the stream, watercourse, swale, floodway or right-of-way during the duration

of such activity and to return it to its original or equal condition after such activity is completed; and

n) Maintenance of drainage facilities or water courses originating and completely on private property is the responsibility of the owner to the point of open discharge at the property line or at a communal watercourse within the property.

8) Fire Protection. A plan showing the number, design, location, and adequacy of proposed fire hydrants, dry hydrants or fire ponds, as well as the proposed access to the site for firefighting equipment and other emergency vehicles, together with a written statement from the Fire Chief approving said plan and indicating that the Fire Department is able to provide fire protection services to the development. And, if required by the Planning Board, the results of a water pressure test demonstrating the sufficiency of water pressure for firefighting purposes.

9) Standards for Fire Protection

a) No subdivision which has access to a public water supply shall be developed such that any building lot is more than five hundred feet (500') from a fire hydrant;

b) All site plans shall demonstrate that the proposed development will not cause an unreasonable burden on the Town's ability to safely deliver fire protection services.

c) Driveways longer than 100' must meet the standards established and published by the Fire Chief.

10) Groundwater. A statement of the quantity of groundwater to be extracted by the development, expressed as the annual total, the maximum monthly rate and the maximum daily rate, and when total groundwater or spring water extraction shall exceed one thousand (1,000) gallons per day, a groundwater extraction impact assessment prepared by a licensed professional engineer, (see standards for groundwater, Article IV, Section 10(A);

11) Hydrogeologic Assessment. A hydrogeologic assessment will be required when any development that will not be served by the public sewer and that will contain five (5) or more lots, dwelling units or rental units, or that will generate a daily average of five hundred (500) gallons of wastewater in any two (2)-month period and that will (a) located over or within three hundred feet (300') of a sand and gravel aquifer, as shown on a map entitled Hydrogeologic Data for significant Sand and Gravel Aquifers, by the Maine Geologic Survey, 1985; (b) contain less than one hundred thousand (100,000) square feet in total area, (c) has an average density of less than one hundred thousand (100,000) square feet per dwelling unit; or (d) when determined by the Planning Board to be required because of the unique or fragile characteristics of the site ; a hydrogeologic assessment must be prepared by a licensed geologist who has demonstrated hydrology impact assessment experience and training. Hydrogeologic assessment shall contain at least the following:

a) certified by a map showing the soils types;

b) the depth to the water table at representative points throughout the development site;

c) drainage conditions throughout the development site;

d) data on the existing groundwater quality, either from test wells on the development site or from existing wells on neighboring properties;

e) an analysis and evaluation of the impacts of the development on groundwater resources. In the case of residential developments evaluation shall, at a minimum, project nitrate-nitrogen concentrations. For development within the watershed of a lake, projections of phosphorus impacts shall also be calculated;

f) projections of groundwater quality shall be made at any wells within the development site and at the development's boundaries or at a distance of five hundred feet (500') from potential contamination sources, whichever is a shorter distance. Projections of groundwater quality shall be based on the assumption of drought conditions (assuming 60% of annual average recharge from precipitation).

12) Planting plan. A planting plan and schedule keyed to the site and indicating the general species and sizes of trees, shrubs, and other plants to be planted on the site.

13) Public use areas. The location of any pedestrian ways, lots, easements, open spaces, and other areas to be reserved for or dedicated to public use and/or ownership. For any proposed easement, the developer shall submit the proposed easement language with a signed statement certifying that the easement will be executed upon approval of the development. In the case of any streets or other ways dedicated to public ownership, the developer shall submit a signed statement that they will maintain such streets or ways year-round until such time as they may be accepted by the Town.

14) Storm water plan. A storm water drainage and erosion control program showing:

a) The existing and proposed method of handling storm water run-offs;

b) The direction of flow of the run-off through the use of arrows;

c) The location, elevation, and size of all catch basins, dry wells, drainage ditches, swales, retention basins, and storm sewers;

d) Engineering calculations used to determine drainage requirements based upon the 25-year 24-hour frequency, if the project will significantly alter the existing drainage pattern due to such factors as the amount of new impervious surfaces (such as paving and building area) being proposed.

(See standards for stormwater management, Article IV, Section 11(B);

15) Street, Sidewalks and Access. The location and names of existing streets and sidewalks and the location, proposed names, and design details of proposed streets, sidewalks and other means of access, including, but not limited to:

a) drawings showing a plan view, profile, and cross section of proposed streets and sidewalks at fifty-foot (50') intervals and at a distance

sufficient to show the full drainage scheme of any proposed intersection;

b) intersections of the proposed streets with existing streets;

c) roadway and right-of-way limits, including edge of pavement, edge of shoulder, sidewalks and curbs;

d) kind, size, location, material, profile, cross section, and inverts of each existing and proposed drainage structure, including its location with respect to existing natural waterways and proposed drainage ways;

e) complete curve data for all horizontal and vertical curves;

f) turning radii at all intersections;

g) centerline gradients;

h) the length of all straight lines, deflection angles, radii, length of curves and central angels of all curves, tangent distances and tangent bearings for each street;

i) written approval of the Code Enforcement Officer (in consultation with the Winterport Road Commissioner or the Maine Department of Transportation) if the developer proposes improvements within existing public streets;

j) design details for all improvements accessory to roads, sidewalks, or other means of access, including bridges, curbs, and bumpers;

k) size, location, and type of culverts with specifications on ditching to ensure proper function.

(see standards for streets, sidewalks and access, Article IV, Section 11(C)

16) Traffic Impact. An estimate of the amount and type of vehicular traffic to be generated on a daily basis and at peak hours and, for all developments of ten (10) or more lots, dwelling units or rental units, for all developments expected to generate more than one hundred (100) vehicle trips per day, and for all development deemed by the Planning Board, because of special circumstances to require it, a traffic impact analysis report by a registered professional engineer that the street giving access to the development and neighboring streets, that can be expected to carry traffic to and from the development, have adequate carrying capacity to accommodate the amount and types of traffic to be generated by the proposed use, and further demonstrating whether the development shall increase the volume capacity ratio of any street above 0.8 or reduce the street's level of service to D or below by using the capacity analysis procedures set forth in the current edition of the Highway Capacity Manual, published by the Transportation Research Board;

17) Utilities. Location and design of all existing and proposed utilities such as gas, electricity, cable television and telephone.

**10. Hearing Procedure**

Within forty-five (45) days of the Planning Board's certification that an application for site plan review is complete, the Planning Board shall conduct a public hearing on said application in accordance with the following:

**A. Published Notice**

Notice of said hearing shall be published two (2) times in a newspaper of general circulation in the Town of Winterport with the first publication at least ten (10) days prior to the hearing date except that in the case of subdivisions notice shall be published at least two (2) times, with the date of the first publication at least seven (7) days prior to the hearing date.

**B. Mailed Notice**

At least ten (10) days prior to the hearing date, the applicant shall mail written notice of said hearing by certified mail, return receipt requested, , to:

a) Owners of all properties within three hundred feet (300') of the development;

b) the Chairperson of the Winterport Town Council and, if the property development is within five hundred feet (500') of a Town line;

c) the Town Clerk and Planning Board Chairperson of any adjacent town if the development is within five hundred feet (500') of a town boundary.

Property Owners are considered to be those listed as the persons against whom taxes are assessed. The Planning Board shall maintain a list of property owners so notified in each case. Notice is deemed received if mailed to the owner's last known address according to the Town's tax records. Failure of any property owner to actually receive notice shall not necessitate another hearing or invalidate any Planning Board actions.

**C. Content of Notice**

Notice of said hearing shall identify the applicant and the property involved, describe the specific nature of the proposal, state the date, time, and place of the hearing, and explain how the recipient of the notice may review the application, and attend and present evidence.

**D. Additional Evidence**

At least two (2) days prior to the public hearing, any person wishing to present documentary evidence to the Planning Board, shall provide to the Town Clerk copies of all such evidence in form and quantity described in Article IV, Section 6(B) except that each submission shall be conspicuously labeled with that person's surname followed by "EXHIBIT 1", "EXHIBIT 2", and so on, in consecutive fashion.

**E. Rules**

Said hearing shall be conducted according to rules adopted by the Planning Board.

**F. Representation**

At any hearing a party may be represented by an agent or attorney provided, however, that if any party is not present, any person acting as that party's agent or attorney shall provide written evidence of such authority.

**G. Continuation**

Any hearing may be continued or recessed to another time for good cause shown.

**H. Staff Support**

The Code Enforcement Officer and Town Manager may attend public hearings and

present plans, photographs or other materials they consider relevant to the Planning Board's review.

**11. Design and Construction Standards**

The Planning Board, before granting site plan approval, must find that the proposed plan will comply with each of the following standards. In all instances the burden of proof shall be upon the applicant.

