

**LAND USE ZONING ORDINANCE**

**OF THE**

**TOWN OF MOUNT DESERT**

**ENACTED MARCH 6, 1978**

**AMENDED JUNE 21, 1978**

**AMENDED AUGUST 4, 1980**

**AMENDED MARCH 2, 1981**

**AMENDED MARCH 7, 1983**

**AMENDED MARCH 5, 1984**

**AMENDED MARCH 4, 1985**

**AMENDED MARCH 3, 1986**

**AMENDED MARCH 2, 1987**

**AMENDED OCTOBER 24, 1988**

**AMENDED MARCH 6, 1989**

**AMENDED MARCH 5, 1990**

**AMENDED MARCH 4, 1991**

**AMENDED MAY 20, 1991**

**AMENDED OCTOBER 7, 1991**

**AMENDED MARCH 2, 1992**

**AMENDED MARCH 2, 1993**

**AMENDED MARCH 8, 1994**

**AMENDED MARCH 7, 1995**

**AMENDED JUNE 6, 1995**

**AMENDED MARCH 6, 1996**

**AMENDED MARCH 4, 1997**

**AMENDED MARCH 3, 1998**

**AMENDED MARCH 8, 2000**

**AMENDED MARCH 7, 2001**

**AMENDED MARCH 5, 2002**

**AMENDED MARCH 4, 2003**

**AMENDED MARCH 2, 2004**

**AMENDED MARCH 8, 2005**

**AMENDED MARCH 7, 2006**

**AMENDED MARCH 6, 2007**

**AMENDED MAY 6, 2008**

**AMENDED MAY 5, 2009**

**AMENDED NOVEMBER 16, 2009**

**AMENDED MAY 4, 2010**

**AMENDED MAY 3, 2011**

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**TOWN OF MOUNT DESERT  
LAND USE ZONING ORDINANCE**

**SECTION 1. PREAMBLE**

- 1.1 Premises.** The Town of Mount Desert has a unique natural setting and has few rivals which can equal the combination or extent of its tidal and fresh water bodies, more than 50 miles of shoreland, mountains, and woodland. These natural assets form the basis of an environment of unusual beauty and recreational possibilities. Long-standing appreciation of these features has fostered traditions of resource conservation as well as diversified community development - there being a dozen different villages and residential localities or neighborhoods in the Town, each with its individual character which the vast majority of the residents desire to maintain.
- 1.2 Assumptions.** The future of the Town will depend largely on the balance achieved between conservation and development. On the one hand, every effort should be made to conserve the best of the natural as well as man-made aspects of the environment. On the other hand, there must be adequate opportunities for the development of additional residential, commercial, and recreational facilities within the Town. Growth must be controlled in accordance with the standards set forth in the Comprehensive Plan so that the essential character of each neighborhood is maintained.
- 1.3 Purpose.** The purpose of this Ordinance is to carry out the intent of the Comprehensive Plan of the Town; to safeguard the comfort, convenience, safety, health, and welfare of the people; to preserve the Town's cultural and aesthetic resources; to protect the environment; and to promote the development of an economically sound and stable community.
- 1.4 Intent.** To achieve its purpose this Ordinance is intended to carry out the Town's policy that use and development of land and water within the Town be guided in accord with the expressed desires of the residents of the Town. Accordingly, this Ordinance prescribes standards and limitations for the implementation of this policy. Responsibility for the maintenance and enforcement of this Ordinance is entrusted to the Planning Board, Code Enforcement Officer, Board of Appeals, and Selectmen. It is the intent of this Ordinance to regulate the use of all lands and waters, population, density and distribution, and the size and location of all structures so as to: (1) permit an increase in the number of residences, recreational facilities, and commercial enterprises in ways which avoid public disadvantage; (2) lessen congestion on and promote the safety and efficiency of roads and highways; (3) protect and enhance existing public and private property and the value inherent therein; and (4) insure the appropriate use of land, water, and air, and the conservation of natural resources.
- 1.5 Authority.** This Ordinance has been prepared in accordance with the provisions of Title 38 Sections 435-449 and Title 30-A Section 3001 of the Maine Revised Statutes Annotated.

## SECTION 2 GENERAL PROVISIONS

**Similar uses.** Unspecified Uses which are substantially the same as, or having effects the same as, the uses listed in Section 3.4 shall be treated the same as those listed uses. Similarity shall be determined by the Planning Board in strict compliance with the standards set forth in Section 6 and with other pertinent provisions of this Ordinance.

Any use or activity not listed in Section 3.4 shall be excluded unless the Planning Board, in accordance with Section 3.4, determines that it is similar to a specified use.

- 2.1 Continuation of Lawful Use.** Any structure or property in the Town devoted to a lawful use at the time of adoption of this Ordinance may continue in such use until abandoned.
- 2.2 Conformity with Ordinance.** No building or land shall hereafter be used or occupied, and no part thereof shall be constructed, moved, or structurally altered except in conformity with the regulations herein specified for the district in which it is located. Each undeveloped newly created lot shall meet the dimensional requirements of the district in which it is located.
- 2.3 Subdivision Requirements.** Each subdivision requires approval by the Planning Board in accordance with provisions of this Ordinance, the Subdivision Ordinance and the Comprehensive Plan. Any new lot exempt by State law from Subdivision Ordinance review must be reviewed by the Code Enforcement Officer prior to executing any conveyance of property rights. Functional land divisions of lots are allowed provided the lots are as conforming as possible, reviewed, and approved by the Planning Board.
- 2.4 Conditional Uses.** Conditional uses may be permitted only after review and approval by the Planning Board, and only if specific provisions for such conditional uses are made in this Ordinance. The Standards of Section 6A and the applicable standards of Section 6B and 6C of this Ordinance shall apply at all times.
- 2.5 Change of Ownership.** When an owner and a prospective owner have signed a purchase-and-sale agreement, which may be conditional upon favorable action by the Planning Board, the prospective owner may apply for a Conditional Use Approval, and the Planning Board shall act upon the application.
- 2.6 Land Transfers from Acadia or Maine.** Land transferred from Acadia National Park or the State of Maine to the Town of Mount Desert shall be placed in the Resource Protection district. Land transferred from Acadia National Park or the State of Maine to private ownership shall be placed in the Conservation district. This property shall subsequently be rezoned upon recommendation of the Planning Board and the Board of Selectmen and vote of Town Meeting.
- 2.7 Amendments.** Amendments to the provisions of this Ordinance may be made only by a majority vote of the eligible voters present at any regular or special Town meeting.
  - 1. Public hearing.** The Planning Board shall have held a public hearing on the proposed change after a notice has been posted in the municipal office at least fourteen (14) days before the public hearing and the notice has been published at least two (2) times in a newspaper with local circulation. The date of the first publication must be at least fourteen (14) days before the public hearing and the date of the second publication must be at least seven (7) days before the public hearing. For any zoning change that has the effect of either prohibiting all industrial, commercial, or retail uses where any of these uses were permitted or permitting any industrial, commercial, or retail uses where any of these uses were prohibited, such notice must be given to the owner of each parcel within the Town located within the

geographic area affected by the amendment, and to the owner of each parcel of land abutting the portion of the Town affected by the proposed amendment. Notice must be mailed at least fourteen (14) days before the public hearing. The Town shall maintain a certified list of the mailing. Notice of the public hearing shall in all respects be given in accordance with state law. Notice is not required under this paragraph for any type of zoning ordinance adopted under the laws governing growth management contained in chapter 187, subchapter II or the laws governing shoreland zoning.

2. **Proposed amendments.** Proposed amendments may be submitted by the Planning Board or by a petition to the Planning Board with the same number of signatures as required for submission to referendum, said signatures to be of legal residence or of property owners of the Town.
3. **Report to Selectmen.** The Planning Board shall have reported in writing to the Selectmen its opinion on the desirability of the proposed change, which opinion shall represent the vote of not less than three (3) members of the Planning Board. If the Planning Board has not submitted its report within thirty (30) days following the public hearing, its concurrence with the proposed change shall be assumed.
4. **Amendment requirements in addition to state law.** The foregoing is in addition to other methods of amendment provided in state law.

- 2.8. **Separability.** The legal invalidity of any section or provision of this Ordinance shall not affect the validity of this Ordinance as a whole or any part thereof.

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.

- 2.9 **Effective Date of Ordinance and Ordinance amendments.** This Ordinance and amendments shall take effect upon its adoption by a majority of the eligible voters present at a regular or special Town meeting and when a copy has been filed with the Department of Environmental Protection. A certified copy of the Ordinance, or Ordinance amendment, attested and signed by the Municipal Clerk, shall be forwarded to the Commissioner for approval. If the Commissioner fails to act on this Ordinance or Ordinance amendment, within forty-five (45) days of his/her receipt of the Ordinance, or Ordinance amendment, it shall be automatically approved.

- 2.10 **Repeal of Prior Ordinances.** All zoning ordinances heretofore enacted by the Town are hereby repealed. Uses permitted by such prior zoning ordinances but not permitted by this Ordinance shall be considered as non-conforming uses subject to the provisions of Section 4. Uses in violation of prior zoning ordinances, which also constitute violations of this Ordinance shall not be construed as non-conforming uses.

## 2.11 **Applicability**

The provisions of this Ordinance shall apply to all areas of the Town of Mt. Desert including 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, or
- upland edge of a freshwater wetland,

and all land areas within 75 feet, horizontal distance, of the normal high-water line of a stream.

This Ordinance also applies to any structure built on, over or abutting a dock, wharf or pier, or other structure extending or located below the normal high-water line of a water body or within a wetland.

## **2.12 Availability**

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

## SECTION 3 LAND USE DISTRICTS

**3.1 Districts.** The fifteen Land Use Districts into which the Town is divided are generally defined below. It is important to note that exact dimensional and use designations for each such district as set forth in Sections 3.4 and 3.5 shall be controlling and shall constitute the exact definition of each such Land Use District.

**VILLAGE COMMERCIAL (VC):** village areas, accessible to public sewer, deemed appropriate for commercial development.

**SHORELAND COMMERCIAL (SC):** areas allocated to marine activities which are dependent upon shore access.

**VILLAGE RESIDENTIAL ONE (VRI):** village areas, with public sewer, deemed appropriate for intensive residential development.

**VILLAGE RESIDENTIAL TWO (VRII):** village areas on public sewer deemed suitable for development on lots not less than 20,000 square feet

**RESIDENTIAL ONE (R1):** areas where, because of the existing character of the neighborhood, lots of one acre are deemed appropriate.

**RESIDENTIAL TWO (R2):** areas where residential development, because of the existing character of the neighborhood or the characteristics of the land, shall be on lots of two acres or larger.

**SHORELAND RESIDENTIAL ONE, TWO, THREE, FIVE (SR1, SR2, SR3, SR5):** areas with uses similar to other residential districts, but which are located within the shoreland zone.

**RURAL OR WOODLAND TWO, THREE (RW2, RW3):** areas where retaining the rural or wooded character of the district is desired, and to allow uses consistent with this character. Minimum lot sizes shall be two or three acres as deemed appropriate.

**RESOURCE PROTECTION (RP)** 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 Shoreland Commercial 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, as defined in Section 8, which are rated "moderate" or "high" value waterfowl and wading bird habitat, including nesting and feeding areas, by the Maine Department of Inland Fisheries and Wildlife (MDIF&W) that are depicted on a Geographic Information System (GIS) data layer maintained by either MDIF&W or the Department. Coastal wetlands are rated as of January 1, 1973, and freshwater wetlands are rated as of December 31, 2008. 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.

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 coastal wetland 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 coastal wetlands which are subject to severe erosion or mass movement, such as steep coastal bluffs.

**CONSERVATION (C):** areas of natural character where limited use of low intensity may be permitted by the Planning Board on a case by case basis with the issuance of Conditional Use Approval. Structures may be permitted.

**STREAM PROTECTION DISTRICT (SP):** 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.

### 3.2 Land Use Map

1. **The districts** are shown on a map entitled "Town of Mount Desert, Maine, Land Use District Map", dated May 3, 2011, which is hereby made part of this Ordinance, together with changes and a copy of which shall remain on file in the Town Office available for public inspection during normal working hours.
2. **Normally the boundary lines of land use districts** will follow property lines or center lines of roads, other public rights of way, or streams. Exceptions shall be designated on the Map.
3. **If amendments are made in the district boundaries** or other matters portrayed on the Land Use District Map, such changes shall be made on the Land Use District Map within thirty (30) days after the amendment has been approved by the Department of Environmental Protection when applicable.

### 3.3 Map Changes: Amended at:

Town Meeting March 2, 1992 change Map 29 Lot 2-3 to Shoreland Commercial.

Town Meeting March 2, 1993 change Map 10 Lots 156 and 157 from Shoreland Residential Two to Residential Two.

Town Meeting March 6-7, 1995 change Map 10 Lot 48, known as Ripples Pond Tract, from Resource Protection District to Residential One District.

Town Meeting March 4, 1997 change Tax Map 009 Lots 011, 012, 017 001, 017 002, 019, 019 001, 020, 036, 037, 038, 039, 040 001, 068, 069, 070, 071, 072, 073, 074, 075, 076, 077, 078, 079, 080, 081, 082, 083, 084, 085, 086, 087, 088, 089, 090, 091, 092, 093, and Tax Map 010 Lots 010, 012, 013, 014, 015, 016, 017, 018, 018 001, 020, 021, 022, 023, 024, 024 001 from Residential Two to Residential One.

Town Meeting March 4, 1997 change Tax Map 011 Lot 029-002 (Bartlett's Landing) from Resource Protection to Shoreland Commercial.

Town Meeting March 2, 2004 change Tax Map 9 Lot 8-2, Tax Map 17 Lots 22-3, 22-2, 22-1 from Shoreland Residential Five to Residential Two.

Town Meeting March 2, 2004 change Tax Map 10 Lot 67 from Shoreland Residential Five to Rural Woodlands Three, except for the area 250 feet from the shore which will become Shoreland Residential Two.

Town Meeting March 8, 2005 change Tax Map 5 Lot 13-1 from Shoreland Residential 2 to Residential 1.

Town Meeting March 8, 2005 change Tax Map 7 Lot 65 from Rural Woodlands Three to Residential 2, except for the area 250 feet from the shore which will become Shoreland Residential Two.

Special Town Meeting November 16, 2009 & Town Meeting May 4, 2010 changed a portion of lots within 250' of the two hundred and fifty (250) feet, horizontal distance, of the normal high-water line of any great pond; 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. from Shoreland Residential 2, 3 & 5, Conservation, Rural or Woodland 3 & Residential 2 to Resource Protection – Tax Map 2 Lots 28, 28-2, 28-3, 31-5, 31-6, Tax Map 3 Lots 3-2, 18-1, 18-5, 19, 19-1, 20, 21, 30, 48, 49, 51, 53, 54, Tax Map 5 Lots 20, 59-2, 59-3, Tax Map 7 Lots 89, 92, 94, Tax Map 9 Lots 10-6, 52-1, 52-2, 53, 59, Tax Map 10 Lots 49, 50, 52, 53, 54, 54-1, 55, 59, 60, 61, 82, 85, 184, Tax Map 11 Lot 7, Tax Map 12 Lot 6, Tax Map 13, Lot 2, Tax Map 29 Lots 1-1, 2-1,

Special Town Meeting November 16, 2009 & Town Meeting May 4, 2010, added Stream Protection District.

Town Meeting May 3, 2011 change Tax Map 3 Lots 4-1, 4-2, 4-9, 6-1, 57, Tax Map 5 Lots 19, 59-3 Tax Map 7 Lots 48-2, 7-50, 7-104, Tax Map 9 Lots 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 107-3, 108, 109, 110, 111, 113, 114, 120, 120-9, 120-10, 120-10-1, 120-11, Tax Map 8 Lots 5, 5-1, Tax Map 10 Lots 1, 2, 3, 4, 4-1, 5, 67, 67-2, 69, 69-1, 70, 112-4, 112-6, 113, 114, 118, 119, 120, 121, 122, 122-2, 122-4, 123, 123-3, 123-4, 123-8, 123-11, 123-12, 123-13, 123-14, 131, 132, 135-1, 135-2, 139, 145, 146, 147, 152, 155, 156, 157, 158, 159, 161, 162, 163, 192-13, 193-1, 193-2, 193-3, 193-5,

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### 3.4 Permitted, Conditional, and Excluded Uses by District:

All land use activities, as indicated in the following table, shall conform with all of the applicable land use standards in Sections 6.A., 6.B., and 6.C. The district designation for a particular site shall be determined from the Official Land Use Zoning map.