**A. Groundwater**

All site plans shall demonstrate that the proposed development shall not, alone or in conjunction with existing activities, adversely affect the quality or quantity of ground water or any body or course of water, and that the development shall comply with the following standards**:**

1) No activity shall locate, store, discharge, or permit the discharge of any untreated, or inadequately treated liquid, gaseous, or solid materials of such nature, quantity, toxicity, or temperature, that runoff, seep, percolate, or wash into surface or ground waters so as to contaminate, pollute, or harm such waters or create objectionable shore deposits, floating or submerged debris, oil or scum, color, odor or taste, as to be harmful to human, animal, plant or aquatic life.

2) All above ground outdoor storage facilities for fuel, chemicals, chemical or industrial wastes, and biodegradable raw materials shall be located on impervious pavement and shall be completely enclosed by an impervious dike which shall be high enough to contain the total volume of liquid kept within the storage area, plus the rain falling into this storage area during a 25-year storm, so that such liquid shall not be able to spill onto or seep into the ground surrounding the paved storage area. Storage tanks for home heating oil and kerosene, not exceeding 275 gallons in size, are exempted from this requirement.

3) All below ground tanks must meet the standards of the Maine Department of Environmental Protection.

4) No development shall increase any contaminant concentration in the groundwater to more than one-half (½) of the level specified in the Primary Drinking Water Standards. No development shall increase any contaminant concentration in the groundwater to more than the level specified in the Secondary Drinking Water Standards.

5) If existing groundwater quality fails to meet the primary standards, and the development is to be served by on-site groundwater supplies, the applicant shall demonstrate how water quality will be improved to an adequate standard.

6) If existing groundwater quality already exceeds the secondary standards, the development shall not cause the concentration of the parameters in question to exceed 150% of the ambient concentration.

7) Subsurface wastewater disposal systems and drinking water wells shall be constructed as shown on the map submitted with the hydrogeologic assessment of groundwater impacts, if one has been required. If construction standards for drinking water wells are recommended in the assessment, those standards shall

be included as a note on the Final Plan and as restrictions in the deeds to the affected lots.

8) The Board shall require specific sized lots where completion of the following formula indicates such lot sizes or densities are necessary in order to meet the standards above.

d = (q) (Cnitrate Cb) + (Cs) )qs)

d is the allowable housing density in dwelling per acre.

q is the rate of natural groundwater recharge, averaged over the year in gpm/acre.

Some representative numbers, based on soil types are:

| SOIL TYPES | VALUE OF q |
|---|---|
| glaciomarine clay-silt | 0.11 – 0.23 |
| thick silty clay | 0.23 |
| thin soil over rock | 0.33 |
| thin till over rock | 0.46 |
| sandy glacial till | 0.57 |
| glaciomarine fine sands | 0.91 |
| raised beach deposits | 1.16 |
| sand and gravel | 1.16 |

Cnitrate is the resultant concentration of nitrate-nitrogen in groundwater as a result of subsurface sewage disposal systems, 5 mg/l.

Cb is the background concentration of nitrate-nitrogen in groundwater; if records are not available, assume 0.25 mg/l.

Cs is the nitrate-nitrogen concentration in typical septic tank discharge, 30 mg/l.

qs is the average leachfield discharge rate per dwelling, which is equal to 70% of 300 gallons per day or 0.15 gal/min.

9) The quantity of water to be taken from groundwater sources will not lower the groundwater table at the property lines by more than two feet (2') or to the detriment of any existing groundwater, cause salt water intrusion to any existing well, cause undesirable changes in groundwater flow patterns, or cause unacceptable ground subsidence, based on the conditions of a drought with a probability of occurrence of once in ten (10) years.

10) The proposed development shall not cause water pollution or other diminution of the quality of the groundwater supply from which the water is to be extracted.

11) The proposed development shall not be within the defined aquifer recharge area of a public water supply, unless notice is given to the operator thereof and the Board has considered any information supplied by the operator and finds that no adverse affect on a public water supply will result.

12) Nothing in this procedure nor any decision by the Planning board shall be deemed to create groundwater rights other than those rights which the applicant

may have under Maine law.

13) The proposed development shall not otherwise cause undue water pollution, taking into consideration at least the following factors:

a) The elevation of the land above sea level and its relation to the flood plains;

b) The nature of the soils and subsoils and their ability to adequately support waste disposal;

c) The slope of the land and its effect on effluents;

d) The availability of streams for disposal of effluents;

e) Any applicable state and local health and water resource rules and regulations.

**B. Stormwater Management**

All developers shall demonstrate that the proposed development shall provide for adequate stormwater management in compliance with the following standards:

1) All new construction and development, whether or not served by a stormwater collection and transportation system, shall be designed to perform as nearly as possible in a manner similar to that of natural runoff conditions in terms of volume, velocity and location of runoff. If runoff after development would exceed by ten percent (10%) predevelopment runoff conditions, the off site impact must be evaluated in terms of potential soil erosion and sedimentation, drainage capacity, land use and land cover characteristics. Appropriate methods of reducing off site impact shall be employed. Stormwater management evaluations and designs shall be based on a 24-hour, 25-year recurrence interval storm.

2) Stormwater runoff systems should be designed to facilitate aquifer recharge when it is advantageous to compensate for groundwater withdrawals or reductions in infiltration. Conversely, designs should avoid recharge where groundwater effects might be harmful. Design of permanent storage facilities should consider safety, appearance, recreational use, and cost and effectiveness of maintenance operations, in addition to the primary storage function. Natural overland flows and open drainage channel and swale locations should be the preferred alignments for major components of a residential drainage system. The use of enclosed components, such as underground piping, should be minimized where the existing natural systems are able to accommodate storm runoff. Energy dissipaters, and other forms of outfall protection shall be employed where enclosed drains discharge onto erodible soils in order to reduce high flow velocities. Stormwater and surface water runoff, whether channelized or not, shall not be diverted onto adjacent properties without an easement, unless on a natural or previously existing channel.

3) The stormwater management system shall be designed to accommodate upstream drainage, considering existing conditions and approved or planned developments not yet built and shall include a surplus design capacity factor of twenty-five percent (25%) for potential increases in upstream runoff.

4) Downstream drainage requirements shall be studied to determine the effect of

the proposed development, including the twenty-five percent (25%) surplus design capacity factor as required above. The storm drainage shall not overload existing or future planned storm drainage systems downstream from the development. The applicant shall be responsible for financing any improvements to existing drainage systems required to handle the increased storm flows.

5) The minimum pipe size for any storm drainage pipe shall be twelve inches (12”). Maximum trench width at the pipe crown shall be the outside diameter of the pipe plus two feet (2').

6) Catch basins shall be installed where necessary and located at the curb line.

7) Drain inlet alignment shall be straight in both horizontal and vertical alignment unless specific approval of a curvilinear drain is obtained in writing from the Planning Board.

8) Manholes shall be provided at all changes in vertical or horizontal alignment and at all junctions. On straight runs, manholes shall be placed at a maximum of four hundred foot (400') intervals.

9) Outlets shall be stabilized against soil erosion by riprap or other suitable materials to reduce stormwater velocity.

10) Materials used in storm drainage construction shall comply with the following standards:

a) Reinforced Concrete Pipe. Reinforced Concrete Pipe shall meet the requirements of ASTM Designation C- 76 (AASHTO M 170). Pipe classes shall be required to meet the soil and traffic loads with a safety factor of 1.2 on the .01 inch crack strength with a Class B bedding. Joints shall be of the rubber gasket type meeting ASTM Designation C 443-70, or of an approved preformed plastic jointing material such as Ramnek. Perforated Concrete pipe shall conform to the requirements of AASHTO M 175 for the appropriate diameters.

b) Corrugated Metal Pipe. Corrugated Metal Pipe shall be coated meeting the requirements of AASHTO Designation M 190 Type C for iron or steel pipe or AASHTO Designation M 196 for aluminum alloy pipe for sectional dimensions and type of bituminous coating. Pipe gauge shall be as required to meet the soil and traffic loads with a deflection of not more than five percent (5%).

c) ABS Pipe. ABS (Acrylonitrile-butadiene styrene) composite pipe and fittings shall conform to the requirements of AASHTO M 264 and AASHTO M 265. Perforated pipe shall conform to the requirements of AASHTO M 36, Type III.

d) Corrugated Plastic Pipe. Corrugated Plastic Pipe shall conform to the requirements of AASHTO M 252.

e) Manholes. Manholes shall be of precast concrete truncated cone section construction meeting the requirements of ASTM Designation C 478 or precast concrete manhole block construction meeting the requirements of ASTM Designation C 139, radial type. Bases may be cast-in-place 3,000

psi 28-day strength concrete or may be of precast concrete, placed on a compacted foundation of uniform density. Metal frames and traps shall be set in a full mortar bed and with tops shall conform to the requirements of AASHTO M 103 for carbon steel castings, AASHTO M 105, Class 30 for gray iron castings or AASHTO M 183 (ASTM A 283, Grade B or better) for structural steel.

f) Catch Basins. Catch basins shall be of precast concrete truncated cone section construction meeting the requirements of ASTM Designation C 478 or precast concrete manhole block construction meeting the requirements of ASTM Designation C 139, radial type. Castings shall be square cast iron sized for the particular inlet condition with the gratings perpendicular to the curb line. Bases may be cast in place 3,000 psi 28-day strength concrete or may be of precast concrete, placed on a compacted foundation of uniform density. Metal frames and traps shall be set in a full mortar bed and with tops shall conform to the requirements of AASHTO M 105, Class 30 for gray iron castings or AASHTO M 183 (ASTM A 283, Grade B or better) for structural steel.

11) Stormwater drainage systems shall be designed so as to prevent the infiltration of stormwater into the public sewer system.

12) Wherever a stormwater drainage system, including a natural water course or drainage way, is not within a public right-of-way, perpetual easements shall be provided to the Town allowing maintenance and improvement of the system. Such easements shall be at least thirty feet (30') in width. In no event shall the granting of such an easement be deemed to require maintenance or improvement of the stormwater drainage system by the Town.

**C. Streets, Sidewalks and Access**

1) Capacity.

a) New streets, streets giving access to the development, and neighboring streets which can be expected to carry traffic to and from the development shall have traffic carrying capacity and be suitably improved to accommodate the amount and types of traffic generated by the proposed development. No development shall increase the volume capacity ratio of any street above 0.8 nor reduce the street's Level of Service to D or below as determined by using the capacity analysis procedures set forth in the current Highway Capacity Manual and accompanying documents as may be published by the Transportation Research Board.

b) Accessways shall be of a design and have sufficient capacity to avoid queuing of entering vehicles on any street.

c) The proposed development shall not cause unreasonable highway or public road congestion or unsafe conditions with respect to the use of highways or public roads, existing or proposed.

d) Where necessary to safeguard against hazards to traffic and pedestrians or to avoid traffic congestion, provision shall be made for turning lanes, traffic directional islands, frontage roads, driveways, and traffic controls within public streets.

2) Layout

a) Proposed streets shall conform, as far as practical, to the Winterport Comprehensive Plan and policy statements of the Town of Winterport.

b) All streets within subdivisions shall be so designed that they will provide safe vehicular travel while discouraging movement of through traffic.

c) The arrangement, character, extent, width, grade, and location of all streets shall be considered in their relation to existing or planned streets, to topographical conditions, to public convenience and safety, and their appropriate relation to the proposed use of the land to be served by such streets. Grades of streets shall conform as closely as possible to the original topography.

d) In the case of dead-end streets, where needed or desirable, the Planning Board may require the reservation of a twenty foot (20') wide easement in the line with the street to provide continuation of pedestrian traffic or utilities to the next street. The Planning Board may also require the reservation of a sixty-six foot (66') easement in line with the street to provide for continuation of the street where future adjoining subdivision is possible.

e) Reserve strips controlling access to streets shall be prohibited.

f) Where a development borders an existing road (below standards set herein) or when the Comprehensive Plan indicates plans for realignment or widening of a road that would require use of some of the land in the development, the developer shall be required to show areas for widening or realigning such roads on the plan, marked Reserved for Road Realignment (or Widening) Purposes. It shall be mandatory to indicate such reservation on the plan when a proposed widening or realignment is shown on the Official Map, if such map exists. Land reserved for such purposes may not be used for building purposes.

g) Where a development abuts or contains an existing or proposed arterial street, the Planning Board may require marginal access streets (street parallel to arterial street providing access to adjacent lots), reverse frontage (that is, frontage on a street other than the existing or proposed arterial street) with screen planting contained in a non-access reservation along the rear property line, or such other treatments as may be necessary for adequate protection of residential properties and to afford separation of through and local traffic.

h) Where possible, subdivisions containing fifteen (15) or more lots shall have at least two street connections with existing public streets, streets shown on the Official Road Map, if such exists, or streets on an approved subdivision plan for which a performance guarantee has been filed and accepted.

i) Entrances of any streets onto existing or proposed collector streets shall not exceed a frequency of one (1) per four hundred feet (400') of street frontage. Entrances of any streets onto existing or proposed arterial streets shall not exceed a frequency of one per one thousand feet (1,000') of street

frontage.

j) Minor streets shall be so laid out that their use by through traffic will be discouraged.

k) Where the streets in a subdivision are to remain private, the following words shall appear on the recorded plan: “All streets in this subdivision shall remain private streets to be maintained by the developer or the lot owners and are not intended to be accepted or maintained by the Town”.

3) Design and Construction

a) All streets shall be designed and constructed to meet the standards set forth in Table IV-1. The Planning Board shall determine the appropriate classification for each street reviewed.

**Table IV – 1 Street Construction Standards**

| | Arterial | Collector | Minor | Private | Industrial Commercial |
|---|---|---|---|---|---|
| Minimum Right-of-Way Width | 80 | 50 | 50 | 50 | 60 |
| Minimum pavement Width | 44 | 24 | 20 | 20 | 30 |
| Sidewalk Width | 8 | 5 | 5 | N/A | N/A |
| Minimum Grade | 0.5% | 0.5% | 0.5% | 0.5% | N/A |
| Max. Grade w/in 50' of Intersection | 3% | 3% | 3% | 3% | 3% |
| Max. Grade | 5% | 5% | 5% | 5% | 5% |
| Minimum Centerline Radius | 500’ | 200’ | 150’ | 150’ | 400’ |
| Roadway Crown | ¼" / ft | ¼" / ft | ¼" / ft | ¼" / ft | ¼" / ft |
| Minimum Angle of Street Intersections** | $90^0$ | $60^0$ | $60^0$ | $60^0$ | $90^0$ |
| Minimum Curb Radii at Intersections*** | 30’ | 20’ | 15’ | 15’ | 30’ |
| Minimum R/O/W Radii at Intersections | 20’ | 10’ | 10’ | 10’ | 20’ |
| Minimum Width of Shoulders (each side) | 8’ | 3’ | 3’ | 3’ | 9’ |
| Crushed Aggregate Sub-base Course (Stone Max 4") | 18” | 18” | 18” | 18” | 18” |
| Crushed Aggregate Base Course | 4” | 4” | 4” | 4” | 4” |
| Hot Bituminous Pavement (Total Thickness) | 3 ½" | 3” | 3” | N/A | 3 ½" |
| Surface Course | 1 ½" | 1” | 1” | N/A | 1 ½" |
| Base Course | 2" | 2" | 2" | 2" | 2" |

*Minimum thickness of material after compaction.

**Street intersection angles shall be as close to 90° as feasible, but no less than the list angle.

***Should be based on turning radii of expected commercial vehicles, but no less than 30'.

b) In addition to the design standards above, dead end streets shall be constructed to provide a cul-de-sac turn-around, entirely constructed and paved as part of the roadway, with a diameter of one hundred thirty feet (130').

c) The centerline of the roadway shall be the centerline of the right-of-way.

d) Before any clearing has started on the right-of-way, the centerline and sidelines of the new road shall be staked or flagged at fifty foot (50') intervals.

e) Except in a ledge cut, side slopes shall be no steeper than a slope of three

feet (3') horizontal to one foot (1') vertical and shall be graded, loamed (six inches compacted), limed, fertilized, and seeded according to the specifications of the erosion and sedimentation control plan. Where a cut results in exposed ledge, a side slope no steeper than one foot (1') vertical to four feet (4') horizontal is permitted.

f) To the greatest extent possible, underground utilities shall be placed in the street right-of-way between the paved road and the street line to simplify location and repair of such utilities. All underground utilities shall be installed prior to paving to avoid cuts in the pavement. Building sewers and water service connections shall be installed to the edge of the right-of-way prior to paving.

g) Grades of all streets shall, within the limits stated above, conform in general to the terrain, so that cut and fill are minimized while maintaining the grade standards above.

h) All changes in grade shall be connected by vertical curves in order to provide the following minimum stopping sight distances based on the street design speed:

| DESIGN SPEED | STOPPING SIGHT DISTANCE |
|---|---|
| 20 miles per hour | 125' |
| 25 miles per hour | 150' |
| 30 miles per hour | 200' |
| 35 miles per hour | 250' |

Stopping sight distance shall be calculated with a height of eye at 3.5 feet and the height of object at 0.5 feet.

i) Cross (four-cornered) street intersections shall be avoided insofar as possible, except as shown on the Comprehensive Plan or at other important traffic intersections. A minimum distance of two hundred feet (200') shall be maintained between centerlines o side streets.

j) Where new street intersections are proposed, sight distances, as measured along the road onto which traffic will be turning, shall be based upon the posted speed limit and conform to the table below. Sight distances shall be measured from the driver’s seat of a vehicle standing on that portion of the exit with the front of the vehicle a minimum of ten feet (10') behind the curbline or edge of shoulder, with the height of the eye 3.5 feet, to the top of an object 4.5 feet above the pavement.

| ALLOWABLE SPEED ON ROAD TO BE ENTERED | REQUIRED SIGHT DISTANCE |
|---|---|
| 25 miles per hour | 250' |
| 30 miles per hour | 300' |
| 35 miles per hour | 350' |
| 40 miles per hour | 400' |

| | |
|---|---|
| 45 miles per hour | 450' |
| 50 miles per hour | 500' |
| 55 miles per hour | 550' |

Where necessary, comer lots shall be cleared of all growth and sight obstructions, including ground excavation, to achieve the required visibility.