<b>P</b>	<b>Permitted</b> (but a Building Permit is required for new structures)
<b>C</b>	<b>Conditional Use Approval Required</b> (approved by the Planning Board)
<b>X</b>	<b>Excluded</b>
<b>CEO</b>	<b>Requires permit from CEO</b>

VR I	VILLAGE RESIDENTIAL ONE
VR II	VILLAGE RESIDENTIAL TWO
R 1	RESIDENTIAL ONE
R 2	RESIDENTIAL TWO
SR 1	SHORELAND RESIDENTIAL ONE
SR 2	SHORELAND RESIDENTIAL TWO
SR 3	SHORELAND RESIDENTIAL THREE
SR 5	SHORELAND RESIDENTIAL FIVE
RW 2	RURAL OR WOODLAND TWO
RW 3	RURAL OR WOODLAND THREE
VC	VILLAGE COMMERCIAL
SC	SHORELAND COMMERCIAL
RP	RESOURCE PROTECTION
C	CONSERVATION
SP	STREAM PROTECTION

See table of uses on following pages

Section 3.4 Permitted, Conditional, and Excluded Uses by District

LAND USE:	Districts								
	VR 1 VR 2	R 1 R 2	SR 1 SR 2 SR 3 SR 5	RW 2 RW 3	VC	SC	C	RP	SP
<b>RESIDENTIAL</b>									
Dwelling 1 & 2 family (a), (b)	P	P	P <sup>(d)</sup>	P	C	C <sup>(d)</sup>	C	C <sup>8</sup>	C <sup>4</sup>
Dwelling, Multiple (b)	C	C	C	C	C	X	C	X	X
Accessory structures including structural additions and guest houses (a), (c)	P	P	P	P	P	P	P	C <sup>8</sup>	C <sup>4</sup>
Cluster and Workforce Subdivisions	C	C	X	C	C	X	X	X	X
Mobile Home Park	C	X	X	X	X	X	X	X	X
<p>(a) But a building permit is required for new structures</p> <p>(b) See definition: Single Family Dwelling/A-Health Care</p> <p>(c) A separate garage is an accessory structure. A separate garage with a dwelling unit shall be deemed a dwelling unit.</p> <p>(d) See Section 6B.10.3 (Lots)</p>									
<b>RECREATIONAL (NON-COMMERCIAL)</b>									
Animal Husbandry	C	C	C	P	X	X	C	X	X
Individual Private Campsites	X	X	X	X	X	X	X	X	X
Indoor Recreational facilities	C	C	C	C	C	X	C	X	X
Livestock (hoofed)	C	C	C	P	X	X	C	X	X
Motorized Vehicular traffic on existing roads and trails	P	P	P	P	P	P	P	P	X
Outdoor, non-intensive recreation, not requiring structures, such as: hiking, skiing	P	P	P	P	P	P	P	P	P
Outdoor recreation facilities, such as for tennis, golf, boating, swimming	C	C	C	C	C	C	C	X	X
Yard & Garage Sales 3 days or less per year	P	P	P	P	P	P	P	X	X

LAND USE:	Districts								
	VR 1 VR 2	R 1 R 2	SR 1 SR 2 SR 3 SR 5	RW 2 RW 3	VC	SC	C	RP	SP
<b>PUBLIC</b>									
Church, school, library, museum, community building	C	C	X	C	C	X	X	X	X
State, Federal & Municipal Buildings	C	C	X	C	C	C	X	X	X
Park, playground, recreation structures	C	C	X	C	C	X	X	X	X
Municipal activities	C	C	C	C	C	C	C	X	X
Cemeteries	X	X	X	C	X	X	X	X	X
<b>COMMERCIAL</b>									
Accessory structures	P	P	P	P	P	P	P	X	X
Agriculture	X	X	X	P	X	X	X	X	X
Animal Husbandry	X	X	X	P	X	X	X	X	X
Aquaculture	X	X	X	C	X	C	X	X	X
Auto repair, sales	X	X	X	C	C	X	X	X	X
Auto service, filling	X	X	X	X	C	X	X	X	X
Boat building	C	C	X	C	C	C	X	X	X
Boat storage, repair, service	X	X	X	C	C	C	X	X	X
Boat marina	NA	NA	X	NA	NA	C	X	X	X
Campground	X	X	X	X	X	X	X	X	X
Commercial fishing	C	C	X	C	X	C	X	X	X
Commercial Materials: Bulk storage	X	X	X	C	X	X	X	X	X
Retail Sales	X	X	X	C	C	C	X	X	X
Wholesale sales	X	X	X	C	X	X	X	X	X
Excavations (gravel pits)	X	X	X	X	X	X	X	X	X
Fish processing	X	X	X	X	X	C	X	X	X

LAND USE:	Districts								
	VR 1 VR 2	R 1 R 2	SR 1 SR 2 SR 3 SR 5	RW 2 RW 3	VC	SC	C	RP	SP
Home occupation	CEO	CEO	CEO	CEO	CEO	CEO	CEO	C	X
Horticulture: nurseries, greenhouses/sale of products	C	C	X	C	P	X	X	X	X
Hotel/Motel	X	X	X	X	C	X	X	X	X
Piers, Docks, Wharves, Bridges and other Structures and Uses Extending over or below the Normal High-Water line or within a wetland (refer to Sections 6B.9 & 6C.8)	X	C	C	C	X	C	C	X	X
Office Building	C	C	X	C	P	X	X	X	X
Office Building: bank	X	X	X	X	P	X	X	X	X
Public utilities	C	C	C	C	C	C	C	X	X
Recreational: indoor recreational facilities	X	X	X	C	C	X	X	X	X
Recreational: outdoor recreation facilities, such as tennis, golf, boating, swimming	C	C	C	C	C	C	C	X	X
Restaurant	X	X	X	C	C	X	X	X	X
Retail Stores: clothing, hardware, paints, grocery, books, art, gifts, antiques, etc.	X	X	X	C	P	X	X	X	X
Services 1: personal (wholly enclosed), hairdressing, barber, tailor, dressmaker, sewing, tanning parlor, etc.	C	C	C	C	P	X	C	X	X
Services 2: (wholly enclosed) electrician, carpentry, interior decoration, upholstery, etc.	C	C	X	C	P	X	X	X	X
Services 3: (not wholly enclosed) construction, masonry, plumbing, painting, carpentry	X	X	X	C	C	X	X	X	X

LAND USE:	Districts								
	VR 1 VR 2	R 1 R 2	SR 1 SR 2 SR 3 SR 5	RW 2 RW 3	VC	SC	C	RP	SP
Seasonal produce sales (including firewood)	CEO	CEO	CEO	CEO	CEO	CEO	CEO	X	X
Storage of construction equipment & heavy vehicles	X	X	X	C	X	X	X	X	X
Timber harvesting	CEO or C	CEO or C	CEO or C	CEO or C	CEO or C	CEO or C	CEO or C	X	X
Yard & garage sales more than 3 days per year	C	C	C	C	C	C	C	X	X
Wind Energy Conservation System	X	X	C	C	X	X	X	X	X
<b>MISCELLANEOUS</b>									
Clearing or Removal of Vegetation for activities other than timber harvesting	P	P	CEO	P	P	CEO	P	C <sup>8</sup>	C <sup>4</sup>
Essential Services									
A. Roadside distribution lines (34.5kv and lower)	P	P	CEO <sup>9</sup>	P	P	CEO <sup>9</sup>	P	C <sup>6</sup>	C
B. Non-roadside or cross- country distribution lines involving ten poles or less in the shoreland zone	P	P	CEO	P	P	CEO	P	C <sup>6</sup>	C <sup>6</sup>
C. Non-roadside or cross- country distribution lines involving eleven or more poles in the shoreland zone	P	P	C	P	P	C	P	C <sup>6</sup>	C <sup>6</sup>
D. Other essential services	P	P	C	P	P	C	P	C <sup>6</sup>	C <sup>6</sup>
Excavation or Filling < 10 cubic yards	P	P	CEO	P	P	CEO	CEO	C <sup>8</sup>	C <sup>4</sup>
Excavation or Filling of 10 to 50 cubic yards	P	P	CEO	P	P	CEO	P	C <sup>8</sup>	C <sup>4</sup>
Excavation or Filling of >50 cubic yards	C	C	C	C	C	C	C	C <sup>8</sup>	C <sup>4</sup>

LAND USE:	Districts								
	VR 1 VR 2	R 1 R 2	SR 1 SR 2 SR 3 SR 5	RW 2 RW 3	VC	SC	C	RP	SP
Fire Prevention Activities	P	P	P	P	P	P	P	X	P
Forest Management Activities except for timber harvesting & land management roads	P	P	P	P	P	P	P	X	P
Land management roads	P	P	P	P	P	P	P	P	C
Mineral Exploration	P <sup>2</sup>	P <sup>2</sup>	P <sup>2</sup>	P <sup>2</sup>	P <sup>2</sup>	P <sup>2</sup>	P <sup>2</sup>	X	X
Mineral Extraction	P <sup>2</sup>	P <sup>2</sup>	C	P <sup>2</sup>	P <sup>2</sup>	C	C	X	X
Parking lot	C	C	X	C	C	C	C	X	X
Private sewage disposal systems for allowed uses	LPI	LPI	LPI	LPI	LPI	LPI	LPI	LPI	LPI
Road & driveway construction	CEO	CEO	CEO	CEO	CEO	CEO	CEO	C <sup>7,8</sup>	C <sup>7,4</sup>
Service drops, as defined, to allowed uses	P	P	P	P	P	P	P	P	P
Soil and Water Conservation Practices	P	P	P	P	P	P	P	P	P
Small non-residential facilities for educational, scientific, or nature interpretation purposes	P	P	CEO	P	P	CEO	P	X	C <sup>4</sup>
Structures accessory to allowed uses	P	P	P	P	P	P	P	C <sup>8</sup>	C
Wildlife Management Practices	P	P	P	P	P	P	P	P	P
Uses similar to permitted uses	P	P	P	P	P	P	P	P	P
Uses similar to uses requiring Conditional Use Approval	C	C	C	C	C	C	C	C	C

LAND USE:	Districts								
	VR 1 VR 2	R 1 R 2	SR 1 SR 2 SR 3 SR 5	RW 2 RW 3	VC	SC	C	RP	SP
Uses similar to uses requiring a CEO permit	CEO	CEO	CEO	CEO	CEO	CEO	CEO	CEO	CEO

Note: Some footnotes have been deleted. – namely 1,3 & 5. 2,4,6,7,8 & 9 retained.

<sup>2</sup> Requires permit from the Code Enforcement Officer if more than 100 square feet of surface area, in total, is disturbed.

<sup>4</sup> Provided that a variance from the setback requirement is obtained from the Board of Appeals; otherwise the setback is 75 feet. Any Excavation or Filling must be limited to that necessary for the construction of approved structures.

<sup>6</sup> See further restrictions in Section 6C.5.2

<sup>7</sup> Only as provided in Section 6C.9.3

<sup>8</sup> Single family dwelling and/or accessory structures may be allowed by special exception for lots located in the Resource Protection District and designated on the Zoning Map as within areas of two or more contiguous acres with sustained slopes of 20% or greater as provided in Section 7.5.3, Special Exceptions. Two-family residential structures are prohibited. Any Excavation or Filling must be limited to that necessary for the construction of approved structures.

<sup>9</sup> Permit 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.

Section 3.5 Dimensional Requirements for Districts: minimum area, width of lots, setbacks, etc.

DISTRICTS	VR1	VR2	R1	R2
<b>DIMENSIONS see Notes (b) (i) (j) (h')</b>				
MINIMUM LOT SIZE: A. with public sewer B. without public sewer. C. Cluster Subdivision w/sewer* D. Cluster Subdivision w/o sewer* E. Workforce Subdivision* * see Note (k)	10,000 sq ft 1 acre 5,000 sq ft 20,000 sq ft State Minimum	20,000 sq ft 1 acre 10,000 sq ft 20,000 sq ft State Minimum	1 acre 1 acre 20,000 sq ft 20,000 sq ft State Minimum	2 acres 2 acres 1 acre 1 acre State Minimum
MINIMUM WIDTH OF LOTS: Shore Frontage  on road** -Cluster Subdivision* -Workforce Subdivision* * see Note (l) **See Note (m)	N/A  75 ft 50 ft -0- ft	N/A  100 ft 50 ft -0- ft	N/A  100 ft 50 ft -0- ft	N/A  100 ft 50 ft -0- ft
SETBACKS FROM: normal high water line of a water body (stream), tributary stream or upland edge of a wetland  Great Ponds  public or private road*  property lines** * see Note (c) ** see Note (d)	75 ft  N/A  20 ft  10 ft	75 ft  N/A  30 ft  15 ft	75 ft  N/A  30 ft  15 ft	75 ft  N/A  30 ft  25 ft
MAXIMUM LOT COVERAGE	40%	40%	40%	40%
MINIMUM DISTANCE BETWEEN PRINCIPAL BUILDINGS	20 ft	20 ft	20 ft	20 ft

Continued...

Section 3.5 Dimensional Requirements for Districts: minimum area, width of lots, setbacks, etc.

DISTRICTS	SR1 see Note (f)	SR2 see Note (f)	SR3 see Note (f)	SR5 see Note (f)
<b>DIMENSIONS see Notes (b) (i) (j) (h<sup>2</sup>)</b>				
MINIMUM LOT SIZE: with public sewer	1 acre	2 acres	3 acres	5 acres
without public sewer	N/A	2 acres	3 acres	5 acres
MINIMUM WIDTH OF LOTS: Shore Frontage	250 ft	250 ft	250 ft	250 ft
on road* * See Note (m)	150 ft	150 ft	150 ft	150 ft
SETBACKS FROM: normal high water line of a water body (stream), tributary stream or upland edge of a wetland	75 ft	75 ft	75 ft	75 ft
Great Ponds (*n)	100 ft (n)	100 ft (n)	100 ft (n)	100 ft (n)
public or private road*	50 ft	50 ft	50 ft	50 ft
property lines (d)** * see Note (c) ** see Note (d)	25 ft	25 ft	25 ft	25 ft
MAXIMUM LOT COVERAGE	15%	15%	15%	15%
MINIMUM DISTANCE BETWEEN PRINCIPAL BUILDINGS	30 ft	30 ft	30 ft	30 ft

Continued...

Section 3.5 Dimensional Requirements for Districts: minimum area, width of lots, setbacks, etc.

DISTRICTS	RW2	RW3	VC see Note (g)	SC see Note (g) (e)	C
<b>DIMENSIONS (b) (i) (j) (h')</b>					
MINIMUM LOT SIZE: A. with public sewer B. without public sewer C. Cluster Subdivision w/sewer* D. Cluster Subdivision w/o sewer* E. Workforce Subdivision* * See Note (k)	2 acres 2 acres 1 acre 1 acre State Minimum	3 acres 3 acres 1.5 acres 1.5 acres State Minimum	5,000 sq ft 1 acre see note (g) see note (g) see note (g)	1 acre 1 acre N/A N/A N/A	3 acres 3 acres N/A N/A N/A
MINIMUM WIDTH OF LOTS: on shore  on road:** -Cluster Subdivision* -Workforce Housing*  * see Note (l) ** See Note (m)	250 ft  175 ft 50 ft -0- ft	250 ft  175 ft 50 ft -0- ft	N/A  20 ft 50 ft -0- ft	100 ft  50ft N/A N/A	250 ft  150 ft N/A N/A
SETBACKS FROM: normal high water line of a water body (stream), tributary stream or upland edge of a wetland  Great Ponds (*n)  public or private road*  property lines** * see Note (c) ** see Note (d)	75 ft  N/A 60 ft 25 ft	75 ft  N/A 60 ft 25 ft	75 ft  N/A 10 ft or -0- ft from edge of public sidewalk 5 ft(o)	75 ft  100 ft.(n) 25 ft 5 ft	75 ft  100 ft (n) 50 ft 25 ft
MAXIMUM LOT COVERAGE	15 %	15%	75%	70%	15%
MINIMUM DISTANCE BETWEEN PRINCIPAL BUILDINGS	30 ft	30 ft	N/A	10 ft	30 ft

Section 3.5 Dimensional Requirements for Districts: minimum area, width of lots, setbacks, etc.