Street curbs and gutters shall be required on all streets within Maine State Department of Transportation defined urban areas and shall be required at the discretion of the Planning Board in other areas. Granite curbing shall be installed on a thoroughly compacted gravel base of six inches (6") minimum thickness. Bituminous curbing shall be installed on the base course of the pavement. The specified pavement width above shall be measured between the curbs. Where curb and gutter are not required, stabilized shoulders and proper drainage shall be the responsibility of the developer on compliance with the requirements herein.

The aggregate sub-base course shall be sand and gravel of hard durable particles free from vegetative matter, lumps or balls of clay and other deleterious substances. The gradation of the part that passes a three inch (3") square mesh sieve shall meet the following grading requirements:

| | PERCENTAGE BY WEIGHT PASSING |
|---|---|
| SIEVE DESIGNATION | SQUARE MESH SIEVE |
| ½" | 45-70% |
| ¼" | 30-55% |
| No.40 | 20% |
| No.200 | 0-5% |

Aggregate for the sub-base shall contain no particles of rock exceeding four inches (4") in any dimension.

k) The aggregate base course shall be sand or gravel of hard durable particles free from vegetative matter, lumps or balls of clay and other deleterious substances. The gradation of the part that passes a three inch (3") square mesh sieve shall meet the following grading requirements**:**

| | PERCENTAGE BY WEIGHT PASSING |
|---|---|
| SIEVE DESIGNATION | SQUARE MESH SIEVE |
| ½" | 45-70% |
| ¼" | 30-55% |
| No.40 | 20% |
| No.200 | 0-5% |

Aggregate for the base shall contain no particles of rock exceeding two inches (2") in any dimension.

l) Minimum standards for the base layer of pavement shall be the M.D.O.T. specifications for plant mix grade B with an aggregate size no more than one inch (1") maximum.

m) Minimum standards for the surface layer of pavement shall meet the M.D.O.T. specifications for plant mix grade C with an aggregate size no more than three-fourth inch (¾") maximum.

n) Where pavement joins an existing pavement, the existing pavement shall be cut along a smooth line and form a neat, even, vertical joint.

o) Sidewalks shall be installed at the expense of the developer where a subdivision abuts or fronts onto a street with existing sidewalks and such other locations as the Planning Board deems necessary. When installed, sidewalks shall be built to the following standards or to alternate specifications of equal or higher quality.

Bituminous Sidewalks

The crushed aggregate base course shall be no less than six inches (6") thick.

The hot bituminous pavement surface course shall be no less than two inches (2") after compaction.

Portland Cement Concrete Sidewalks

The sand base shall be no less than six inches (6") thick.

The Portland Cement concrete shall be reinforced with six inch (6") square, number 10 wire mesh and shall be no less than four inches (4") thick.

p) All roads within the development shall be constructed according to the approved application and the town will inspect the work for compliance. The developer shall reimburse the Town for all costs associated with the inspection of the work.

4) Names. Streets which join or are in alignment with streets of abutting or neighboring properties shall bear the same name. Names of new streets shall be subject to the approval of the Planning Board. Street name signs shall be furnished and installed by the developer. The type, size and location of signs shall be to the approval of the Planning Board

## 12. Performance Guarantees

### A. Required Improvements

Applicants whose developments are subject to site plan or subdivision review shall provide performance guarantees sufficient to ensure the completion of the following improvements:

1) monuments required by Article V Section H (1);

2) street signs;

3) streets;

4) sidewalks;

5) water supply facilities, including fire hydrants or ponds;

6) sewage disposal facilities;

7) stormwater drainage facilities;

8) utilities.

**B. Contents of Guarantee**

A performance guarantee shall contain a construction schedule, cost estimates for each major phase of construction taking into account inflation, provisions for inspections of each phase of construction, provisions for the release of part or all the performance guarantee to the developer, and a date after which the developer will be in default and the Town shall have access to the funds to finish construction. The conditions and amount of the performance guarantee shall be determined by the Planning Board with the advice of the Town Council and/or the Town Attorney. The Developer shall be responsible for all Town costs for the Town Attorney to review the content of the performance guarantee. In establishing the amount of a performance guarantee, the Town may seek independent verification of the accuracy of the developer's cost estimates or may set the amount in accordance with the amount of the contract between the developer and the contractor who will be installing the required improvements. The amount of a performance guarantee shall be adequate to cover the entire construction costs of all required improvements, including such costs incurred by the Town to ensure compliance with the approved application, costs of restoring adjacent properties and roads to preconstruction condition if damaged by the developer, taking into account the proposed time span of the construction schedule and the inflation rate for construction costs.

**C. Types of Guarantees**

A performance guarantee may take any one of the following forms:

1) Escrow Account. A cash contribution to the establishment of an escrow account made by either a certified check made out to the Town, the direct deposit into a savings account, or the purchase of a certificate of deposit. For any account opened by the developer, the Town shall be named as owner and the consent of the Town shall be required for a withdrawal. Any interest earned on the escrow account shall be returned to the developer unless the expenditure of the interest by the Town is necessary to complete the required improvements.

2) Performance Bond. A performance bond, issued by a surety company approved by the Town Council or the Town Manager, made payable to the Town. A performance bond shall detail the conditions of the bond, the method for release of the bond or portions of the bond to the developer, and the procedures for collection by the Town. The bond documents shall specifically reference the development for which approval is sought.

3) Irrevocable Letter of Credit. An irrevocable letter of credit, issued by a financial institution approved by the Town Council or the Town Manager, establishing funding for the development from which the Town may draw if construction is inadequate. An irrevocable letter of credit shall indicate that funds have been set aside for the construction of the development and may not be used for any other project or loan.

4) Conditional Agreement. In the case of a subdivision, the Planning Board, at its discretion, may provide for the developer to enter into a binding agreement with the Town in lieu of other performance guarantees. Such an agreement shall provide for approval of the final plan on the condition that no lots may be sold or built upon until either:

a) it is certified by the Planning Board, or its agent, that all of the required improvements have been installed in accordance with this Ordinance and the regulations of the appropriate utilities; or

b) a performance guarantee, acceptable to the Town, is submitted in an amount necessary to cover the completion of the required improvements at an amount adjusted for inflation and prorated for the portions of the required improvements already installed. Notice of the agreement and any conditions shall be on the final plan which is recorded at the Registry of Deeds.

**D. Release of Guarantee**

Before releasing any portion of a performance guarantee, the Town Manager must confirm, based upon the report of the Code Enforcement Officer, input from their designee, the Planning Board, and other relevant agencies and departments, that the completed improvements meet or exceed the design and construction standards for the portion for which the release is requested.

**E. Default**

If Code Enforcement Officer or their designee determines through inspection that any required improvements do not conform to the plans and specifications submitted with the application, they must submit a written report to the Municipal Officers, the Planning Board, and the developer. The Municipal officers shall take any steps necessary to protect the Town's interests.

# Article V.

# SUBDIVISION REVIEW

Except as expressly modified herein, all provisions of Article IV, Site Plan Review, including, but not limited to, review procedure, fees, submission requirements and standards, shall govern the review of proposed subdivisions in the Town of Winterport and all references therein to site plans shall be deemed to include subdivision plans.

## 1. Prohibitions

No plan of a division of land within the municipality which would constitute a subdivision shall be recorded in the Registry of Deeds until it has been approved by the Planning Board in accordance with this section.

No person, firm, corporation, or other legal entity may sell, develop, build upon, or convey, or offer or agree to sell, develop, or convey any land in a subdivision which has not been both approved by the Planning Board and recorded in the Registry of Deeds.

Development of a subdivision without Planning Board approval shall be a violation of law and this Ordinance. Development includes grading or construction of roads, grading of land or lots, or construction of buildings which require a subdivision plan approved as provided in this section and recorded in the Registry of Deeds.

## 2. Preliminary Sketch Review

### A. Contents

Prior to requesting a review of a proposed subdivision plan and pursuing the procedure set forth in Article IV, an applicant shall submit a preliminary sketch which shall show, in simple sketch form, the proposed layout of the streets, lots and other features in relation to existing conditions. The sketch plan, which may be a free-hand penciled sketch describing or outlining the existing conditions of the site and showing the proposed development, shall be superimposed on or accompanied by a copy of the Assessor's map of the site and shall be accompanied by:

1) a copy of that portion of a U.S.G.S. topographic map encompassing the site, showing an outline of the proposed subdivision;

2) any written request for the waiver of submissions that the applicant intends to submit pursuant to Section Article IV Section 6(F);

3) an outline of data on existing covenants, medium intensity soil survey and soil interpretation sheets, and available community facilities and utilities, and by information describing the subdivision proposal such as number of residential lots, typical lot width and depth, business areas, playgrounds, park areas and other public areas, proposed protective covenants, and proposed utilities and street improvements; and

4) the names and addresses of all property owners within three hundred feet (300') of the property being subdivided.

### B. Time

A preliminary sketch plan, together with supporting documentation, shall be submitted to the Town clerk fifteen (15) days prior to a regular Planning Board meeting. The Planning Board shall review a sketch plan within forty-five (45) days following its

submission.

**C. Form**

Ten (10) copies of a preliminary sketch and supporting documentation, or one digital copy and one hard copy, together with a form provided by the Planning Board, shall be submitted and each submission, where appropriate, shall be conspicuously labeled SKETCH PLAN EXHIBIT 1, SKETCH PLAN EXHIBIT 2, and so on, in consecutive fashion.

**D. Review of Sketch Plan**

At the time of its review of a preliminary sketch plan, the Planning Board shall entertain brief public comment on the proposal for the limited purpose of informing the applicant of the nature of any public concerns about the project so that such concerns may be considered by the applicant in preparing his/her application upon its review of a preliminary sketch plan, the Planning Board shall:

1) set a date for a site inspection by a member or members of the Board within thirty (30) days;

2) make specific suggestions to be incorporated by the applicant in subsequent submissions;

3) act on the applicant's request for submission waivers, if any.

**E. Rights Not Vested**

The submission or review of or public comments about a preliminary sketch plan or the conduct of a site inspection shall not be construed to be a substantive review of the proposed subdivision as defined by 1 M.R.S. § 302. No application for subdivision review shall be deemed pending until the Planning Board has determined the subdivision application to be complete and conducted at least one substantive review of that application.

**3. Site Inspection**

**A. Flagging**

Prior to the site inspection the applicant shall place flagging along the centerline of any proposed streets, at the approximate intersections of street centerlines and at all corners of proposed lots. Failure of the applicant to place such flagging in a timely fashion shall delay a scheduled site inspection and all limits of existing wetlands.

**B. Not a Public Proceeding**

A site inspection shall not constitute a "public proceeding" as defined by 1 M.R.S § 402(2). Planning Board members shall not discuss the merits of a proposed subdivision at the time of a site review but may make inquiries of the owner or developer reasonably calculated to develop a better understanding of the site.

**4. Review of Subdivision Application**

**A. Deadlines.**

Within six (6) months of the site inspection, the applicant shall submit to the Town Office an application for approval of a subdivision, provided that said time shall be extended upon the written request of the applicant if necessary to allow the applicant

sufficient time to obtain any permits required by Article IV, Section 6(H). In order to obtain such an extension, the applicant shall provide proof that he/she has initiated and is actively pursuing any necessary permits. The review procedure for subdivisions shall follow the procedure set forth in Article IV, including but not limited to application completeness review pursuant to Article IV Section 4(D), and a public hearing pursuant to Article IV, Section J, except that any public hearing shall take place within ninety (90) days of the application being deemed complete and any decision shall be made within Ninety (90) days of a public hearing or, if no hearing is held, within ninety (90) days of the application being deemed complete. If the applicant fails to comply with the time requirements of this paragraph, the Planning Board may, without prejudice, refuse to act on the application and require the resubmission of a preliminary sketch plan.

**B. Form.**

The submissions presented as part of a subdivision application shall be submitted in the form and quantity described in Article IV, Section 6(B), except that each submission shall be conspicuously labeled SUBDIVISION EXHIBIT 1, SUBDIVISION EXHIBIT 2 and so on in consecutive fashion. Maps and plans shall be drawn to a scale no smaller than one hundred feet (100') to the inch, unless otherwise indicated.

**C. Application.**

An application for the review of a subdivision shall contain all applicable submission requirements of Article IV, Section 9, except those that have been or may be waived.

**5. Approval and Recording**

Upon the approval of a subdivision plan or a revised subdivision plan, the Planning Board shall sign and date both reproducible copies of the final plan, one of which shall be retained by the Town Office and one of which shall be returned to the applicant for recording in the Waldo County Registry of Deeds. Within ninety (90) days of the date when a plan is signed by the Planning board, the applicant shall provide the Town Clerk, and the CEO, with proof of recording or the plan shall become null and void.

**6. Amendment to an Existing Subdivision**

**A. Procedure**

Subject to the limitations of this section, the procedure for approval of all amendments to an existing subdivision plan shall be the same as the procedure for approval of a new subdivision.

**B. Application**

An application for amendment(s) to an existing subdivision plan shall comply with the requirements of applications for subdivisions, except that all maps submitted, shall bear the words AMENDED PLAN. The Planning Board, at the written request of the applicant, may limit the required application submissions to that information necessary to determine whether the proposed amendment(s) will meet the applicable standards.

**C. Scope of Review**

The scope of the Planning Board’s review in considering a proposed amendment to a previously approved subdivision shall be limited to those portions of the plan that have been changed.

**7. Submissions**

In addition to any of the requirements of Article IV, Section 9, that are applicable, any application for subdivision approval shall include:

**A. Survey**

In the case of a subdivision, a complete boundary line survey, certified by a registered land surveyor, of the tract being subdivided and including:

1) the exact acreage of the proposed subdivision;

2) any remaining portion of the owner's property if the proposed subdivision covers only a portion of the owner's contiguous holdings;

3) all lots that were, within the previous five (5) years, contiguous to and in common ownership with the tract being subdivided;

4) existing and proposed easements related to the property;

5) the number of lots being created;

6) lot numbers;

7) the locations of lot boundaries;

8) the metes and bounds dimensions of each lot;

9) the area of each lot in square feet;

10) the locations of permanent reference monuments;

11) street names and lines and pedestrian ways;

12) the length of all straight lines, the deflection angles, radii, lengths of curves, and central angles of all curves, tangent distances and tangent bearings for each street;

13) the location of all reserved open space, properly designated;

14) the location of all areas to be reserved for public use;

15) the location of all existing and proposed utilities;

16) the location of proposed wells and waste water disposal test pits.

**B. Location Map**

A location map drawn at an appropriate scale showing the relation of the proposed subdivision to adjacent properties and to the general surrounding area, which map shall include:

1) all the area within two thousand feet (2,000') of any property line of the proposed subdivision;

2) the location of existing subdivisions within two thousand feet (2,000') of the proposed subdivision together with the names of the record owners of all adjacent parcels of land, including those directly across any street adjoining the proposed subdivision;

3) location, width and names of existing and proposed streets and easements, together with an indication of the future probable street system of the remaining

portion of the tract, if the proposed development covers only part of the developer's entire holding.

**C. Central Water Supply: DHS**

The written approval of the Maine Department of Human Services of design plans if the applicant proposes to provide a central water supply system;

**D. Central Subsurface Wastewater: DHS**

The written approval of the Maine Department of Human Services of design plans if a centralized or shared subsurface wastewater system is to be utilized;

**E. Wastewater Licenses: DEP**

The written approval of the Maine Department of Environmental Protection of a Wastewater Discharge License is required;

**F. Municipal Services: Department Heads**

Written statements from the Fire Chief and the Superintendent of Schools evaluating the adequacy of their respective departments' capital facilities to serve the proposed development;

**G. Plats**

Two reproducible originals, one to be recorded at the Waldo County Registry of Deeds, the other to be filed in the Town Office, and three (3) copies of one or more maps drawn to a scale of not more than one hundred feet (100') to the inch and containing a notation of all waivers granted by the Planning Board pursuant to Article IV, Section 6(F)) together with the information described in the following sections;

1) Article IV, Section 9(B)(6) Floodplains
2) Article IV, Section 9(C)(13)(i) Reserved Areas
3) Article IV, Section 9(C)(12) Natural and Historic Features
4) Article V, Section 7(A) Survey
5) Article IV, Section 7(B)(9) Map Legend
6) Article IV, Section 9(A)(4) Covenants and Agreements

All information on each map shall be easily legible. Each map shall be no larger than twenty-four inches (24") by thirty-six inches (36") outside of the border line on the left side for binding and a one inch (1") margin outside the border lines on the remaining sides. Sufficient space shall be provided for endorsement and dating by the Planning Board.

**8. Design Standards**

Notwithstanding and in addition to any other provision of this Ordinance, before granting subdivision approval, the Planning Board must find that the proposed subdivision plan will comply with all of the other standards of this Ordinance and such of the following standards as are applicable:

**A. Monuments**

Permanent monuments shall be set at all corners and angle points of the subdivision

boundaries; at all street intersections and points of curvature; and at the corners of all lots. Monuments shall be of a material usually and customarily used for such purposes, located in the ground at grade level, and indicated on the final plan.

**B. Blocks**

The length, width and shape of blocks shall be determined with due regard to: (a) provision of adequate building sites suitable to the special needs of the type of use contemplated; (b) requirements as to lots sizes and dimensions; (c) needs for convenient access, circulation, control and safety of streets traffic; (d) limitations and opportunities of topography. In blocks exceeding eight hundred feet (800') in length, the Planning Board may require the reservation of a twenty foot (20') wide easement through the block to provide for the crossing of underground utilities and pedestrian traffic where needed or desirable and may further specify, at its discretion, that a four foot (4') wide paved foot path be included. The Planning Board shall require the subdivider to provide for the proper maintenance of any such easement.

**C. Frontage**

The subdividing of the land shall be such as to provide that each lot shall have frontage on a public street, or on a private road giving access to a public street. Private streets shall be constructed in accordance with the standards set forth in this Ordinance.