NOTES:

- (a) Uses in Conservation District are regulated by Section 3.4.
- (b) All distances shall be measured horizontally in a straight line.
- (c) Measured from edge of road surface, or edge of legally established right of way if no road exists.
- (d) In all districts restrictions on setback of structures from property lines may be varied or nullified by written agreement with the abutting property owner. Said agreement or a copy of said agreement showing signatures shall be filed at the Municipal Office.
- (e) The minimum SC setback from shoreline is 75 feet except for functionally water-dependent structures.
- (f) A newly created lot, any portion of which is within the State Mandated Shoreland Zone, and which increases the number of lots wholly or partially within the State Mandated Shoreland Zone, must have at least the minimum shore frontage required by this section. This footnote only applies to lots bordering on a great pond, fresh water or coastal wetland.
- (g) Primary residential use in a Commercial District must meet the dimensional requirements of the adjacent residential district. This requirement does not apply to projects that include covenants held by a qualified workforce housing entity.
- (h<sup>1</sup>) Height: Structures in any non-Shoreland district shall not exceed forty (40) feet. In exceptional cases, which meet the standards of this Ordinance and will not adversely affect the skyline of the Town, Conditional Use Approval may be issued, notwithstanding the above height limitations. Placement of fill to circumvent this height requirement is prohibited.
- (h<sup>2</sup>) Height: Structures in any Shoreland district shall not exceed thirty-five (35) feet. Placement of fill circumvent this height requirement is prohibited.
- (i) All lot lines abutting a road in a subdivision approved after March 4, 1997 shall run to the middle of the road's right-of-way.
- (j) Lots abutting a cul-de-sac may have a width of lot on a road or right-of-way that is not less than 50% of the minimum width of lot required for the District in which it is located, provided that the width of lot at the required setback from a road or right of way equals the normal required width of lot for the District in which it is located.
- (k) Minimum Lot Size for Cluster Subdivision and Workforce Housing development shall only apply to lots in a subdivision that is approved by the Planning Board under the cluster development provisions.
- (l) Minimum Width Requirements for Cluster Subdivision and Workforce Housing development shall only apply to lots in a subdivision that is approved by the Planning Board under the cluster development provisions.

- (m) Lot Width on Roads for certain lots. A back lot or lots shall be exempt from the road frontage requirements; provided that the lot is serviced by a road or driveway that has a minimum travel surface width of 12 feet, a minimum unobstructed width of 14.5 feet, and a minimum vertical clearance of 14.5 feet and is located within a legally established easement running from a public or private way to the lot. (Added May 2008, and amended May 4, 2010 and May 3, 2011.)
- (n) The setback from the normal high-water line of a great pond is 100 feet, except for these lots where the setback is 75 feet, indicated below.

**Map-Lot IDs for 75 ft. setback**

**Map-Lot IDs for 100 ft. setback**

**Long Pond & Echo Lake:**

All Lots

**Little Round Pond:**

012-018  
012-019  
012-019-001

**Little Round Pond:**

012-015-001  
012-020

**Round Pond:**

011-120  
011-122  
011-123  
011-124  
012-013

**Round Pond:**

011-90  
011-118  
011-119

**Little Echo Lake:**

009-098  
009-099  
009-100  
009-101  
009-102

**Little Echo Lake:**

009-107  
009-120-010  
009-120-011  
009-097  
009-107-003

(Added November 16, 2009)

(Amended May 3, 2011)

- (o) Setback from property lines in Village Commercial:

New or newly renovated structures on the following lots and any future subdivision of said lots may have a -0- foot side-setback if constructed in accordance with the current editions of the NFPA 101 Life Safety Codes & NFPA 5000 Building Construction and Safety Code, Maine State adopted codes, and the current editions of the IRC and IBC Codes except on the side where affected lots abut structures whose primary use is residential. Rear setbacks are unaffected.

Tax Map 024: Lots 063-002, 073 through 081, 081-001, 082 through 086, 088 through 090, 102, 104, 106 through 108, & 109-003/109-004 Tax Map 026: Lots 004-001, 004-002, 008-002, & 057 through 063

(Added May 3, 2011)

## SECTION 4 NON CONFORMING USES

**4.1 Purpose.** It is the intent of this Ordinance to promote land use conformities, except that non-conforming conditions that existed before the effective date of this Ordinance or amendments thereto shall be allowed to continue, subject to the requirements set forth in Section 4. Except as otherwise provided in this Ordinance, a non-conforming condition shall not be permitted to become more non-conforming.

### 4.2 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.
3. **Structures made non-conforming because they fail to meet the setback:** Any principal structure or accessory structures made non-conforming by adoption or amendment of the Land Use Zoning Ordinance of the Town of Mount Desert which is non-conforming because of a failure to meet the setback requirements of Section 3.5 may be reconstructed, or extended, providing that such work otherwise complies with all provisions of this Ordinance.

### 4.3 Non-conforming Structures

1. **Determination of conformity.** In all Shoreland Zoning Districts the Planning Board is responsible for determining whether conformity is met to the greatest practical extent. In all other districts the Code Enforcement Officer is responsible for determining whether conformity is met to the greatest practical extent.
2. **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 1 and 2 & 3 below.
  1. **30% Limit.** 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 more than 30%, during the lifetime of the structure.
  2. **Expansion of Replacement Structure.** If a replacement structure conforms with the requirements of Section 4.3.4, 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.
  3. **Foundation.** 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 Code Enforcement Officer, basing its decision on the criteria specified in Section 4.3.3 Relocation.

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 Code Enforcement Officer, and provided that the applicant demonstrates that the present subsurface sewage disposal system meets the requirements of State law and the State of Maine Subsurface Wastewater Disposal Rules, or that a new system can be installed in compliance with the law and said Rules. In no case shall a structure be relocated in a manner that causes the structure to be more non-conforming.

In determining whether the building relocation meets the setback to the greatest practical extent, the Planning Board or Code Enforcement Officer 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 in the shoreland zone only, as follows:

1. 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.

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

4. **Reconstruction or Replacement.** Any non-conforming structure which is located less than the required setback from a water body, tributary stream, wetland and which is removed, or damaged or destroyed, regardless of the cause, by more than 50% of the market value of the structure, as determined by an appraiser, 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 Code Enforcement Officer 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 4.3.2 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 4.3.3 above.

Any non-conforming structure which is located less than the required setback from a water body, tributary stream, or wetland and which is removed by 50% or less of the market value as determined by an appraiser, or damaged or destroyed by 50% or less of the market value as determined by an appraiser 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 structure reconstruction or replacement meets the setback to the greatest practical extent the Planning Board or Code Enforcement Officer shall consider, in addition to the criteria in Section 4.3.2 above, the physical condition and type of foundation present, if any.

5. **Change of Use of a Non-conforming Structure.** The use of a non-conforming structure may not be changed to another use unless the Planning Board, after receiving a written application, determines that the new use will have no greater adverse impact than the existing use on;

a.) the subject or adjacent properties and resources;

or

b.) a water body, tributary stream, or wetland

#### 4.4 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 4.3.2 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 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 4.3.5 above.

#### 4.5 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 setbacks 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 the effective date of this Ordinance 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

1. Each nonconforming lot is located in the Village Commercial or Village Residential 1 District and either:
  - a. Is served by a public sewer; or
  - b. Can accommodate a subsurface sewerage disposal system in conformance with the State of Maine Subsurface Wastewater Disposal Rules;

or

2. Each nonconforming lot located in any other district is either 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 abutting a great pond, freshwater or coastal wetlands contains at least 100 feet of shore frontage and at least 20,000 square feet of lot area; or
- b. Any lots abutting a great pond, freshwater or coastal wetlands that do not meet the shore frontage and lot size requirements of Section 4.5.3.1 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.

#### 4.6

**Functional Land Divisions.** Functional land divisions of lots are allowed provided the lots are as conforming as possible, reviewed, and approved by the Planning Board. The Planning Board will determine whether each division is a distinct, separate, and historical residential use. The following criteria shall be met for a functional land division to be approved:

1. The dwelling unit(s) located on the property all predate the adoption of this Ordinance or any amendment thereto which made the structures non-conforming.
2. The structures located on the property, together with appropriate curtilage (i.e. yard area used with and around structure/s), were separately occupied and used by tenants at the time of the adoption of this Ordinance or any amendment thereto which made the structures non-conforming.
3. The proposed use reflects the nature and purpose of the use prevailing when the zoning legislation took effect.
4. There is not created a use different in quality or character, as well as in degree.
5. The current use is not different in kind in its effect on the neighborhood.

## SECTION 5 CONDITIONAL USE APPROVAL

### 5.1 General requirement

No person may establish or expand a conditional use without first obtaining Conditional Use Approval of the Planning Board in accordance with the procedure described in this section. The granting of Conditional Use Approval shall in no way relieve any such person from the obligation to obtain a Town building permit and such other permits and approvals as may be required by local ordinances and state and federal laws.

### 5.2 Application

Application for Conditional Use Approval shall be made to the Planning Board in such forms as the Planning Board may require. Application shall be made by a person who has some right, title, or interest in the property. The complete application form, evidence of payment of the required fees, and the required plans and related information must be submitted to the Code Enforcement Officer.

**Waiver.** The Planning Board may waive any of the submission requirements based upon a written request of the applicant. Such request must be made at the time of the initial review of the application. A waiver of any submission requirement may be granted only if the Board makes a written finding that the information is not required to determine compliance with the standards. Fees shall not be waived.

### 5.3 Review Procedures

The review procedures set forth below may, at the Planning Board's discretion, be undertaken at a single meeting.

- 1. Determination of completeness.** Following receipt of a formal Conditional Use Approval application, the Planning Board shall review the material and determine whether or not the submission is complete. If the application is determined to be incomplete, the Board shall notify the applicant in writing of this finding, shall specify the additional materials required to make the application complete and shall advise the applicant that the application will not be considered by the Board until the additional information is submitted to the Board. These steps, except the notification requirements, shall be repeated until the application is found to be complete.
- 2. Notification of completeness.** As soon as the Board determines that the application is complete, the Board shall notify the applicant of this finding and issue a dated receipt.
- 3. Public hearing and notice of meeting.** On each application for Conditional Use Approval the Planning Board shall hold a public hearing not less than ten (10) days after public notice. The Planning Board shall send notice of each public hearing by first class mail to all abutting property owners and shall publish such notice in a newspaper with local circulation at the applicant's expense. The notice shall include the date, time, and place of the meeting at which the application will be considered.

#### 4. Planning Board Decision

1. **Written Decision.** Within thirty (30) days after the later of 1) the public hearing or 2) the date on which the applicant furnished all information reasonably requested by the Planning Board, the Planning Board shall render its decision in writing, and such decision shall be signed by all voting members of the Planning Board.
2. **Findings of fact.** In issuing its decision, the Planning Board shall make written findings of fact establishing that the proposed Conditional Use does or does not meet the standards of approval and other requirements of the Town. If the decision is adverse to the applicant it shall include a statement of findings of fact and of reasons in support of the decision. If the Planning Board attaches restrictions or conditions to the Conditional Use Approval, those restriction or conditions shall be listed on the Conditional Use Approval. The Planning Board shall issue a Conditional Use Approval only when in its majority opinion the applicant has demonstrated by clear and convincing evidence that the proposed use meets the standards of Section 6A and the applicable standards of Sections 6B and 6C. In issuing a Conditional Use Approval the Planning Board may attach such restrictions and conditions to such approval as it deems necessary to insure compliance with the standards of Section 6A and the applicable standards of Sections 6B and 6C.
3. **Notification.** The Board shall notify the applicant, and all parties who requested to be notified of the action of the Board, including the findings of fact, and any conditions of approval, as well as draft and final copies of the meeting minutes. This requirement can be met through the distribution of minutes of the meeting containing the findings of fact and decision of the Board.
5. **On-site inspection.** The Planning Board may hold an on-site inspection of the site to review the existing conditions, field verify the information submitted and investigate the proposal. The Board may schedule this visit either before or after the first meeting at which the application is considered. The Board may decide not to hold an on-site inspection when adverse conditions such as weather make such inspection impractical. If an application is pending during a period when adverse conditions such as weather make such inspection impractical, the deadline by which the Planning Board shall take final action on the application as specified in subsection 5.3.4 may be extended, which extension shall not exceed thirty (30) days after the Board is able to conduct an on-site inspection. Written notice of the on-site inspection shall be provided to all parties entitled to notice under subsection 5.3.3.
6. **Extension of time limits.** All time limits provided for in this section may be extended by mutual agreement of the applicant and Planning Board.

#### 5.4 Deadline for establishment of use

Unless more restrictive criteria are required in another section of this Ordinance, the proposed use must be established within twelve (12) months of the date of approval of the Conditional Use Application. Otherwise the approval lapses and a new application is required. The beginning of construction or the commencement of business shall constitute establishment.

## **5.5 Amendment**

An amendment to a Conditional Use Approval may be issued by the Planning Board only:

1. in conformity with the procedural and substantive requirements set forth in Section 6A and the applicable standards of Section 6B and 6C.
2. on finding that there have been significant changes of conditions or circumstances; and
3. when justified by a statement of findings of fact and reasons.

## **5.6 Reconsideration**

A Conditional Use Approval application which has been denied may not be resubmitted for a period of nine (9) months from the denial of the initial application unless there have been significant changes of conditions or circumstances, as determined by the Planning Board.

## **5.7 Appeal**

The decision of the Planning Board may be appealed to the Zoning Board of Appeals within 30 days of notice of the Planning Board's final written decision. For this purpose, an applicant shall be deemed to have received notice three days after mailing of the final written decision of the Planning Board to the applicant. Other interested parties shall be deemed to have received notice three days after a copy of the final written decision of the Planning Board has been filed as a public record in the Town Clerk's office.

## **5.8 Standards**

The application for Conditional Use Approval shall be approved unless the Planning Board determines that the applicant has failed to meet one or more of the standards of Section 6A and/or one or more of the applicable standards of Section 6B or 6C. In all instances, the burden of proof shall be on the applicant who must produce evidence sufficient to warrant a finding that all applicable standards have been met.

In addition, in all shoreland areas, 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 Shoreland Commercial district;
8. Will avoid problems associated with floodplain development and use; (In compliance with Floodplain Management Ordinance of the Town of Mount Desert – Amended March 7, 2006.)
9. Is in conformance with the provisions of Sections 6A, 6B and 6C.

## **SECTION 6 STANDARDS FOR USES, PERMITS AND APPROVALS**

The land use standards in this Ordinance shall be applied to permitted as well as to conditional uses in all zoning districts.

The Planning Board or Code Enforcement Officer(s) in deciding whether or not to issue a permit or approval shall be governed by the standards set forth in this section. The Planning Board or Code Enforcement Officer(s) may reasonably require an applicant for a permit or approval to furnish at the applicant's expense expert testimony, including documentary material, to prove compliance with such standards.

### **6A GENERAL PERFORMANCE STANDARDS**

#### **6A.1 Compatibility**

The proposed use shall be compatible with the permitted uses within the district in which it is located as measured in terms of its physical size, visual impact, proximity to other structures, and density of development.

#### **6A.2 Erosion and Sedimentation Control**

1. Soil erosion plan for unstabilized soil. 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:
  1. Mulching and revegetation of disturbed soil.
  2. Temporary runoff control features such as hay bales, silt fencing or diversion ditches.
  3. Permanent stabilization structures such as retaining walls or riprap.
2. Development to fit topography. 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 control measures. 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. Stabilization of bare ground. 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:

1. 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.
  2. Anchoring the mulch with netting, peg and twine or other suitable method may be required to maintain the mulch cover.
  3. 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. Drainage ways and outlets. Natural and man-made drainage ways and drainage outlets shall be protected from erosion from water flowing through them. Drainage ways shall be designed and constructed in order to carry water from a twenty five (25) year storm or greater, and shall be stabilized with vegetation or lined with riprap.”
  6. Removal of sand or gravel. Removal of sand or gravel from natural beaches or the disruption or removal of buffer strips that protect fragile land areas immediately behind a shoreline and on neighboring properties is prohibited.
  7. Tilling of soil. Where soil is tilled in a Conservation District, or where soil in excess of twenty thousand (20,000) square feet lying either wholly or partially within the area covered by this Ordinance is tilled in a Rural or Woodland District, such tillage shall be carried out in conformance with the provisions of a Conservation Plan which meets the standards of the State Soil and Water Conservation Commission, and is approved by the appropriate Soil and Water Conservation District.