**D. Double Frontage and Reverse Frontage**

Double frontage lots and reverse frontage lots shall be avoided except where essential to provide separation of residential development from traffic arteries or to overcome specific disadvantages of topography and orientation. A permanent planting screen easement of at least ten feet (10'), across which there shall be no right of access, shall be provided along the line of lots abutting such a traffic artery or other disadvantageous use.

**E. Lot Lines**

Side lot lines shall be substantially at right angles or radial street lines.

**F. Land Not Suitable for Development**

The Planning Board shall not approve such portions of any proposed subdivision that:

1) Are situated below sea level;

2) Are located within the 100-year frequency floodplain as identified by an authorized federal or state agency, or, when such identification is not available, are located on floodplain soils identified and described in the National Cooperative Standard Soils Survey;

3) Are located on land which must be filled or drained or on land created by diverting a watercourse; except the Planning Board may grant approval if a central sewage collection and treatment system is provided. In no instance shall the Planning Board approve any part of a subdivision located on filled wetlands, except that the Planning Board may approve a subdivision involving filling of wetlands only to the extent necessary for construction of roads and driveways required for access, provided that the applicant has obtained all required State Department of Environmental Protection permits.

**G. Outstanding River Segments**

When lots in a subdivision have frontage on an outstanding river segment, as defined in Title 30-A M.R.S. § 4401(7), the proposed subdivision plan must require principal structures to have a combined lot shore frontage and setback from the normal high-water line of five hundred feet (500').

1) To avoid circumventing the intent of this provision, whenever a proposed subdivision adjoins a shoreland strip narrower than two hundred fifty feet (250') which is not lotted, the proposed subdivision shall be reviewed as if lot lines extended to the shore.

2) The frontage and setback provisions of this section do not apply within areas designated by ordinance as densely developed. The determination of which areas are densely developed must be based on a finding that existing development met the definitional requirements of 30-A M.R.S.A. § 4401(1) on September 23, 1983.

**9. Statutory Criteria**

The Planning Board shall consider the following criteria before granting approval and shall determine that for all subdivision applications, in addition to complying with the performance standards of this Ordinance including Article IV (Site Plan Review), and Article III (Shoreland Zoning) the proposed development:

**A. Pollution.**

Will not result in undue water or air pollution on and off site. In making this determination it shall at least consider: the elevation of land above sea level and its relation to the flood plains, the nature of soils and subsoils and their ability to adequately support waste disposal; the slope of the land and its effect on effluents; the availability of streams for disposal of effluents; and the applicable state and local health and water resources rules and regulations.

**B. Sufficient water.**

Has sufficient water available for the reasonably foreseeable needs of the development including, but not limited to, potable water and fire control water. Will not cause an unreasonable burden on an existing water supply, including private groundwater or a public water supply, whichever is to be utilized.

**C. Municipal water supply.**

The proposed subdivision will not cause an unreasonable burden on an existing water supply, if one is to be used.

**D. Soil erosion and sediment control.**

Will not cause unreasonable soil erosion or reduction in the capacity of the land to hold water so that a dangerous or unhealthy condition may result both on and off site. If the development proposes to discharge storm water runoff at an increased rate compared to the pre-application rate into a municipal storm water system, then the developer shall improve or pay for the improvement of such municipal storm water system so that it will have the capacity to handle such an increase plus 25% extra capacity. Criteria in the current version of “Stormwater Management For Maine: Best Management Practices” prepared by the Department of Environmental Protection shall be followed.

**E. Highway or public road congestion.**

Will not cause unreasonable highway or public road congestion or unsafe conditions with respect to use of the highways or public roads existing or proposed both on and off site. If the developer is required to submit a traffic impact analysis for off site traffic, and as a result changes and/or improvements are needed on municipal owned or maintained public ways, the developer shall make or pay for such changes and/or improvements.

**F. Solid waste and sewage waste disposal.**

Will provide for adequate sewerage disposal. Will not cause an unreasonable burden on the ability of a municipality to dispose of solid waste and sewerage if municipal services are to be utilized, and has made adequate provision for such disposal. If demolition debris, stumps, rock, and brush are to be disposed of they shall be disposed of on site if possible and if they are to be disposed of at a municipal site the costs of such disposal shall be paid for by the developer. If the development will use more than 33 1/3% of the available excess capacity of any portion of the municipal sewerage collection system, treatment facility, and/or its discharge permits, the developer shall pay for the replacement of the available excess capacity needed by the development.

**G. Aesthetic, cultural, and natural values.**

Will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, significant wildlife habitat identified by the department of Inland Fisheries and Wildlife or the municipality or rare and irreplaceable natural areas or any public rights for physical or visual access to the shoreline.

**H. Conformity with town ordinances and plans.**

Is in conformance with all Town of Winterport Ordinances, comprehensive plan, development plan, or land use plans. In making this determination, the Planning Board may interpret these ordinances and plans.

**I. Financial and technical capability.**

The developer has adequate financial and technical capacity to meet the standards of this section.

**J. Shoreland zoning.**

Whenever situated, in whole or in part, within the Shoreland Zone, will not adversely affect the quality of that body of water or unreasonable affect the shoreline of that body of water and complies with Article III, Shoreland Zoning.

**K. Groundwater.**

Will not, alone, or in conjunction with existing activities, adversely affect the quality or quantity of groundwater both on and off site.

**L. Flood areas.**

The applicant will determine, based on the federal Emergency Management Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate Maps, whether the project is in a flood-prone area. If the project, or any part of it, is in such an area, the applicant will determine the 100-year flood elevation and flood hazard boundaries within the project. The proposed project shall include a condition of plat approval

requiring that principal structures on lots in the project shall be constructed with their lowest floor, including the basement, at least one foot above the 100-year flood elevation.

**M. Freshwater wetlands.**

All freshwater wetlands within the proposed development have been identified on any maps submitted as part of the application, regardless of the size of these wetlands.

**N. River, stream or brook.**

Any river, stream or brook within or abutting the proposed development has been identified on the maps as part of the application. For purposes of this section, "river, stream or brook" has the same meaning as in Title 38, section 480-B, subsection 9.

**O. Storm water.**

The proposed development will provide for adequate storm water management.

**P. Spaghetti-lots prohibited.**

No lot in the proposed subdivision may be configured with an overall depth to width ratio exceeding five (5) to one (1), regardless of the location of the land.

**Q. Lake phosphorus concentration.**

The long-term cumulative effects of the proposed development will not unreasonably increase a great pond's phosphorus concentration during the construction phase and life of the proposed development.

**R. Impact on adjoining municipality.**

For any proposed development that crosses municipal boundaries, the proposed development will not cause unreasonable traffic congestion or unsafe conditions with respect to the use of existing public ways in an adjoining municipality in which part of the development is located.

**S. Access to direct sunlight.**

The Planning Board may, to protect and ensure access to direct sunlight for solar energy systems prohibit, restrict or control development. The Planning Board may call for development plans which may contain restrictive covenants, height restrictions, side yard and setback requirements, or other permissible forms of land use controls.

**T. Lands subject to liquidation harvesting.**

Timber on the parcel being subdivided has not been harvested in violation of rules adopted pursuant to Title 12 M.R.S. § 8869(14).

# Article VI.

# DEFINITIONS

## 1. Interpretation of Language

Language used in this Ordinance shall be construed as follows:

1) In the interpretation and enforcement of this Ordinance, all words other than those specifically defined herein shall have the meaning implied by their context in the ordinance or their ordinarily accepted meanings as found in the current edition of Webster's New Collegiate Dictionary.

2) The words person, applicant and developer include individuals, firms, associations, corporations, partnerships, trusts or other legal entities.

3) Words used or defined in one tense or form shall include other tenses or derivative forms.

4) Words in the singular shall include the plural and words in the plural shall include the singular.

5) The masculine gender shall include the feminine, and the feminine shall include the masculine.

6) The words shall and will are mandatory and the word may be passive.

7) The word structure includes the word building.

8) The word dwelling includes the word residence.

9) The word lot includes the words plot or parcel.

10) The words used or occupied as applied to any land or building shall be construed to include the words intended, arranged, or designed to be used or occupied.

11) The words Town or municipality mean the Town of Winterport, Maine.

12) In case of any difference of meaning or implication between the text of this Ordinance and any map, illustration, or table, the text shall control.

## 2. Definitions

The following terms shall have the following meanings:

Abutting: Having a common border with, or being separated from such common border by an alley, easement, street, road, public way or private way.

Access: A means of approach or entry to exit from a property.

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 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.

Acre: A measure of land containing forty-three thousand five hundred sixty (43,560) square feet.

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.

Alley: A thoroughfare either used or shown on any recorded description of the subject parcel(s), which is not more than thirty feet (30' wide and which affords only a secondary means of access to abutting property.

Appeal: A means for obtaining review of a decision, determination, order or failure to act pursuant to the terms of this Ordinance.

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

Area of Special Flood Hazard: The land in the flood plain having a one percent (1%) or greater chance of flooding in any given year.

Authorized Agent: Anyone having written authorization to act in behalf of a property owner, signed by the property owner.