The number of the plan shall be filed with the Planning Board. Non-conformance with the provisions of such Conservation Plan shall be considered to be a violation of this Ordinance.

### **6A.3 Highway Safety**

The proposed use shall not cause unreasonable congestion on highways or public roads, or unsafe conditions with respect to the use of highways or public roads existing or proposed. Sufficient off-street parking shall be available.

### **6A.4 Impact on Town Services**

The proposed use shall not unduly burden the capacity of the Town's facilities, including public water and sewage, or the ability of the Town to provide essential public services (such as, but not limited to, schools, fire and police protection, refuse collection, and parking) to its residents and visitors.

### **6A.5 Land Suitability**

All uses to be on suitable 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 person who is acceptable to the Planning Board to 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.

## 6A.6 Lighting - Outdoor

1. **Purpose.** To establish minimum requirements for outdoor lighting that enhance visibility and public safety by preventing uncontrolled intrusion into adjacent properties and the natural environment. Voluntary best practices are recommended to promote energy conservation and preserve the Town's night sky which is an important part of the Town's character.
2. **Requirements**
  1. **Full cutoff.** All lights greater than \*1800 lumens (a 100 watt incandescent light produces 1800 lumens) shall be shielded to direct all light towards the ground.
  2. **Light trespass.** All light shall be directed away from adjacent properties. The light sources in flood and spot lights shall not be directly visible from adjacent properties. High intensity light sources shall not be directly visible to motorists on public roads.
  3. **Excessive Lighting** may not be used to direct attention away from existing business and community lighting.
    1. The lighting of structural canopies such as gas station canopies shall not be used to attract attention to the business. Areas under structural canopies shall be illuminated so that the uniformity ratio (ratio of average to minimum illumination) shall be no greater than 5:1 with an average illumination level of not more than 30 footcandles.
    2. Light fixtures located on structural canopies shall be mounted so that the lens cover is recessed or flush with the ceiling of the canopy.
3. **Recommended Best Practices:**
  1. **Motion sensors.** Use motion sensors to control flood and spot lights.
  2. **HPS lights.** Use high pressure sodium (HPS) lights to minimize sky glow where color recognition is not needed.
  3. **Non-security parking lights.** Turn off non-security parking lot lights after business hours to save energy and protect the night sky.
  4. **Minimum amount of lighting.** Provide the minimum amount of light needed to achieve safe uniform lighting with lights that consume the lowest amount of power possible.

5. **Shield or flush mount lights.** Fully shield or horizontally flush mount all lights.
6. **Signs and flags.** Illuminate signs and flags from above and shield all sports lighting.
7. **Guidelines for professional design.** Request that professionals follow Illuminating Engineering Society guidelines for intensity and uniformity and not to exceed the minimum recommended values.

#### 4. **Definitions**

Lumen: Approximately the amount of light measured one foot from a candle. 1 lumen is approximately 1 foot candle.

\*A 100 watt incandescent light produces 1800 lumens.

5. **Grandfathering.** These requirements apply only to new construction and lighting installations.

### 6A.7 **Stormwater**

1. **Purpose.** The direct discharge of stormwater from ditches, swales and developed sites to streams and lakes can contribute to water pollution because stormwater can contain sediment, nutrients, hydrocarbons and other harmful substances. Stormwater can also damage roads, ditches, culverts and other drainage structures that are not designed or sized to accommodate storm flows. These problems can worsen when an undeveloped woody site is cleared for development since stormwater that was previously intercepted by vegetation and absorbed into the ground is allowed to flow more freely across and off of the site. The closer post-project stormwater flows are kept to pre-project conditions in terms of volume, rate, timing and pollutant load, the less likely that stormwater will damage the site or public or private property or cause harm to water bodies. Special care needs to be taken on lots that are within 75 feet of a water body and where drainage is towards the water body or on slopes of 25% or greater, or drain to a Town, State or Local roadway drainage system.
2. **Applicability.** In any district all new construction, development or other alteration of a lot must be designed to minimize stormwater runoff from the site in excess of the natural predevelopment conditions.
3. **Stormwater plan required.** For development on all lots the applicant shall submit a Stormwater Management Plan which demonstrates to the satisfaction of the Code Enforcement Officer that stormwater runoff has been minimized, and will not excessively exceed natural predevelopment conditions.

In the event that the proposed project includes on-site stormwater conveyance structures, evidence will be provided that insures that these structures have been sized properly and can handle anticipated flows. In the event that a development discharges storm flows into any off-site conveyance and/or control system, evidence will be provided that the off-site systems can handle the anticipated flows without resulting in any adverse conditions. (see Code Enforcement Officer for example of stormwater plan)

4. **Vegetated buffer.** Lots shall be developed to accommodate vegetated buffers whenever possible. The purpose of the buffer is to intercept and then spread out and soften the flow of water.

Stormwater from the developed portion of the site shall be directed by sheet flow to the buffer. This buffer must be located on the down slope side(s) of the lot. If, due to lot orientation, a driveway or other opening must be located within the buffer, it shall be sited so that drainage from the developed portion of the site, including the driveway, can still be directed by sheet flow into the buffer. The buffer requirement may be met as follows:

- a. **Wooded buffer width.** If the buffer is presently wooded, it shall be at least 25 feet in width. Removal of trees and other vegetation within the buffer cannot result in any cleared openings or disturbance of the existing forest floor except for removal of dead trees and safety hazards.
  - b. **Non-wooded buffer width that revert to woods.** A minimum 25-foot wide non-wooded buffer may also be used if it is allowed to revert to woods or is planted with shrubs or similar landscaping which minimizes disturbance of ground vegetation and leaf litter.
  - c. **Non-wooded buffer width.** If a non-wooded buffer is to be maintained as a field, it shall be at least 50 feet in width and mowing limited to no more than twice per year.
  - d. **Buffer alternatives.** Berms, detention basins or other alternatives as approved by the Code Enforcement Officer may be used instead of vegetated buffers if they are designed to intercept and then spread out and soften the flow of stormwater without channeling it. The Code Enforcement Officer is authorized to request the review and endorsement of any such alternatives by the Hancock County Soil and Water Conservation District, or Maine Registered Professional Engineer the cost of which shall be borne by the Applicant.
5. **Natural drainage.** Existing swales or drainage courses that carry water through the site are to remain undisturbed to the maximum extent possible. Culverts, stream crossings and other alterations may be permitted if the flow of water is unimpeded as it leaves the property in a manner similar to pre-project conditions and that proper erosion control and stabilization measures are installed at the inlets and outlets.
6. **Directing sheet flow to buffers.** All disturbed portions of the site, including buildings, lawns and driveways, are to be graded to direct sheet flow of drainage into the buffer areas and not into roadside ditches wherever possible. Any drainage that must be directed to roadside ditches shall be minimized.
7. **Filling or grading to protect the shoreline and prevent erosion.** On slopes greater than twenty-five (25) percent, there shall be no grading or filling within one hundred (100) feet of the shoreline, except to protect the shoreline and prevent erosion.
8. **CEO Inspection.** Following completion of lot development, the Code Enforcement Officer or his/her designee shall inspect the lot to verify that the requirements of the Stormwater Standard have been met. Should the Code Enforcement Officer determine that the lot is not in compliance with the Stormwater Standard, he/she shall initiate enforcement action to bring the lot into compliance in accordance with the provisions of this Ordinance.
9. **Modifications.** The Code Enforcement Officer may approve modifications to the Stormwater Standard if the applicant can demonstrate that the intent of Stormwater Standard will be complied with.

In making this determination, the Code Enforcement Officer may request the review and endorsement of the Hancock County Soil and Water Conservation District, or Maine Registered Professional Engineer. The cost of such assistance shall be borne by the applicant.

10. **Maintenance.** Stormwater runoff control systems shall be maintained as necessary to ensure proper functioning.

#### 6A.8 Vegetation

1. **Clearing.** Clearing of trees or conversion to other vegetation is allowed for permitted construction provided that:
  1. Appropriate measures are taken, if necessary, to prevent erosion when activity is undertaken.
  2. The activity is in conformity with Section 6C.3, clearing or removal of vegetation for activities other than timber harvesting.
2. **Tree removal near town roads.** Removal of more than 25% of the trees within 25 feet of any town or state road in any 12 month period shall require a Conditional Use Approval of the Planning Board.
3. **Slash.** No accumulation of slash shall be left within 50 feet of any town or state road or within 50 feet of the normal high-water mark of any waterbody, and in shoreland areas shall comply with the standards of Section 6C.3. Slash shall be disposed of so that no part extends more than 4 feet above the ground.
4. **CEO Permit.** A CEO Permit is required for cutting timber larger than 4 inches in diameter measured 4 ½ feet above ground when the total amount to be cut is greater than 10 cords but less than 50 cords in any one year period.
5. **Conditional Use Approval.** Conditional Use Approval is required from the Planning Board for cutting timber larger than 4 inches in diameter measured 4 ½ feet above ground when the total amount to be cut is 50 cords or more in any one year period.

#### 6A.9 Preserving the Town's Character

The proposed use shall be consistent with protecting the general character of the Town, conserving the natural beauty of the area and shall not tend to change the historical or cultural character of the neighborhood. Such use shall be similar to a use specified as P, CEO or C in Section 3.4 and shall be in accord with the Comprehensive Plan.

#### 6A.10 Nuisances

Notwithstanding any other standard in this section, the Planning Board shall not issue any Conditional Use Approval for any proposed use which if established would be obnoxious or offensive by reason of odors, dust, smoke, gas, fumes, vibration, noise, outdoor lighting or other objectionable features, nor for any use which would prove injurious to the safety and welfare of the neighborhood.

## 6B SPECIFIC PERFORMANCE STANDARDS FOR ACTIVITIES AND LAND USES

### 6B.1 Agriculture

In non-shoreland areas, all spreading or disposal of manure shall be accomplished in conformance with the *Manure Utilization Guidelines* published by the Maine Department of Agriculture on November 1, 2001, and the Nutrient Management Law (7 M.R.S.A. sections 4201-4209). In shoreland areas, all spreading or disposal of manure shall comply with Section 6C.1.

### 6B.2 Air Landing Sites

No air landing site shall be developed or used for such purpose without Conditional Use Approval of the Planning Board.

### 6B.3 Beach Construction

Beach construction on any great pond, river, stream, brook, or coastal wetland shall require a permit from the State Department of Environmental Protection.

### 6B.4 Boat Storage

No boat in excess of twenty four (24) feet length shall be stored or parked on any residential property within the Town except as such vessel shall be owned or be within the exclusive use or control of the property owner, and shall meet the setback requirements of the district in which the property is located, and in no event shall be stored or parked less than ten (10) feet from the rear line of said property.

### 6B.5 Campgrounds

Campgrounds and Individual Private Campsites are prohibited, and any campgrounds or individual private campsites existing on the effective date of this Ordinance are considered non-conforming.

### 6B.6 Driveway Construction

1. **Primary access driveways.** Driveways that provide the primary access from a public or private way to a building shall hereafter be located, constructed, and maintained in such a manner that there is minimal potential for erosion. Adequate provisions shall be made to prevent soil erosion and sedimentation of surface waters and meet the following construction standards:

Minimum travel surface width:	12 feet
Minimum unobstructed width:	14.5 feet
Minimum vertical clearance:	14.5 feet

2. **Continuation of compliance.** The minimum construction standards must be maintained at all times to provide adequate ingress and egress for emergency vehicles.
3. **Culverts.** Culverts with a minimum 15" diameter shall be installed at the end of driveways to provide for adequate drainage at the intersection with public or private ways where ditching exists.
4. **Stormwater flow from driveways.** Driveways shall be constructed and maintained to meet the following minimum standards:

1. **No flow onto streets.** The driveway shall be constructed to prevent water or runoff from the driveway from reaching the paved or traveled portion of a public or private street.
2. **No flow increase on abutting property.** Driveway construction shall not result in an increase in quantity or concentration of pre-construction stormwater flow from the property onto an abutting property.
5. **Compliance with stormwater standards.** Driveways shall comply with the stormwater standards of Section 6A.7, where applicable.

**6B.7 Excavation (other than gravel pits) or filling**

Excavation or filling shall be permitted in any district only to the extent such activities are essential or are incidental to any permitted, conditional, or other lawful use. Filling, dumping, or excavation of any matter is allowed as specified in Section 3.4 of the Land Use Zoning Ordinance.

Appropriate measures shall be taken to prevent erosion during or after the filling or excavation, and the applicable standards of Section 6A.2 shall be complied with. All fill permits are approved for a twelve (12) month period only and expire twelve (12) months from the date of approval. The Code Enforcement Officer may renew either the Code Enforcement Officer permit or the Conditional Use Approval for additional twelve (12) month periods.

**6B.8 Fences and walls**

A solid fence (as opposed to a rail or similar fence) or wall, more than four (4) feet in height, measured vertically from the ground directly beneath the fence or wall, shall require either a Code Enforcement Officer Permit or Conditional Use Approval. Such fences or walls shall not unduly restrict scenic views. The structural side of the fence shall not face the public view.

1. **A Code Enforcement Officer Permit** may be issued for solid fences or walls up to six (6) feet in height provided that:
  1. A setback of six (6) feet is maintained from roads, sidewalks, and right-of-ways.
  2. It does not obstruct highway visibility.
  3. A plan for vegetative screening, in the six (6) foot setback area, is provided that produces a minimum of twenty (20) percent cover of the fence or wall area. The plan must be implemented and maintained.
2. **Fences or walls that do not meet** the above criteria shall require Conditional Use Approval of the Planning Board.

**6B.9 Home occupations and home offices**

Home occupations and home offices (except those of a temporary or casual nature) shall require a permit from the Code Enforcement Officer to insure compliance with the following standards:

1. **Home Occupation or Home Office.** An income producing activity which is conducted in a residential structure or on residential property and:
  1. is compatible with the residential use of the property and surrounding residential uses and;
  2. employs, in addition to the resident family member, either:
    - a. no more than three family members residing on the property, or

- b. no more than two persons (family members or not) who do not reside on the property and;
  - 3. is conducted in a specified structure, existing at the time of the application. No additional structure shall be built or used to accommodate the occupation, without first being granted an amended Conditional Use Approval.
  - 4. All goods sold on the home property must be produced on the home property.
  - 5. Off-street parking may be required.
2. **Bed and breakfast.** Bed and Breakfast accommodations are permitted in the legal residence of the host/hostess who shall reside on the premises. There shall be not more than three (3) rooms devoted to guests nor more than eight (8) people accommodated. Off street parking is required. Bed and Breakfast Home Occupation shall be excluded in Shoreland Residential districts.

## 6B.10 Lots

- 1. **Minimum lot size.** See section 3.5.
- 2. **Requirements for non-shoreland lots**
  - 1. **Lots abutting more than one road.** Lots which abut on more than one road shall have the required width of the lot and setbacks along each road used as an entrance or exit.
  - 2. **Additional one-family or two-family dwellings.** One-family and two-family dwellings are allowed in all districts, as indicated in Section 3.4. For each additional one-family or two-family dwelling on a lot, all dimensional requirements shall be met separately for each one-family or two-family dwelling.
  - 3. **Minimum area suitable for development.** Each lot shall have sufficient area for the construction of buildings without utilizing wetlands. Any floodplains that are used for the construction of buildings shall be subject to the requirements of the Mt. Desert Floodplain Management Ordinance. The applicant shall be responsible for documenting compliance with this requirement. The required area shall be located outside of any setback areas (unless setbacks are reduced pursuant to Section 3.5, footnote d).
  - 4. **Lot lines in subdivisions.** All lot lines abutting a road in a subdivision approved after March 4, 1997 shall run to the middle of the road's right of way. Lots abutting a cul-de-sac may have a width of lot on a road or right of way that is not less than 50% of the minimum width of lot required for the District in which it is located, provided that the width of lot at the required setback from a road or right of way equals the normal required width of lot for the District in which it is located.
- 3. **Requirements for Shoreland Lots**
  - 1. **Minimum area suitable for development.** Land below the normal high-water line of a water body or upland edge of a wetland and land serving more than two (2) lots shall not be included toward calculating minimum lot area.
  - 2. **Minimum width within 100 feet.** 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.

3. **Multiple structures.** 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.

#### 6B.11 Manufactured Homes

Manufactured homes, or housing, as defined in Section 8, which are structures to be used for residential occupancy and which have a pitched shingle roof, a permanent foundation or masonry slab, piers or walls, and exterior siding of clapboard, cedar shingles, wooden or vinyl material that is residential in appearance are permitted.

#### 6B.12 Mineral Exploration and Extraction

**Ground disturbance limit.** 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. Mineral exploration is prohibited in the Resource Protection and Stream Protection Districts. 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.

**Extraction.** Mineral extraction may be permitted under the following conditions:

1. **Reclamation plan.** 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 6B.12.3, below.
2. **Setback.** No part of any extraction operation, including drainage and runoff control features, shall be permitted within the Resource Protection and Stream Protection Districts, nor within one hundred (100) feet, horizontal distance, of the normal high-water line of a great pond 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. Written permissions signed by the owner(s) of such adjacent properties shall be filed at the Municipal Office.
3. **Reclamation.** 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:
  1. 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.

2. The final graded slope shall be two and one-half to one (2 1/2:1) slope or flatter.
3. 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.
4. 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.

#### **6B.13 Mobile Homes (temporary), Campers, Trailers and Recreational Vehicles**

No temporary or older mobile home, camper, trailer, or other recreational vehicle shall be used for human habitation unless it is in a campground or a trailer park which has been established in accord with provisions of this Ordinance. (This provision is not applicable to pre-fabricated modular homes.) Provided, however, that the Code Enforcement Officer may issue a permit authorizing temporary use of a trailer, temporary or older mobile home, camper, or recreational vehicle for residential purposes not exceeding ninety (90) days, only while a home is uninhabitable and under construction or renovation, and only on the same site as the home that is being constructed or renovated.

#### **6B.14 Sanitary Standards**

1. **Availability of public sewer.** All plumbing systems within two hundred (200) feet of a public sewer shall be connected to public sewer where available in accordance with local, state, and federal laws and regulations. The Planning Board may waive this requirement if all other standards of Section 6A and the applicable standards of Section 6B are met.
2. **State standards.** All subsurface sewage disposal facilities shall be installed in conformance with the State of Maine Subsurface Wastewater Disposal Rules.

#### **6B.15 Sign Regulations**

1. **Definition.** Any outdoor sign, display, device, figure, painting, drawing, message, placard, poster, billboard, or other figure which is designed, intended, or used to advertise or inform. A sign with a double signboard or display area shall be construed to be one sign for the purpose of this Ordinance.
  1. **Minimum requirement.** No sign shall be changed, structurally altered, erected, or relocated except in conformance with this Ordinance.
2. **Signs Prohibited:**
  1. **Off-premise signs.** Signs relating to goods or services not sold or rendered on the premises are not permitted, except for those permitted under Subsection 3.
  2. **Subdivision, multi-family developments.** Permanent signs which are visible from the public road identifying an entry or name of a subdivision or multifamily development are not permitted.
3. **Signs Permitted: Temporary Signs:**

1. **Non-commercial.** Signs of a temporary, non commercial, nature, such as political posters, advertisements of charitable functions, notices of meetings, and other signs of a similar nature, are permitted for a period not to exceed thirty (30) days (except banners) and shall be removed by the party erecting the sign.
2. **Banners.** Banners for charitable functions are permitted.
3. **Real estate.** A real estate sign up to nine (9) square feet in area (attached to a building or free standing) may be erected advertising the sale, lease, or rental of the premises upon which the sign is located. All signs shall be removed by the owner or agent when the property is sold or leased.
4. **Agriculture.** Agricultural signs may be erected during the period June 15 through November 1, by growers of fresh fruit and vegetable crops, when such crops are offered for sale on the premises where grown; such signs shall advertise only those fruits and vegetables immediately available. Signs shall not exceed eight (8) square feet in size; must be located within five (5) miles of the farm stand; shall be permitted only during the day crops are offered for sale. Signs must be erected on private property with the landowner's written consent.
5. **Construction.** One sign up to nine (9) square feet in area identifying a current construction project may be erected.

4. **Signs Permitted: Permanent Signs:**

1. **Bulletin board.** A bulletin board or similar sign not exceeding twenty-four (24) square feet in display area in connection with any church, school, library, museum, or similar public structure is permitted.
  2. **Home occupation.** Signs announcing the name, address, and profession of a permitted home occupation or a lawfully existing non-conforming home occupation are allowed, providing such signs do not exceed two (2) square feet in display area.
  3. **Identification.** Identification signs indicating the location of or direction to a private dwelling may be erected on the owner's property. Such signs shall not exceed two (2) square feet in area nor extend higher than five (5) feet above the ground level. Directional signs solely indicating ingress or egress placed at driveway locations, containing no advertising material or display area shall not exceed three (3) square feet nor extend higher than four (4) feet above ground level.
  4. **General.** "No Hunting", No Trespassing", and similar signs, of size no larger than 2 square feet are permitted on private land.
  5. **Directional.** Directional signs on roadsides within the Town of Mount Desert are permitted for any church, school, library, museum, or similar public facility with the approval of the Board of Selectmen on the recommendation of the Planning Board.
5. **General Safety Standards.** No sign, whether new or existing, shall hereafter be permitted that causes a sight, traffic, health, or welfare hazard, or results in a nuisance, due to illumination, placement, display, or manner of construction.

1. **Projecting signs.** No sign shall project over a public right-of-way, but this restriction does not apply to signs over sidewalks. Signs erected after March 1, 1992 shall provide a minimum of ten (10) feet six (6) inches clearance over sidewalks and a minimum of fourteen (14) feet clearance over roads and rights-of-way.

## 6. Restrictions and Limitations on Signs

1. **Permit required.** No permanent sign in excess of two (2) square feet shall be erected within the Town of Mount Desert without first acquiring a building permit from the Code Enforcement Officer.
2. **Size limit.** No sign (except banners) shall exceed thirty-two (32) square feet in area. Nor shall the aggregate of all signs on site pertaining to any business exceed thirty-two (32) square feet in area unless Conditional Use Approval of the Planning Board is obtained. In shoreland areas, no sign shall extend higher than twenty (20) feet above the ground.
3. **Section 3 limits.** No billboard, banner, streamer, pennant, ribbon, spinner, or similar device shall be erected in any district, except those permitted in Subsection 3.1.
4. **Moving parts.** No sign shall have visible moving parts, blinking, moving, or glaring illumination, or any part consisting of banners, pennants, ribbons, streamers, spinners, or other similar devices. A string of lights shall not be used for the purpose of advertising or attracting attention. Signs may be illuminated only by shielded non-flashing lights. Neon and other self-illuminating signs are not permitted. For the purpose of this Ordinance, self-illuminated vending and like machines are considered signage.
5. **Roof signs.** Roof signs shall not be permitted except after the issuance of Conditional Use Approval of the Planning Board. No roof sign shall extend above the roof line of the building.
7. **Maintenance and Conformance of Signs:** No sign shall hereafter be erected, altered, or changed except in conformity with the provisions of this Ordinance. Notwithstanding any provisions contained herein, however, the sign must be kept clean, neatly painted and free from all hazards, such as, but not limited to, faulty wiring or loose fastenings, and must be maintained at all times in such safe condition.
8. **Removal:** Any sign now or hereafter existing which no longer advertises a bona fide business conducted, product sold, activity or campaign being conducted, or public notice, shall be taken down and removed by the owner, agent, or person having the beneficial use of the building or premises upon which such sign may be found within ten (10) days after the written or personal notification from the Code Enforcement Officer.

### 6B.16 Vehicles, Unregistered

No more than two (2) unregistered and/or uninspected vehicles may be stored on any residential lot, unless said vehicles cannot be viewed from any public way.

## 6B.17 Wireless Communication Facilities

1. **Purpose.** The purpose of this subsection is to provide a uniform and comprehensive set of performance standards and requirements to be used by the Planning Board during the Conditional Use Approval process upon review of an application for the placement and construction of a wireless communications tower. These standards and requirements are intended to regulate the location and installation of such facilities in order to:
  - a. Protect and preserve the aesthetic quality of Mount Desert as set forth in the goals, policies and objectives of the adopted Mount Desert Comprehensive Plan.
  - b. Protect and preserve the visual character of the Town and Acadia National Park.
  - c. Protect abutting properties from potential damage from tower failure, falling ice and to prevent other hazards to public safety through careful siting regulations and engineering requirements.
  - d. Require co-location on existing and future wireless communications towers and maximize the use of existing and approved towers and other existing structures such as utility poles and buildings to accommodate new communications antennas in order to reduce the number of new towers needed to serve the community's needs.
2. **Exemptions.** The following activities and structures are exempt from a Conditional Use Approval:
  - a. A ground, building- or tower-mounted antenna, operated by a federally licensed amateur radio operator as part of the Amateur Radio Service, which is not licensed or used for any commercial purpose.
  - b. Radio or television satellite dish antenna for the sole use of the resident occupying a residential parcel on which the satellite dish is located.
  - c. A single ground- or building-mounted receive-only radio or television antenna including any mast, for the sole use of the occupant of a residential parcel on which the radio or television antenna is located.
  - d. A ground- or building-mounted citizens band radio or two-way antenna, including any mast.
  - e. A wireless facility that is integrated into an existing or proposed church steeple, flagpole, light standard, power line support device, water tower, or similar structure.
3. **Space requirements.** The maximum height of any tower shall not exceed 125 feet, including antenna arrays and other attachments, subject to the approval of the Planning Board with possible conditions and restrictions to meet the purpose of this chapter.
4. **Mass of antennas per user.** The mass of antennas, including required antenna support structures, on a tower shall not exceed 1,900 cubic feet per array. The Planning Board may allow an increase in the mass if it determines an increase is necessary for the provision of

services. The mass shall be determined by the appropriate volumetric calculations using the smallest regular rectilinear, cuboidal, conical, cylindrical or pyramidal geometric shapes encompassing the entire perimeters of the array and all of its parts and attachments.

**5. Lot area requirement.** A wireless communications tower may be placed on a legally nonconforming lot that does not meet the dimensional requirements of the districts it is in after a finding by the Planning Board that such a tower siting will not jeopardize the health, safety and welfare of surrounding lot owners, and all setback requirements are met. This requirement does not apply to towers and antennas that are exempted in Section 8 – Structure Definition.

**6. Setbacks.**

- a. The center of the base of any wireless communications tower must be set back a minimum of 105% of the tower height or the required minimum setback of the district in which it is located, whichever is greater.
- b. No part of the structure, including anchors, overhead lines, masts, etc., shall be located in the required district setback or in any required buffer area both on the ground or in the air space above the ground.
- c. Accessory support buildings containing electronic equipment and any other structures accessory to the wireless communications tower shall meet the required district building setback.
- d. If more than one wireless communications tower is proposed on a single lot or parcel, they shall be clustered as closely together as technically possible.
- e. If other non-accessory uses are located on the same lot or parcel as a tower, all structures associated with such other uses shall be located a minimum distance of 105% of the tower height from the center of the base of the tower.
- f. Setback requirement cannot be waived by abutting property owner as otherwise allowed in Section 3.5 footnote (d).

**7. Co-location requirements.**

- a. Existing towers. Applicants for Conditional Use Approval for a new communications tower must send written notice by certified first-class United States Mail to all other owners of communications towers in the Town and all licensed communications providers utilizing existing towers, regardless of tower location, to service the town, stating their siting needs and/or co-location capabilities in an effort to meet the town co-location requirement. Evidence that this notice requirement has been fulfilled shall be submitted to the Planning Board and shall include a name and address list, copy of the notice which was sent, and a statement, under oath, that the notices were sent as required. An application for a new wireless communications tower must include evidence that existing or previously approved towers cannot accommodate the communications equipment (antennas, cables, etc.) planned for the proposed tower. Such evidence would be:
  - 1. Planned, necessary equipment would exceed the structural capacity of existing and approved towers, considering the existing and planned use

of those towers, and existing and approved towers cannot be reinforced to accommodate planned or equivalent equipment.

2. Planned equipment will cause electromagnetic frequency interference with other existing or planned equipment for that tower and the interference cannot be prevented or mitigated.
3. Existing or approved towers do not have space on which planned equipment can be placed so it can function effectively.
4. Other documented reasons that make it technically or financially unfeasible to place the equipment planned by the applicant on existing and approved towers.

- b. Construction of new towers. A proposal to construct a new wireless communications tower must include evidence that the tower can structurally support a minimum of three antenna arrays for co-location purposes.

**8. Submissions.** In addition to all of the relevant Conditional Use Approval Application submission requirements, the following submissions, in a form acceptable to the Planning Board shall be required, unless waived by the Planning Board:

- a. A report from a professional engineer registered in the State of Maine that describes the communications tower, the technical reasons for the tower design and the capacity of the tower, including the number(s), type(s) and volume of antenna(s) that it can accommodate and the basis for the calculation of capacity.
- b. For pole-mounted facilities, certification by a professional engineer registered in the State of Maine that the design is adequate to support, without failure, the maximum forces expected from wind, earthquakes, ice/snow loading when the pole is fully loaded with antennas, transmitters, other equipment, and camouflaging, as described in the submitted plan.
- c. Elevation drawings, cross-sectional area or silhouette, of the facility, drawn to scale and showing all measurements, both linear and volumetric, showing front, sides and rear of the proposed facility, including all fencing, supporting system for transmission cables running between the tower and accessory structures, control panels, antennas, and existing structures and trees. Reference any design characteristics that have the effect of reducing or eliminating visual obtrusiveness.
- d. Detail of the tower base or method of attachment to a structure. If the facility will be attached to an existing building or structure, measurements and elevations of the structure shall be provided.
- e. Details of all accessory structures, including buildings, parking areas, utilities, gates, access roads, etc.
- f. A narrative and demonstration detailing:

1. The extent to which the proposed facility would be visible from scenic resources as determined by the Planning Board and from Acadia National Park.
  2. The tree line elevation of vegetation within 300 feet of the proposed tower.
  3. The distance to the proposed facility from the designated scenic resources.
- g. A visual impact assessment, which shall include a photo montage, field mockup, or other techniques, shall be prepared by or on behalf of the applicant who identifies the potential visual impacts at design capacity, of the proposed facility. Consideration shall be given to views from public areas as well as from private residences and from Acadia National Park, archaeological and historic resources, including historic districts, areas and structures, specifically those listed in the National Register of Historic Places, or eligible for inclusion.

The analysis of the impact on historical and archaeological resources shall meet the requirements of the Maine State Historic Preservation Officer in his/her review capacity for the FCC.

The overall analysis shall assess the cumulative impacts of the proposed facility and other existing and foreseeable communications facilities in the area and shall identify and include all feasible mitigation measures consistent with the technological requirements of the proposed communications service.

- h. Site photos showing vegetation, existing and adjacent structures and views of and from the proposed site. Topography of and land uses on the proposed parcel and on abutting properties.
- i. Landscaping plan showing location of proposed screening and fencing, planting areas, proposed plantings, existing plant materials to be retained and trees or shrubs to be removed.
- j. Identification of any other communications facilities existing or proposed on the site.
- k. A written description of how the proposed facility fits into the applicant's communications network, including a demonstration of a coverage and/or capacity problem, demonstration that all alternatives and existing structures have been identified and fairly rejected, that the proposed height is the minimum height necessary to achieve the targeted coverage area and a description of how other tower heights would change the coverage area. It should also describe reasonable anticipated expansion of the proposed facilities on the proposed site and related facilities in the region and reasonable anticipated changes of technology and their effect on expansions of the proposed facility. This submission requirement does not require disclosure of confidential business information.
- l. A letter of intent that commits the tower owner and successors in interest to:
1. Respond in a timely, comprehensive manner to a request for information from potential co-location applicant.