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

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

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

Building Area: The total of areas taken on a horizontal plane at the main finished grade level of the principal building and all accessory buildings, exclusive of uncovered porches, terraces and steps. All dimensions shall be measured between exterior faces of walls.

Building Front Line: Line parallel to the front lot line transecting that point in the building face which is closest to the front lot line. This face includes porches whether enclosed or unenclosed but does not include steps.

Building: Any roofed structure built, maintained, or intended for use for the shelter or enclosure of persons, animals, goods or property of any kind. Where independent units with separate entrances are divided by walls, each unit is a building.

Built: Erected, constructed, reconstructed, altered, enlarged, moved, extended, filled, excavated, paved and the like.

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.

Channel: A water course between defined banks created by the action of surface water and characterized by the lack of terrestrial vegetation and by the presence of a bed, devoid of

topsoil, containing waterborne deposits or exposed soil parent material or bedrock.

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

Code Enforcement Officer: A person appointed by the municipal officers to administer and enforce this Ordinance. Reference to the Code Enforcement Officer may be construed to include Building Inspector, Plumbing Inspector, Electrical Inspector and the like where applicable.

Commercial Fishing Activities: Activities directly related to commercial fishing and those commonly associated with or supportive of commercial fishing such as the repair of boats, engines and other equipment commonly used on boats. Industrial uses are not included in this definition.

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.

Comprehensive Plan: Any part or element of the overall plan or policy for development of the Town as defined by 30-A M.R.S. §§ 4321 et seq.

Contiguous Lots: Lots which adjoin at any line or point or are separated at any point by a body of water less than fifteen feet (15') wide.

Cul de sac: A local street with only one outlet and having the other end for the reversal of traffic movement.

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

Dedication: The transfer of property interests from private to public ownership for a public purpose. The transfer may be fee simple interest or of a less than fee simple interest, including an easement.

Developed Area: Any area on which a site improvement or change is made, including buildings, landscaping, parking areas and streets.

Developer: The legal or beneficial owner of a lot or parcel of any land proposed for inclusion in a development, including the holder of an option or contract to purchase.

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.

Drainage: The removal of surface or groundwater from land by drains, grading or other means. Drainage includes the control of runoff to minimize erosion and sedimentation during and after development, and includes the means necessary for water supply preservation and prevention or alleviation of flooding.

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.

Earth: Topsoil, sand, gravel, clay, peat, rock, or other minerals.

Easement: Authorization of a property owner of use by another of any designated part of the owner's property for a specified purpose.

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 - 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 floor area or volume of a structure, including all extensions such as, but not limited to: attached decks, garages, porches and greenhouses.

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

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

Filling: Depositing or dumping any matter on or into the ground or water.

Flood Plain: Land subject to inundation by storm or flood water caused by overflow from the normal high water mark of any coastal or inland waters or as defined or identified by the Flood Boundary maps of the Town of Winterport.

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

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

Forest management activities - timber cruising and other forest resource evaluation activities, pesticide or fertilizer application, management planning activities, timber stand improvement, pruning, regeneration of forest stands, and other similar or associated activities, exclusive of timber harvesting and the construction, creation or maintenance of roads.

Forested wetland - a freshwater wetland dominated by woody vegetation that is six (6) meters tall (approximately twenty (20) feet) 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, other than forested wetlands, which are:

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 10 acres; and

Inundated or saturated by surface or ground water at a frequency and for a duration sufficient to support, and which under normal circumstances do support, a prevalence of wetland vegetation typically adapted for life in saturated soils.

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

Frontage, Road: The linear distance, measured along the lot line which separated the lot from a public or private road, but not including a private driveway providing access to more than one lot.

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 or inland waters and that can not be located away from these waters. The uses include, but are not limited to commercial and recreational fishing and boating facilities, excluding recreational boat storage buildings, finfish and shellfish processing, fish storage and retail and wholesale fish marketing facilities, waterfront dock and port facilities, shipyards and boat building facilities, marinas, navigation aids, basins and channels, retaining walls, industrial uses dependent upon water-borne transportation or requiring large volumes of cooling or processing water that can not reasonably be located or operated at an inland site, and uses that primarily provide general public access to coastal or inland waters.

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

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

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

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

Hazardous Waste Incinerator: An enclosed device using controlled flame combustion to thermally break down hazardous waste.

Hazardous Waste: A waste substance or material, in any physical state, designated as hazardous by the Board of Environmental Protection pursuant to 38 M.R.S. § 1319-0. It does not include waste resulting from normal household or agricultural activities. The fact that a hazardous waste or part or constituent may have value or other use or may be sold or exchanged does not exclude it from this definition.

Height of a structure - the vertical distance between the mean original (prior to construction) grade at the downhill side of the structure and the highest point of the structure, excluding chimneys,

steeples, antennas, and similar appurtenances that have no floor area.

High Intensity Soil Survey: A map prepared any a Maine Certified Soil Scientist, identifying the soil types down to 1/10 acre or less at a scale equivalent to the subdivision plan submitted. The soils shall be identified in accordance with the National Cooperative Soil Survey. The map shall show the location of all test pits or auger samples used to identify the soils and shall be accompanied by a log of each sample point identifying the depth to seasonal high-water table or bedrock at that point. Single soil test pits and their evaluation for suitability for subsurface wastewater disposal systems shall not be considered to constitute high intensity soil surveys.

High-level Radioactive Waste Repository or Repository: Any system licensed by the United States Nuclear Regulatory Commission that is intended to be used for, or may be used for, the permanent deep geologic disposal of high-level radioactive waste and spent nuclear fuel, whether or not the system is designed to permit the recovery, for a limited period during initial operation, of any materials placed in the system. This term includes both surface and subsurface areas at which high-level radioactive waste and spent nuclear fuel handling activities are conducted.

High-level Radioactive Waste: The highly radioactive material resulting from the reprocessing of spent nuclear fuel, including liquid waste produced directly in reprocessing and any solid material derived from that liquid waste that contains fission products in sufficient concentrations; and other highly radioactive material that the United States Regulatory Commission, consistent with existing law, determines by rule to require permanent isolation.

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 2) which employs no more than two (2) persons other than family members residing in the home.

Incineration Facility: A facility where municipal solid waste or refuse-derived fuel if disposed of through combustion, including combustion for the generation of heat, steam or electricity.

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. For example, there is no increase in nonconformity with the setback requirement for water bodies, wetlands, or tributary streams if the expansion extends no further into the required setback area than does any portion of the existing nonconforming structure. Hence, a structure may be expanded laterally provided that the expansion extends no closer to the water body, tributary stream, or wetland than the closest portion of the existing structure from that water body, tributary stream, or wetland. Included in this allowance are expansions which in-fill irregularly shaped structures.

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. §§ 5501 et seq..

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.

Lot Coverage: The percentage of the lot covered by impervious surfaces.

Lot Depth: The mean horizontal distance between the front and the rear lot lines, measured within the lot boundaries.

Lot Standards: Numerical standards relating to spatial relationships including, but not limited to, setback, lot area, lot dimensions, shore frontage, height, coverage, road frontage and density.

Lot, Corner: A lot abutting two or more streets at their intersection.

Lot, Nonconforming: 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.

Lot: An area of land undivided by any street or private road, in one ownership or leasehold, with ascertainable boundaries established by a deed or some other instrument of record.

Low-level Radioactive Waste Disposal Facility: A parcel of land, together with the structures, equipment and improvements on or attached to the land, for the isolation of low-level radioactive waste from the biosphere inhabited by people and their food chains.§

Low-level Radioactive Waste Storage Facility: Any facility for storage of low-level radioactive waste, except for temporary on-site storage prior to disposal.

Low-level Radioactive Waste: Radioactive material that is not high-level radioactive waste, spent nuclear fuel, transuranic waste or byproduct material, as defined in the United States Code, Title 42, Section 2014(e)(2), the Atomic Energy Act of 1954, Section 11(e)(2); and that the United States Nuclear Regulatory Commission, consistent with existing law, classifies as low-level radioactive waste.

Manufactured Housing: A structural unit designed for human occupancy, constructed in a manufacturing facility and then transported by the use of its own chassis, or placed on an independent chassis, to a building site, as defined more specifically in 30-A M.R.S. § 4358(1)(A).

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.

Mobile Home Park: A parcel of land under unified ownership approved by the Town of Winterport for the placement of three (3) or more manufactured homes.

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

Native – indigenous to the local forests.

Non-conforming condition – 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. Areas contiguous with rivers and great ponds that support non-forested wetland vegetation and hydric soils and that are at the same or lower elevation as the water level of the river or great pond during the period of normal high-water are considered part of the river or great pond.

Open Space: The portion of a lot or site which is maintained in its natural state to preserve scenic resources, farm and forest land, wetlands, groundwater recharge areas, wildlife habitat, public access to water bodies, and other important or environmentally sensitive areas, or to be used for outdoor recreation purposes.

Owner: The person or persons having the right of legal title to, beneficial interest in, or a contractual right to purchase a lot or parcel of land.

Parcel: the area within the boundary lines of a development.