2. Negotiate in good faith for shared use by other parties.

- m. Evidence that co-location on existing or an approved tower is not possible per co-location section above or in adjacent towns. If the proposed tower cannot be accommodated on an existing or approved tower site, the applicant must assess whether such tower site could be changed to accommodate the proposed tower and generally describe the means and projected cost of shared use of the existing or approved tower site.
- n. Proof of financial capacity to build, maintain, and remove the proposed tower.

**9. Design Standards.** The following design standards shall be met by the applicant. The Planning Board, as part of the Conditional Use Approval review process, shall determine if the applicant has complied with these standards.

All communications facilities shall be designed to blend into the surrounding environment to the greatest extent feasible. To this end, all of the following measures shall be implemented:

- a. Towers shall be constructed of metal or other nonflammable material unless specifically waived by the Planning Board due to technical or engineering reasons.
- b. Accessory facilities shall be adjacent to the tower base unless an alternative location will be less visually obtrusive or topographic considerations require an alternative location.
- c. Accessory facilities shall be constructed out of no reflective exterior materials with earth toned colors or shall be placed underground, if possible.
- d. New accessory facilities shall be no taller than one story in height and shall be treated to look like a building or facility typically found in the area.
- e. All buildings, poles, towers, antenna supports, antennas and other components of each communications facility site shall be initially painted and thereafter repainted as necessary with matte finish paint. The color(s) selected shall be one that the Planning Board determines will minimize their visibility to the greatest extent feasible. To this end, improvements that will be primarily viewed against soils or trees shall be painted colors matching these landscapes, while elements which rise above the horizon shall be painted a blue gray that matches the typical sky color at that location unless the Planning Board determines that an alternative proposal will minimize visibility.
- f. The Planning Board may require special design of the facilities where findings of particular sensitivity are made (e.g., proximity to historic or aesthetically significant structures, views and/or community features).
- g. Sufficient anti-climbing measures and other security measures preventing access to the site shall be incorporated into the facility, as needed, to reduce the potential for trespass and injury.

- h. Only security lighting is permitted. All outdoor lighting shall meet Section 6A.6 standards of the Land Use Zoning Ordinance unless required by the Federal Communications Commission, Federal Aviation Administration, or other federal agency.
- i. Advertising and commercial signs shall not be permitted on a communications facility.
- j. Guy wires shall not be permitted as part of a communications facility.

**10. Location.** All communications facilities shall be located so as to minimize their visibility and to minimize the total number of towers in the Town. The following measures shall guide the location:

- a. Communications facilities shall not be sited in areas of high visibility, as determined by the Planning Board, to meet the purpose of this subsection unless the facility is designed to minimize its profile by blending with the surrounding existing natural and man-made environment in such a manner as to be effectively unnoticeable. The height of a communications tower that is located within the view shed of a scenic vista, scenic landscape or scenic road, as determined by the Planning Board, may be, at the discretion of the Planning Board, subject to height limitation. Such limitation may restrict the height of the tower such that it does not exceed the height of vegetation within 300 feet of the proposed location.
- b. No facility shall be located so as to create a significant impact to the health or survival of rare, threatened or endangered plant or animal species.
- c. No facility shall be located within areas two hundred fifty (250) feet of the normal high-water line of any great pond or salt water body, or areas within two hundred fifty (250) feet of the upland edge of a coastal or freshwater wetland, or areas within seventy-five (75) feet of the high-water line of a stream.

**11. Standards.** In addition to the criteria and standards, listed in Section 6 of the Land Use Zoning Ordinance these additional criteria and standards shall be utilized by the Planning Board in reviewing applications for Conditional Use Approval for proposed communications facilities:

- a. Mitigation measures have been utilized to screen antennas and towers from view from public rights-of-way or scenic vistas, either by landscaping, fencing or other architectural screening.
- b. Antennas shall be as small as technically possible in order to minimize visual impact.
- c. Creative design measures have been employed to camouflage facilities by integrating them with existing buildings and among other uses.
- d. Other technically feasible sites have been investigated, and if available, the proposed facility has been located in order to minimize the effect on visually sensitive areas.

- e. Co-location, where technically feasible and visually desirable, on an existing tower, has been investigated, and if technically and financially feasible, the proposed facility is co-located.
- f. Use of an existing community facility site, such as utility poles, has been investigated as a potential site for a tower, antennas and other equipment and, if available and technically feasible and visually desirable, is proposed as the site for the facility.
- g. Adequate bonding for removal of the communications, facility, in a form, and amount acceptable to the Town Manager has been submitted.

**12. Amendments.** Any change to proposed towers requires Conditional Use Approval. Once a tower has been erected and is operational, changes to the facility that do not increase the height of the facility shall not require Conditional Use Approval unless such changes exceed the design criteria and additional standards and criteria previously approved in the original Conditional Use Approval. If the height of the facility will not increase and the design standards and additional standards and criteria previously approved in the original Conditional Use Approval remain consistent, changes to the facility shall require a permit from the Code Enforcement Officer.

- a. Removal of communications facilities.
- b. If the tower ceases to be used or if the use of the tower is abandoned for any reason, it shall be the responsibility of the owner of the facility to notify the Code Enforcement Officer of the date of abandonment or cessation of use. If the owner fails to give the required notice, the CEO shall make a determination of such date, which determination shall be conclusive as to the date of abandonment or cessation of use.
- c. In the case of a tower which is abandoned or the use of which ceases, it shall be removed within one year of its abandonment or cessation of use. All aboveground structures, equipment, foundations, utilities and access roads or driveways specifically constructed to service the tower, structures, equipment or utilities shall be removed and the land returned to a condition as near to the original preconstruction condition as possible.
- d. At the time of approval, the applicant for a new tower shall submit to the Town a bond or other financial surety in a form acceptable to the Town Manager outlined in Performance Guarantees, of the Land Use Ordinance, to be approved by the Finance Director, in the amount of 150% of the estimated demolition cost of the tower and the removal of all accessory facilities as described above, such cost to be determined by an independent professional engineer registered in the State of Maine and the amount shall be acceptable to the Town Manager. The bond or other financial surety shall be in effect for as long as the tower is in place.
- e. (The bond shall be used by the Town to demolish a tower which is abandoned or the use of which has ceased, accessory facilities and associated abandoned structures only if the owner has not done so within the required one-year period.

- f. The owner may apply to the Town Manager for release of the bond at such time that the owner or assigns remove the tower, accessory facilities and associated abandoned structures as described above and such completed removal is found to be satisfactory by the Code Enforcement Officer. The cost of inspection by the Code Enforcement Officer shall be borne by the owner.

**13. Inspections and Monitoring.** The following procedure shall be undertaken by the owner of the tower:

- a. Inspection of towers by an independent tower inspection firm shall be performed to insure structural integrity. Such inspections shall be performed as follows:
  - i. Monopole towers at least once every seven years following completion of construction. The inspection shall take place between the sixth and seventh year of the repeat sequence.
  - ii. Self-supporting towers at least once every five years following completion of construction. The inspection shall take place between the fourth and fifth year of the repeat sequence.
- b. The inspection report shall be submitted to the Code Enforcement Officer within 30 days of its receipt by the tower owner. Based upon the results of the inspection, the CEO may require repair or demolition of the tower.
- c. The cost of such inspections, reports, repairs or demolition shall be borne entirely by the tower owner. Required repairs shall be completed within 90 days or less as required by the CEO for safety reasons.
- d. Failure to provide required inspection reports in the required time schedule shall be deemed prima facie evidence of abandonment.
- e. The owner of a wireless communications facility shall pay for an independent radio frequency engineer approved by the Town to evaluate the electromagnetic radiation emitted from all users of the wireless communications facility every year, with the first evaluation occurring within 30 days after transmission begins. The levels of electromagnetic radiation emissions must comply with the most up-to-date FCC standards at the time of the monitoring test. A report detailing the monitoring test shall be submitted to the Code Enforcement Officer within 30 days of completion of the monitoring test. Failure to provide required inspection reports in the required time schedule shall be a violation of the Land Use Ordinance.
- f. Should the monitoring of a facility reveal that the electromagnetic radiation emitted from the site exceeds the current FCC standards and guidelines, the owner(s) of all facilities utilizing the site shall be notified. In accordance with FCC requirements, the owner(s) must immediately reduce power or cease operation as necessary to protect persons having access to the site, tower, or antennas.

In addition, the owner(s) shall submit to the Town an analysis of what caused the problem and a plan for the reduction of emissions to a level in compliance with the current FCC standards within 10 business days. Failure to accomplish this reduction of emissions within 15 business days of initial notification of noncompliance shall be a violation per Section 7.10 of the Land Use Ordinance.

## SHORELAND ZONING STANDARDS

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

### 6C.1 Agriculture

1. **Manure spreading.** All spreading of manure shall be accomplished in conformance with the *Manure Utilization Guidelines* published by the Maine Department of Agriculture on November 1, 2001, and the Nutrient Management Law (7 M.R.S.A. sections 4201-4209).
2. **Manure storage.** Manure shall not be stored or stockpiled within one hundred (100) feet, horizontal distance, of a great pond 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. **Conservation plan.** 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.

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

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4. **New tilling.** 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; 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. **Livestock grazing areas.** 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; 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.

### 6C.2 Archaeological Sites

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

### 6C.3 Clearing or Removal of Vegetation For Activities Other Than Timber Harvesting

1. **Resource Protection District.** In a Resource Protection District abutting a great pond, there shall be no cutting of vegetation within a strip of land extending 75 feet, horizontal distance, inland from the normal high water line except to remove safety hazards.

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

2. **Buffer strip, within 100 feet of water.** Except in areas as described in Section 6C.3.1, 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:

1. **Cleared openings.** 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.
2. **Selective cutting.** 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 this section 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.

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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:

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

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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.

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The following shall govern in applying this point system:

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

For the purposes of this section “other natural vegetation” is defined as retaining existing vegetation under three (3) feet in height and other ground cover and retaining at least five (5) saplings less than two (2) inches in diameter at four and one half (4 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.

3. **Other vegetation.** 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 6C.3 paragraphs (2) and (2)(1) above.
4. **Pruning.** Pruning of tree branches, on the bottom 1/3 of the tree is allowed.
5. **Replanting.** 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.

**Exemption – public recreational facilities.** Section 6C.3.2 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. **Selective cutting beyond shoreline setback.** 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.

**Cleared opening limit.** 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 Shoreland Commercial District.

4. **Non-conforming openings.** Legally existing nonconforming cleared openings may be maintained, but shall not be enlarged, except as allowed by this Ordinance.
5. **Fields that have re-grown.** Fields and other cleared openings which have reverted to primarily shrubs, trees, or other woody vegetation shall be regulated under the provisions of Section 6C.3.

#### **6C.4 Commercial and Industrial Uses**

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

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

## 6C.5 Essential Services

1. **Limited to public ways.** Where feasible, the installation of essential services shall be limited to existing public ways and existing service corridors.
2. **Exclusion from RP, Stream Protection.** The installation of essential services, other than road-side distribution lines, is not allowed in a Resource Protection nor Stream Protection District except to provide services to a permitted use within the Resource Protection or Stream Protection 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 lines.** Damaged or destroyed public utility transmission and distribution lines, towers and related equipment may be replaced or reconstructed without a permit.

## 6C.6 Parking Areas

1. **Setback from water.** 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 Shoreland Commercial 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 Shoreland Commercial 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. **Adequate size.** 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. **Determination of size.** In determining the appropriate size of proposed parking facilities, the following shall apply:
  1. 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.
  2. Internal travel aisles: Approximately twenty (20) feet wide.

## 6C.7 Marine and Freshwater Structure Performance Standards

**Marine Structure Definition.** Piers, docks, floats, wharves, bridges over ten (10) feet in length, and other marine structures extending over or below the normal high-water line of a water body or within a wetland.

**Requirement.** All marine structures shall require Conditional Use Approval of the Planning Board and compliance with the performance standards below before Conditional Use Approval will be granted. The Planning Board may require the submission of an environmental impact assessment on natural areas and may require mitigation measures such as 1.) Changes in the design and/or location of the marine structure, and/or 2.) Changes in the magnitude of activities on the marine structure.

**The performance standards** are as follows:

Commercial and public marine structures are exempt from requirements 13 through 16.

1. **Access from shore.** Access from the shore shall be developed on soils appropriate for such use and measures shall be taken to minimize soil erosion both during and after construction. Whenever possible, access from the shore to the marine structure shall be placed on bedrock. The Planning Board may require consultation with the local Soil and Water Conservation District Office.
2. **Interference with existing uses and beaches, etc.** The location of the marine structure shall not interfere with developed or natural beach areas, nor access to existing marine structures or points of public access, nor shall it unreasonably interfere with the use of other marine structures and landing places.
3. **Effect on fisheries, wildlife, etc.** The marine structure shall be designed, sited, and constructed to minimize adverse impacts on fisheries, significant wildlife habitats or unique natural areas including, but not limited to: fin fish and shellfish fisheries, salt marshes, eel grass beds, shorebird and nesting habitats, critical fish spawning and nursery areas.
4. **Size.** The facility shall be no larger in dimension than necessary to carry on the activity and be consistent with the surrounding character and uses of the area. A temporary pier, dock or wharf shall not be wider than six feet for non-commercial uses.
5. **No new structures.** No new structure shall be built on, over or abutting a pier, wharf, dock or other structure extending below the normal high-water line of a water body or within a wetland unless the structure requires direct access to the water body or wetland as an operational necessity.
6. **New permanent piers and docks.** New permanent piers and docks on non-tidal waters shall not be permitted unless it is clearly demonstrated to the Planning Board that a temporary pier or dock is not feasible, and a permit has been obtained from the Department of Environmental Protection, pursuant to the Natural Resources Protection Act.
7. **Conversion to dwellings.** No existing structures built on, over or abutting a pier, dock, wharf or other structure extending below the normal high-water line of a water body or within a wetland shall be converted to residential dwelling units in any district.
8. **Height limit.** Except in the Shoreland Commercial District, structures built on, over or abutting a pier, dock, wharf or other structure extending below the normal high-water line of a water body or within a wetland shall not exceed twenty (20) feet in height above the pier, wharf, dock or other structure.
9. **Conditional use permit required.** Piers, docks, floats, wharves, breakwaters, causeways, marinas, bridges more than 20 feet in length, and permanent uses projecting into water bodies from normal high water line shall require Conditional Use Approval of the Planning Board. The Planning Board may issue guidelines to insure compliance with state laws.
10. **Interference with natural flow.** Interference with the natural flow of any surface or subsurface waters shall be minimized during the construction and subsequent use of the marine structure.

11. **Encroachment on navigation.** The marine structure shall be designed, sited, and constructed so as not to encroach upon officially designated navigation channels.
12. **Mooring area.** The Planning Board shall request comment from the Harbor Master in cases where the applicant proposes to build a marine structure in an officially designated mooring area.
13. **Dimensional limits.** The marine structure shall comply with the dimensional limits listed below. The facility shall be no larger than necessary to accomplish the purposes for which it is designed. Its size and construction shall not change the intensity of the adjoining land use, and by no means shall exceed a total distance of more than one-third the width of the coastal wetland or water body, when proposed for coastal or inland waters. Notwithstanding the dimensional limits below, in areas where the horizontal distance from the normal high-water line to the mean lower low water is in excess of 160 feet, no permanent structure will be allowed seaward of the normal high-water line.

Marine Structure	Dimensional Requirement
Maximum length of entire marine structure (i.e. pier, ramp and float combined)	225 feet <sup>1</sup>
Maximum length of all permanent structures	150 feet
Maximum length of all non-permanent structures (i.e. ramp and float)	75 feet <sup>2</sup>
Maximum width of pier walkway	6 feet
Maximum width of ramp	6 feet
Maximum square footage of floats	400 square feet
Maximum square footage of floats for communal marine structures (see 14 and 15 below)	800 square feet
<sup>1</sup> Or length needed to obtain six feet of depth of water at mean lower low water, whichever is less. <sup>2</sup> In cases where no permanent structure is proposed the applicant will be permitted to install a ramp and float extending no further than 75 feet into the water body.	

14. **Additional square footage for floats.** If two or more shorefront lot owners choose to share a communal marine structure the applicant may request additional square footage of floats.
15. **Communal dock.** When proposed by the applicant, new subdivisions may provide a communal dock in lieu of the development of docks on individual lots. The applicant may request additional square footage of floats provided a demonstrated need can be shown.
16. **Limit on number.** There shall be no more than one marine structure on a lot.

## 6C.8 Principal and Accessory Structures

### 1. Setback.

- 1.) In the Resource Protection District all new principal and accessory structures shall be set back at least 250 feet, horizontal distance, except for structures, roads, or other regulated objects specifically allowed in that district in which case the setback requirements specified below shall apply.
- 2.) All new principle and accessory structures shall be set back at least one hundred (100) feet, horizontal distance, from the normal high-water line of great ponds or seventy-five (75) feet, horizontal distance, from the normal high-water line on designated lots, and any division thereof.

- 3.) All new principle and accessory structures shall be set back at least seventy-five (75) feet, horizontal distance, from the normal high-water line of streams, tributary streams, or the upland edge of a wetland.

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

2. **Highly unstable coastal bluffs.** 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 as determined by the Planning Board to make a determination. If agreement is still not reached, the applicant may appeal the matter to the board of appeals.
3. **Accessory structure for non-conforming lots.** 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.

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

NOTE: 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.

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4. **Height.** Principal or accessory structures and expansions of existing structures which are permitted in the Resource Protection, Conservation, Shoreland Residential 1, 2, 3 and 5, and Stream Protection Districts, shall not exceed thirty-five (35) feet in height.
5. **Elevation of lowest floor.** The lowest floor elevation or openings of all buildings and structures, including basements, shall comply with the Floodplain Management Ordinance dated March 7, 2006.
6. **15% footprint limitation.** The total footprint area of all structures, parking lots and other non-vegetated surfaces, within the shoreland zone shall not exceed fifteen (15) percent of the lot or a portion thereof, located within the shoreland zone, including land area previously developed, except in the Shoreland Commercial District adjacent to tidal waters, where lot coverage shall not exceed seventy (70) percent.

7. **Retaining walls.** 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:
1. **Previous alteration.** The site has been previously altered and an effective vegetated buffer does not exist;
  2. **25-foot setback.** 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;
  3. **Lawn or eroding site.** 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;
  4. **Height.** The total height of the wall(s), in the aggregate, are no more than 24 inches;
  5. **Outside floodplain.** Retaining walls are located outside of the 100-year floodplain on, streams, coastal wetlands, and tributary streams, as designated on the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps or Flood Hazard Boundary Maps, or the flood of record, or in the absence of these, by soil types identified as recent flood plain soils.
  6. **Vegetation behind wall.** 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
  7. **Vegetated buffer.** 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:
    1. 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;
    2. Vegetation plantings must be in quantities sufficient to retard erosion and provide for effective infiltration of stormwater runoff;
    3. Only native species may be used to establish the buffer area;
    4. 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;
    5. A footpath not to exceed the standards in Section 6C.3.3 may traverse the buffer;

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NOTE: 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.

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8. **Stairways and similar structures.** 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.

## 6C.9 Roads and Driveways

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

1. **Setback.** 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, 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. In reducing the setback, the Planning Board shall maintain, to the greatest practical extent, the seventy-five (75) foot setback. The setback shall neither apply to approaches to water crossings, nor to driveways in the Shoreland Commercial District that provide access to permitted structures, and facilities located nearer to the shoreland due to an operational necessity, excluding temporary docks for recreational uses. Driveways providing access to permitted structures within the setback area shall comply fully with the requirements of Section 6B.6 except for that portion of the driveway necessary for direct access to the shoreline.

**Steep slopes.** 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 6C.9.1 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 6C.9.1 except for that portion of the road or driveway necessary for direct access to the structure.

2. **Existing public roads.** 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 or Stream 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 or Stream 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 or Stream Protection District the road and/or driveway shall be set back as far as practicable as determined by the Planning Board from the normal high-water line of a water body, tributary stream, or upland edge of a wetland.

4. **Steepness.** 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 6A.2.
5. **Grades.** Road and driveway grades shall be no greater than ten (10) percent except for segments of less than two hundred (200) feet.
6. **Drainage to unscarified strip.** 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.** 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:
  1. **Ditch relief culverts.** Ditch relief culverts, drainage dips and associated water turnouts shall be spaced along the road or driveway at intervals no greater than indicated in the following table:

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

2. **Drainage dips.** Drainage dips may be used in place of ditch relief culverts only where the grade is ten (10) percent or less.
3. **Slopes greater than 10%.** On sections having slopes greater than ten (10) percent, ditch relief culverts shall be placed at approximately a thirty (30) degree angle down slope from a line perpendicular to the centerline of the road or driveway.

4. **Culvert size.** 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. **Maintenance.** 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.

#### 6C.10 Septic Waste Disposal

All subsurface sewage disposal systems shall be installed in conformance with the State of Maine Subsurface Wastewater Disposal Rules, and the following:

1. **Clearing setback from water.** 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.
2. **Holding tank.** A holding tank is not allowed for a first-time residential use in the shoreland zone.

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

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#### 6C.11 Timber Harvesting

1. **Resource Protection and Stream Protection Districts.** In the Resource Protection and Stream Protection Districts, timber harvesting is prohibited.
2. **Areas other than Resource Protection or Stream Protection.** Except in areas as described in Section 6C.11.1. above, timber harvesting shall conform with the following provisions:
  1. **40% limit.** Selective cutting of no more than forty (40) percent of the total volume of trees four (4) inches or more in diameter measured at 4 1/2 feet above ground level on any lot in any ten (10) year period is permitted. In addition:
    1. **No clearcuts within shoreline setback.** Within one-hundred (100) feet, horizontal distance, of the normal high-water line of a great pond, and within seventy-five (75) feet, horizontal distance, of the normal high-water line of other water bodies, tributary streams, or the upland edge of a wetland, there shall be no clearcut openings and a well-distributed stand of trees and other vegetation, including existing ground cover, shall be maintained.
    2. **Cleared openings farther than shoreline setback.** At distances greater than one-hundred (100) feet, horizontal distance, of a great pond, and greater than seventy-five (75) feet, horizontal distance, of the normal high-water line of other water bodies or the upland edge of a wetland, harvesting operations shall not create single clearcut openings

greater than ten-thousand (10,000) square feet in the forest canopy. Where such openings exceed five-thousand (5000) square feet they shall be at least one hundred (100) feet, horizontal distance, apart. Such clearcut openings shall be included in the calculation of total volume removal. Volume may be considered to be equivalent to basal area.

2. **Harvesting in excess of 40%.** Timber harvesting operations exceeding the 40% limitation in Section 6C.11.2.1 above may be allowed by the planning board upon a clear showing, including a forest management plan signed by a Maine licensed professional forester, that such an exception is necessary for good forest management and will be carried out in accordance with the purposes of this Ordinance. The planning board shall notify the Commissioner of the Department of Environmental Protection of each exception allowed, within fourteen (14) days of the planning board's decision.
3. **Accumulation of slash.** No accumulation of slash shall be left within fifty (50) feet, horizontal distance, of the normal high-water line of a water body. In all other areas slash shall either be removed or disposed of in such a manner that it lies on the ground and no part thereof extends more than four (4) feet above the ground. Any debris that falls below the normal high-water line of a water body or tributary stream shall be removed.
4. **Stream channel travel prohibited.** Timber harvesting equipment shall not use stream channels as travel routes except when:
  1. Surface waters are frozen; and
  2. The activity will not result in any ground disturbance.
5. **Crossing of flowing water.** All crossings of flowing water shall require a bridge or culvert, except in areas with low banks and channel beds which are composed of gravel, rock or similar hard surface which would not be eroded or otherwise damaged.
6. **Skid trail runoff.** Skid trail approaches to water crossings shall be located and designed so as to prevent water runoff from directly entering the water body or tributary stream. Upon completion of timber harvesting, temporary bridges and culverts shall be removed and areas of exposed soil revegetated.
7. **Soil exposure setback.** Except for water crossings, skid trails and other sites where the operation of machinery used in timber harvesting results in the exposure of mineral soil shall be located such that an unscarified strip of vegetation of at least seventy-five (75) feet, horizontal distance, in width for slopes up to ten (10) percent shall be retained between the exposed mineral soil and the normal high-water line of a water body or upland edge of a wetland. For each ten (10) percent increase in slope, the unscarified strip shall be increased by twenty (20) feet, horizontal distance. The provisions of this paragraph apply only to a face sloping toward the water body or wetland, provided, however, that no portion of such exposed mineral soil on a back face shall be closer than twenty five (25) feet, horizontal distance, from the normal high-water line of a water body or upland edge of a wetland.

## **6C.12 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.

## SECTION 7 CODE ENFORCEMENT OFFICER

**7.1 Appointment.** A Code Enforcement Officer (CEO) shall be appointed by the Town Manager and confirmed by the Board of Selectmen.

1. A Deputy Code Enforcement Officer (Deputy CEO) may be appointed by the Town Manager and confirmed by the Board of Selectmen.
2. In the event that the CEO is absent or otherwise unavailable, the Deputy CEO is authorized to act on his or her behalf.
3. The CEO may also serve as Building Inspector.

### **7.2 Duties.**

The Code Enforcement Officer (CEO) shall administer and enforce this Ordinance. No permit application shall be approved by the Code Enforcement Officer except in compliance with the provisions of this Ordinance. The Code Enforcement Officer shall have the following duties, among others, in enforcing this Ordinance:

1. **Applications and fees.** Act upon all applications and collect any fees due; refer/process all applications as required.
2. **CEO Permit approvals.** Act upon permit applications that are under the jurisdiction of the CEO as set forth in Section 3.4 of this Ordinance.
3. **Applications for Conditional Use Approval.** Review applications which are under the jurisdiction of the Planning Board, as set forth in Section 3.4, for completeness of submissions and refer such applications to the Planning Board for Conditional Use Approval. Provide assistance as needed to the Planning Board in the Board's review of applications for Conditional Use Approval.
4. **Board of Appeals applications.** Refer requests for variances and administrative appeals to the Board of Appeals.
5. **Inspections.** Inspect sites where permit applications have been approved to ensure compliance with local ordinances and State laws or rules. The CEO shall have the reasonable right of entrance to properties as necessary to carry out the duties assigned in this section, consistent with the requirements of federal and state law.
6. **Complaints and violations.** Investigate complaints and reported violations. The CEO shall reply, in writing, within fourteen (14) days to any written complaint regarding violation of this Ordinance.
7. **Reports and records.** Keep written inspection reports and thorough 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, revocation actions, revocation of permits, appeals, court actions, violations investigated, violations found, and fees collected. On a biennial basis, a summary of this record involving the shoreland zone shall be submitted to the Director of the Bureau of Land and Water Quality within the Department of Environmental Protection.

8. **Violation notices.** Issue violation notices.
9. **Appeals.** Participate in appeals procedures.
10. **Consent agreements.** Process or act on consent agreements involving violations of this Ordinance and appear in court when necessary.
11. **Permit revocations.** Revoke any permit issued by the Code Enforcement Officer after notice if it was issued in error or if it was based on erroneous information.

### 7.3 Permits Required

It shall be unlawful, without first obtaining a permit from the appropriate reviewing authority, to engage in any activity or use of land or structure requiring approval 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. Approval shall be required for:

1. **Activities requiring Code Enforcement Officer approval.** Any activity listed in Section 3.4, as requiring approval from the Code Enforcement Officer.
2. **Activities requiring Planning Board approval.** Any activity listed in Section 3.4 as requiring Conditional Use Approval from of Planning Board.
3. **Road culvert.** A permit is not required for the replacement of an existing road culvert as long as:
  1. The replacement culvert is not more than 25% longer than the culvert being replaced;
  2. The replacement culvert is not longer than 75 feet; and
  3. Adequate erosion control measures are taken to prevent sedimentation of the water, and the crossing does not block fish passage in the watercourse.
4. **Archaeological excavation.** 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.
5. **Permit in addition to other permits.** Any permit required by this Ordinance shall be in addition to any other permit required by other law or ordinance.

### 7.4 Permit Application

1. **Written application.** Every applicant for a permit shall submit a written application, including a scaled site plan, on a form provided by the municipality, to the Code Enforcement Officer. The following items, when appropriate, shall be included on the application.
  1. The shape, size and location of the lot to be built upon and structure(s) to be

erected, altered or removed.

2. Any structure(s) already on the lot.
  3. Setbacks of structure(s).
  4. Statement of intended use.
  5. Any other information needed by the Code Enforcement Officer, Planning Board, or the Board of Appeals to determine compliance with the provisions of this Ordinance.
  6. Documentation that the applicant has right, title or interest in the property.
2. **Signature.** All applications shall be signed by an owner of the property or individual who can show evidence of right, title or interest in the property, or the owner's legal agent, representative, tenant or contractor of the owner with authorization from the owner to apply for a permit hereunder, certifying that the information on it is complete and accurate. 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. **Application to be dated.** 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. **Plumbing Permit & Subsurface Wastewater Disposal Permit.** If the property is not served by a public sewer, a valid plumbing permit or a completed application for a plumbing permit and/or subsurface wastewater disposal 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 wastewater disposal system.

## 7.5 Procedure for Administering Permits

1. **Submission of Permit applications to Code Enforcement Officer**
  1. **Determination of complete application.** Within 30 days of the date of receiving a written application for approval of either the Code Enforcement Officer or the Planning Board, the Code Enforcement Officer shall notify the applicant in writing either that the application has been accepted as a complete application or, if the application is incomplete, that specific additional material is needed to make the application complete.
  2. **Referrals.** All applications which require Conditional Use Approval of the Planning Board or action by the Board of Appeals shall within a period of thirty (30) days be referred to the applicable board for action and public notice shall be given. After approval, with or without conditions by such Board, the Code Enforcement Officer shall issue a permit within ten (10) working days after being notified of such approval.
  3. **Code Enforcement Officer permits and approvals.** In all other cases involving approval by the Code Enforcement Officer, the Code Enforcement

Officer shall within a period of ten (10) working days approve or deny such applications in accordance with the provisions of this Ordinance.

4. **Written notification.** If approval 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 any state law which the municipality is responsible for enforcing.

## 2. Applicant Responsibility

1. **Burden of proof.** 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.
2. **Posting.** Within three (3) days of receiving the approval, the applicant shall conspicuously post any approval issued, on the lot where the activity will occur.
3. **Special Exceptions.** In addition to the criteria specified in Section 5.8 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:
    1. Located on natural ground slopes of less than 20%; and
    2. Located outside the velocity zone in areas subject to tides, based on detailed flood insurance studies and as delineated on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate Maps; all buildings, including basements, are elevated at least one foot above the 100-year flood plain elevation; and the development is otherwise in compliance with any applicable municipal flood plain ordinance.

If the floodway is not shown on the Federal Emergency Management Agency Maps, it is deemed to be 1/2 the width of the 100-year flood-plain.
  4. The total ground-floor area, including cantilevered or similar overhanging extensions, of all principal and accessory structures is limited to a maximum of 1500 square feet. This limitation shall not be altered by variance.
  5. All structures, except functionally water-dependent structures, are set back from the normal high-water line of a water body, tributary stream or upland

edge of a wetland to the greatest practical extent, but not less than 75 feet, horizontal distance. In determining the greatest practical extent, the Planning Board shall consider the depth of the lot, the slope of the land, the potential for soil erosion, the type and amount of vegetation to be removed, the proposed building site's elevation in regard to the flood plain, and its proximity to moderate-value and high-value wetlands.

4. **Expiration of permit.** All building Permits shall be void unless the foundation, as described on the Building Permit application, is completed within one year of the date of issuance.
5. **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.

**7.6 Violations.** If, upon inspection or investigation, the CEO shall find what appears to be a violation, he/she shall notify in writing the person(s) believed to be responsible, within ten working days. The notice shall describe the nature of the violation, and state what appeal procedures may be available. The CEO may order any necessary action to correct the violation, including discontinuance of the activity and/or removal of buildings, and abatement of nuisance conditions. The CEO shall maintain a copy of all such notices, which shall be available for public inspection during regular office hours. Each day that the violation occurs shall constitute a separate offense, beginning with the day following notification by the Code Enforcement Officer of such violation. A copy of such notices shall be submitted to the municipal officers and be maintained as a permanent record.