Performance Guarantee: A financial guarantee to ensure that all improvements, facilities or work

required by this Ordinance, regulations and the approved plans and specifications of a development are completed.

Performance Standard: A criterion established to control the use of land and structures. The purpose of performance standards is to provide detailed regulations and restrictions by means of minimum criteria which must be met by uses in order to protect neighbors from adverse impacts of adjoining land uses and to protect the general health, safety and welfare of citizens of Winterport.

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.

Personal Property: property which is owned, utilized and maintained by an individual or members of his or her residence and acquired in the normal course of living in or maintaining a residence and is not attached to or affixed to the ground of a structure. It does not include merchandise which was purchased for resale or obtained on consignment.

Principal structure - a building 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.

Private Street: See Street.

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.

Public Improvements: Any improvement, facility or service, together with customary improvements, necessary to provide for public needs, such as vehicular and pedestrian circulation systems, storm sewers, flood control improvements, water supply and distribution facilities, sanitary sewage disposal and treatment, public utility and energy services.

Radioactive Material: Any material which emits ionizing radiation spontaneously. It includes accelerator-produced, by product, naturally occurring, source and special nuclear materials.

Recent Flood Plain Soils: The following soil series as described and identified by the National Cooperative Soil Survey:

| | | |
|---|---|---|
| Fryeberg | Hadley | Limerick |
| Alluvial | Cornish | Charles |
| 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 average of the basal area of trees remaining on a harvested site.

Re-subdivision: The division of an existing subdivision or any change of lot size therein or the relocation of any street or lot in a subdivision.

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.

River - a free-flowing body of water including its associated floodplain wetlands from that point at which it provides drainage for a watershed of twenty five (25) square miles to its mouth.

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 saltmarsh cordgrass (Spartina alterniflora). More open areas often support widgeon grass, eelgrass, and Sago pondweed.

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

Septage: Waste, refuse, effluent, sludge and any other materials from septic tanks, cesspools, or any other similar facilities.

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

b. the total length of the extension is less than one thousand (1,000) feet.

2) in the case of telephone service

a. the extension, regardless of length, will be made by the installation of telephone wires to existing utility poles, or

b. the extension requiring the installation of new utility poles or placement

underground is less than one thousand (1,000) feet in length.

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

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 any great pond or river; within 250 feet, horizontal distance, of the upland edge of a coastal wetland, including all areas affected by tidal action; within 250 feet of the upland edge of a freshwater wetland; or within 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.

Solid Waste Disposal Facility: A solid waste facility for the incineration or landfilling of solid waste or refuse-derived fuel.

Solid Waste Facility: A waste facility used for the handling of solid waste, except that the following facilities are not included:

A waste facility that employs controlled combustion to dispose of waste generated exclusively by an institutional, commercial or industrial establishment that owns the facility; and

Lime kilns; wood chip, bark and hogged fuel boilers; kraft recovery boilers and sulfite process recovery boilers, which combust solid waste generated exclusively at the facility.

Solid Waste Landfill: A waste disposal facility for the disposal of solid waste on or in land. This term does not include landspreading sites used in programs approved by the Department of Environmental Protection.

Special Waste: Any solid waste generated by sources other than domestic and typical commercial establishments that exists in such an unusual quantity or in such a chemical or physical state, or any combination thereof, that may disrupt or impair effective waste management or threaten the public health, human safety or the environment and requires special handling, transportation and disposal procedures. Special waste includes, but is not limited to:

Asbestos and asbestos-containing waste;

Contaminated soils and dredge spoils;

Debris and residuals from nonhazardous chemical spills and cleanup of those spills;

Industrial and industrial process waste;

High and low pH waste (higher than 8.5 or lower than 5.5 pH);

Oil, coal, wood and multifuel boiler and incinerator ash;

Sand blast grit and nonliquid paint waste;

Waste water treatment plant sludge, paper mill sludge and other sludge waste;

Spent filter media and residue; and

Other waste designated by the Board of Environmental Protection, by rule.

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 edition of a United States Geological Survey 7.5 minute series topographic map, or if not available, a 15-minute series topographic map, to the point where the body of water becomes a river or flows to another water body or wetland within the shoreland area.

Street, Arterial: A major thoroughfare which serves as a major traffic way travel between and through the municipality.

Street, Collector: A street servicing at least fifteen (15) lots or dwelling units, or streets which serve as feeders to arterial streets, and collectors of traffic from minor streets.

Street, Minor: A street servicing less than fifteen (15) lots or dwelling units.

Street, Private Right-of-way: A street which is not intended to be dedicated as a public way and which will be maintained by a developer, property owner or group of property owners.

Street: Public and private ways such as alleys, avenues, boulevards, highways, roads and other rights-of-way consisting of a bed of exposed mineral soil, gravel, asphalt or other surfacing material and constructed for or created by the repeated passage of motorized vehicles, as well as areas on subdivision plans designated as rights-of-way or streets, except such ways as have been discontinued or abandoned.

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.

Structure Nonconforming: 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 affect.

Structure, Principal: A structure other than one which is used for purposes wholly incidental or accessory to the use of another structure or use on the same premises.

Structure, Water related: A structure, including a pier, dock, wharf, float, crib, piling, boat house, breakwater or causeway, the utility of which depends on its location adjacent to, or its projecting below the shoreline.

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

Structure, Water Related, Temporary: Structures which remain in the water for less than seven (7) months in any period of twelve (12) consecutive months.

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. The term includes structures temporarily or permanently located, such as decks and satellite dishes.

Subdivision: See Title 30-A M.R.S. §4401(4), as may be amended.

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

Substantive Review: A review of a completed application to determine whether it complies with the review standards set forth in this Ordinance and with other applicable requirements of law.

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. § 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 Article III, Section 15 (O), Clearing or Removal of Vegetation for Activities Other Than Timber Harvesting.

Tributary stream – means a channel between defined banks created by the action of surface water, which is characterized by the lack of terrestrial vegetation or by the presence of a bed, devoid of topsoil, containing waterborne deposits or exposed soil, parent material or bedrock; and which is connected hydrologically with other water bodies. “Tributary stream” does not include rills or gullies forming because of accelerated erosion in disturbed soils where the natural vegetation cover has been removed by human activity. This definition does not include the term "stream" as defined elsewhere in this 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 (approximately twenty (20) foot) tall or taller.

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

Use, Principal: The primary use to which the premises are devoted or for which the premises are designed, arranged, intended, occupied or maintained.

Use: The purpose or activity for which land or any building or structure thereon is designed, arranged, intended, occupied or maintained.

Utilities: All public services such as electricity, water, sanitary sewer, stormwater drainage, telephone and cable television.

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.

Waste facility: Any land area, structure, location, equipment, or combination of them, used for handling hazardous waste, biomedical waste, special waste, solid waste, low-level radioactive waste, high-level radioactive waste, waste oil, sludge or septage, including but not limited to a commercial hazardous waste facility, hazardous waste incinerator, incineration facility, solid waste disposal facility, solid waste facility, solid waste landfill, high-level radioactive waste repository, high-level radioactive waste storage facility, low-level radioactive waste storage facility, low-level radioactive waste disposal facility or dump. A land or structure does not become a waste facility solely because:

It is used by individual homeowners or lessees to openly burn leaves, brush, deadwood and tree cuttings accrued from normal maintenance of their property, when such burning is not prohibited by State law or regulation;

It is used by its owner for disposing of septage from the owner's residence;

It is used by its residential owner to burn highly combustible domestic, household trash such as paper, cardboard cartons or wood boxes, when such burning is not prohibited by State law or regulation.

It is used to store, for ninety (90) days or less, hazardous waste generated on the same premises;

Waste Oil: A petroleum-based oil which, through use or handling, has become unsuitable for its original purpose due to the presence of impurities or loss of original properties. Waste oil which exhibits hazardous wastes characteristics, or which has been contaminated with hazardous wastes in excess of quantities normally occurring in waste oil, shall be subject to the provisions of this Ordinance dealing with hazardous waste.

Water Bodies, River: Any free-flowing body of water, including its associated flood plain wetlands, from that point at which it provides drainage for a watershed of twenty-five (25) or more square miles to its mouth.

Water Bodies, Stream: A free-flowing body of water from the outlet of a great pond or the confluence of two (2) or more perennial streams as depicted on the most recent edition of a United States Geological Survey 7.5 minute series topographic map, or if not available, a 15-minute series topographic map, to the point where the body of water becomes a river or flows to another water body or wetland within the shoreland area.

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. This definition includes crossings for timber harvesting equipment and related activities.

Wetland - a freshwater or coastal wetland.

Wildlife Management Practices: Activities engaged in for the exclusive purpose of management of wildlife populations by manipulation of their environment for the benefit of one or more species. Such practices may include, but not be limited to, harvesting, or removal of vegetation, controlled burning, planting, impounding water, controlled hunting and trapping, relocation of wildlife, predator and disease control, and installation of artificial nesting sites, provided that such activities are specifically controlled and designed for the purpose of managing such species.

Wildlife: All vertebrate species (animal with backbones), except fish.

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