**7.7 Disputes and appeals.** In cases where the alleged violator disputes the interpretation or order of the CEO, but discontinues any ongoing activity after CEO notice, the alleged violator may appeal the CEO action or decision to the Zoning Board of Appeals within 30 days of the written decision order. No activity may be undertaken during this period other than the actions which may be necessary to protect property or the environment and as agreed to by the CEO and alleged violator (to allow erosion control measures or temporary tarp over open roof, etc.). The Zoning Board of Appeals shall consider such cases as administrative appeals in a purely appellate capacity and they shall be heard as prescribed by ordinance. If any ongoing land use activity continues after the CEO notice or order, the enforcement action by the CEO or municipal officers shall not be appealable to the Zoning Board of Appeals (see Board of Appeals Ordinance).

**7.8 Notification of Town Manager.** If not appealed, or not appealable, or if the action or order is sustained by the Zoning Board of Appeals, the CEO shall notify the Town Manager. The Town Manager will make recommendations for penalty and/or legal action to the Board of Selectmen. The Board of Selectmen shall make the final decision for any legal action.

**7.9 Enforcement.** 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.

A decision by the Board of Selectmen to proceed against an alleged violator for violations of this Ordinance or any permit issued pursuant to this Ordinance is not appealable to the Zoning Board of Appeals. This Ordinance shall be enforced in accordance with Title 30-A M.R.S.A. Section 4452.

**7.10 Penalties.** Any person, including but not limited to a landowner, a landowner's agent or a contractor or firm, or corporation who violates, who violates any provision or requirement of this Ordinance, or disobeys, refuses to comply with, or resists the enforcement of, any provision of this ordinance or who starts construction or under-takes a land use activity without a required permit, shall be penalized in accordance with 30-A M.R.S.A. Section 4452.

**7.11 Consent agreement.** The Board of Selectmen, 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. The Board of Selectmen may, at their option, ask the Court to approve a consent order. Such agreements shall not allow an illegal structure or use to continue unless:

1. **Erroneous advice.** 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 Town official and there is no evidence that the owner acted in bad faith, or;
2. **Greater damage.** In such cases where the removal of the structure or use will result in a greater threat or hazard to public health and safety or will result in substantial environmental damage.

## SECTION 8 DEFINITIONS

General: In reading and interpreting this Ordinance the following definitional rules apply:

1. words used or defined in one tense or form shall include other tenses and derivative forms;
2. words in the singular number shall include the plural number, and words in the plural number shall include the singular;
3. the masculine gender shall include the feminine, and the feminine gender shall include the masculine;
4. the words "shall" and "must" are mandatory;
5. the words "may" and "should" are permissive;
6. the word "person" includes individuals, firms, corporations, associations, and other similar entities;
7. the word "Town" means the Town of Mount Desert;
8. the term "municipal officers" covers elected, appointed and employed personnel acting as provided by the law within the Town of Mount Desert;
9. any term, phrases, words and their derivation not defined below shall be given that definition which is promulgated in WEBSTER'S NEW COLLEGIATE DICTIONARY, on file in the Town Office.

Words and Terms Defined -

**ABUTTING PROPERTY:** Any lot which is physically contiguous with the subject lot even if only at a point and any lot which is located directly across a street or right-of-way from the subject lot such that the extension of the side lot lines of the subject lot would touch or enclose the abutting property.

**ACCESSORY STRUCTURE OR USE:** A use or structure which is incidental and subordinate to an existing 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.

**AGGRIEVED PERSON:** 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.

**AIR LANDING SITE:** An airport, seaplane-port, helicopter landing place and accessory uses.

**ALTERATION:** As applied to a building or structure, is a substantial change or rearrangement in the structural parts or in the exit facilities, or a substantial enlargement,

whether by extending on a side or by increasing in height, or the moving from one location or position to another.

**ANIMAL HUSBANDRY:** The care and keeping of livestock, poultry, and domestic animals.

**AQUACULTURE:** The growing or propagation of harvestable freshwater, estuarine, or marine plant or animal species.

**AUTO SERVICE STATION:** A place where gasoline or any other automobile engine fuel, kerosene, motor oil, lubricants or grease (for operation of motor vehicles) are retailed directly to the public on the premises, including the sale of minor accessories and the servicing and minor repair of automobiles, but NOT including storage of unlicensed vehicles or body, frame, or fender straightening and repair.

**AUTO REPAIR GARAGE:** A place where, with or without the attendant sale of engine fuels, the following services may be carried out: general repair, engine rebuilding, rebuilding or reconditioning of motor vehicles; collision service, such as body, frame, or fender straightening and repair; overall painting and undercoating of automobiles.

**BACK LOT:** A lot that does not have frontage on a public or private road and has direct access to a public or private way that meets the standards of Section 6B.6.

**BARN:** A building or shelter used for the habitation of livestock.

**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 5 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.

**BOAT STORAGE, REPAIR & SERVICE:** A commercial facility which provides one or more of the following marine services: boat storage, repairs, handling and outfitting; sale of marine supplies and equipment; but not including such marine facilities as dock rental, food services, or other shore facilities.

**BUILDING:** A roofed structure.

**CAMPGROUND:** A facility for the temporary parking of campers, recreational vehicles, tents, or other shelters for temporary human occupation of two (2) or more parties. Temporary shall mean use of a tent, camper or other device providing shelter for human habitation on the campground for no more than seventy-five (75) consecutive days in any one calendar year.

**CANOPY:** The more or less continuous cover formed by tree crowns in a wooded area.

**CHARITABLE FUNCTION:** An activity of which all the proceeds raised would be for the benefit of Volunteer Fire Departments, Libraries, Schools, Churches, or other benevolent purposes.

**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 Association. Coastal wetlands may include portions of coastal sand dunes.

**CO-LOCATION:** The use of a communications facility by more than one communications provider.

**COMMERCIAL FISHING:** All activities relating to the commercial harvesting of fish, shellfish, and other marine organisms.

**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.

**CONDITIONAL USE:** A use which by its nature in a particular zoning district requires case by case determination to assure compliance with the provisions of this Ordinance and avoidance of harm to public or private interests.

**CONSTRUCTED:** Includes built, erected, altered, reconstructed, moved upon, or any physical operations on the premises, which are required for construction. Excavation, fill, drainage, and the like, shall be considered a part of construction.

**COOKING FACILITIES:** A stove, microwave, or other cooking device.

**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.

**DISTRICT:** A specified portion of the Town delineated on the official zoning map of the Town, within which certain regulations and requirements or various combinations thereof apply under the provisions of this Ordinance.

**DRIVEWAY:** 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, serving not more than two lots.

**DWELLING UNIT:** (See Residential Dwelling Unit)

**DWELLING ONE-FAMILY:** (See Residential Dwelling One-Family)

**DWELLING TWO-FAMILY:** (See Residential Dwelling Two-Family)

**DWELLING MULTI-FAMILY:** (See Residential Dwelling Multi-Family)

**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 A USE:** The additional use of more floor, land or water area devoted to a particular use; additional one or more weeks of the use's operating season; or additional business hours of operation.

**FAMILY:** One or more persons related by blood, marriage, adoption, or guardianship, or not more than five (5) persons not so related occupying a dwelling unit and living as a single housekeeping unit: such group to be distinguished from a group occupying a boarding house, lodging house, club fraternity, or hotel.

**FENCE/WALL, SOLID:** Any fence or wall in which the individual solid portions visually exceed the open portions. The individual solid portions shall not exceed twelve (12) inches in width.

**FISH PROCESSING:** Activities such as, but not restricted to, canning, freezing, and packaging of fish.

**FLEA MARKET:** See GARAGE SALE.

**FLOOD PLAIN. FLOOD- PLAIN OR FLOODPLAIN:** The lands adjacent to a body of water which have been or may be covered by a regional flood. (See Flood Plain Ordinance)

**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:

1. Of ten or more contiguous acres; or of less than 10 contiguous acres and adjacent to a surface water body, excluding any river, stream or brook, such that in a natural state, the combined surface area is in excess of 10 acres; and
2. Inundated or saturated by surface or ground water at a frequency and for duration sufficient to support, and which under normal circumstances do support, a prevalence of wetland vegetation typically adapted for life in saturated soils.

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

**FUNCTIONAL LAND DIVISION:** A functional land division is the division of a lot of land into the distinct, separate, historical residential uses of the property into separate non-conforming lots.

**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.

**GARAGE SALE (FLEA MARKET, YARD SALE):** Open air or partly enclosed market for second hand articles and antiques.

**GRAVEL PIT:** A mining operation undertaken primarily to extract and remove sand, fill or gravel.

**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,

**GROUND COVER:** Small plants, fallen leaves, needles and twigs, and the partially decayed organic matter of the forest floor.

**GUEST HOUSE:** A structure to house only family members or guests which shall not be rented or become a dwelling unit as defined in this Ordinance.

**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 WATER, HIGH-WATER, OR HIGHWATER:** See **NORMAL HIGH-WATER LINE**

**HOME OCCUPATION:** An occupation or profession which is customarily conducted on or in a residential structure or property and which is clearly incidental to and compatible with the residential use of the property and surrounding residential uses.

**HORTICULTURE:** Includes the use of greenhouses and nurseries for commercial purposes and the sale of such products.

**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.

**INDUSTRIAL:** The assembling, fabrication, finishing, manufacturing, packaging or processing of goods, or the extraction of minerals.

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

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

**LICENSED FORESTER:** A forester licensed under 32 M.R.S.A. Chapter 76.

**LIVESTOCK (HOOFED):** Animals such as cattle, goats, horses, pigs, etc., including llamas.

**LOT (TRACT):** A parcel of land described on a deed, plot, or similar legal document, and is all contiguous land within the same ownership, provided that lands located on opposite sides of a public or private road shall be considered each a separate parcel or tract of land unless such road was established by the owner of land on both sides of the road thereof after September 22, 1971.

**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 area of the lot covered by impervious surfaces, excluding driveways and parking areas except in the shoreland zone where lot coverage includes all non-vegetated surfaces.

**MANUFACTURED HOMES OR HOUSING:** Those units constructed after June 15, 1976, commonly called "newer mobile homes," which the manufacturer certifies are constructed in compliance with the United States Department of Housing and Urban Development standards, meaning structures, transportable in one or more sections, which, in the traveling mode, are fourteen (14) body feet or more in width and are seven hundred fifty (750) or more square feet, and which are built on a permanent chassis and designed to be used as dwellings, with or without permanent foundations, when connected to the required utilities, including the plumbing, heating, air-conditioning and electrical systems contained therein; except that the term shall include any structure which meets all the requirements of this paragraph, except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the Secretary of the United States Department of Housing and Urban Development and complies with the standards established under the National Manufactured Housing Construction and Safety Standards Act of 1974, United States Code, Title 42, Section 5401, et seq.

**MARINE STRUCTURE:** Piers, docks, floats, wharves, bridges over ten (10) feet in length, and other marine structures extending over or below the normal high water line of a water body or within a wetland.

**MARINA:** A business establishment having frontage on navigable water and providing for hire docking facilities or moorings at its location, unless such uses are incidental to the principle use of the property. In addition it may also provide other services such as: boat storage and repair; boat sales; boat hauling and launching; sale of marine supplies and marine fuel.

**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, clay, rock, peat, or other like material from its natural location and to transport the product removed, away from the extraction site. Excluding gravel pits as defined.

**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 TEMPORARY OR OLDER TYPE:** Any dwelling capable of being lived in by humans on a permanent basis and which was originally designed with the capability of being moved from time to time over public streets and highways. This includes temporary or older type mobile homes which do NOT meet the specifications of MANUFACTURED HOMES as defined above.

**MOBILE HOME PARK:** A tract of land on which two or more mobile homes are or are to be occupied for dwelling or sleeping purposes.

**MOTEL (HOTEL):** A building or group of buildings which contains rooms intended or designed to be used or which are used, rented, or hired out to be occupied, or which are occupied for sleeping purposes by the guests, and where only a general kitchen and dining room are provided within the building or accessory building. A unit within a motel which has any food preparation, storage, eating or kitchen facilities shall be construed as a dwelling unit and shall be governed as such.

**M.R.S.A.:** (Maine Revised Statutes Annotated) Maine State Law.

**NATIVE:** Indigenous to the local ecosystems.

**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 (HIGH WATER OR HIGHWATER) 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 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 great pond during the period of normal high-water are considered part of the great pond.

**PARKING AREA (shoreland zone):** Land area used for parking vehicles excluding an area associated with a driveway used for parking two (2) vehicles or fewer.

**PARKING LOT:** A lot on which three or more motor vehicles are parked and which use is not associated with or accessory to another use established on such lot.

**PERMITTED USE:** A use specifically permitted within a district.

**PERSON:** An individual, corporation, governmental agency, municipality, trust, estate, partnership, association, two or more individuals having a joint or common interest, or other legal entity.

**PIERS, DOCKS, WHARVES, BRIDGES AND OTHER STRUCTURES AND USES EXTENDING OVER OR BELOW THE NORMAL HIGH-WATER LINE OR WITHIN A WETLAND.**

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

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

**PREMISES: See PROPERTY**

**PRINCIPAL STRUCTURE OR USE:** A structure or use other than one which is wholly incidental or accessory to another structure or use on the same premises.

**PROPERTY (PREMISES):** A lot together with any structures and other physical facilities which are located on it.

**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 SEWER:** A sanitary system main leading to a treatment plant maintained by the Town, of adequate size and condition to receive a proposed discharge without modification of existing mains.

**PUBLIC UTILITY:** Any person, firm, corporation, municipal department, board, or commission, authorized to furnish gas, steam, electricity, waste disposal, communication facilities, or transportation of water to the public.

**QUALIFIED WORKFORCE HOUSING ENTITY:** Non-profit organizations, public agencies, or private corporations, whose fundamental purpose promotes year round housing opportunities for the professional, business, or service sectors.

**RECENT FLOODPLAIN SOILS:** The following soil series as described and identified by the National Cooperative Soil Survey:

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

**RECREATION FACILITIES - INDOOR:** Include swimming pools, tennis courts, gymnasiums, and other recreational facilities which are enclosed by a building or other structure, capable of accommodating more than ten (10) persons.

**RECREATION FACILITIES - OUTDOOR:** Include swimming pools, tennis courts, playing fields, basketball courts, golf courses, and other recreational facilities which are not in any way permanently enclosed by a building or structure and capable of accommodating more than ten (10) persons. Such facilities may include building or other structures as accessory for such facility.

**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 a group of rooms designed for permanent, seasonal, or temporary habitation by one family at a time that includes cooking, toilet, and

sleeping facilities. The term shall include mobile homes, and rental units that contain cooking, toilet and sleeping facilities (regardless of the time-period rented). Recreational vehicles are not residential dwelling units.

**RESIDENTIAL DWELLING ONE-FAMILY:** A structure or a portion of a structure designed for human habitation that includes facilities for cooking, eating, and sleeping for one family, except a Conditional Use Approval may be issued by the Planning Board for an additional cooking facility within the structure for domestic or health care providers of the occupant. The unit may or may not have an internal connection to another unit or units.

**RESIDENTIAL DWELLING TWO-FAMILY:** A single structure containing two attached dwelling units, each of which has independent access. The two dwelling units shall share a common floor, roof or wall. A covered porch or enclosed breezeway measuring no longer than 12 feet in length between the two dwellings shall meet the requirement of a shared floor, roof or wall.

**RESIDENTIAL DWELLING MULTI-FAMILY:** A structure or a portion of a structure designed for human habitation that includes facilities for cooking, eating, and sleeping for three or more families. The units may or may not have an internal connection to another unit or units.

**RESIDUAL BASAL AREA:** The average of the basal area of trees remaining on a harvested site.

**RESTAURANT:** A business principally engaged in serving prepared foods and drinks to the public, including businesses serving groups, either on or off the premises.

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

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

**SALT MARSH:** Areas of coastal wetland (most often along coastal bays) that support salt tolerant species, and where at average high tide during the growing season, the soil is irregularly inundated by tidal waters. The predominant species is salt marsh cord grass (*Spartina alterniflora*). More open areas often support widgeon grass, eel grass, 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 cord grass (*Spartina patens*) and black rush; common three square occurs in fresher areas.

**SEASONAL PRODUCE SALES:** The sale of locally grown or prepared fruits, vegetables, or other food stuff (including fish), beverages or ice, in the season when grown, caught, or prepared.

**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 horizontal distance measured in a straight line from any property line, shoreline, road (or edge of legally established right-of-way if no road exists) abutting a lot or property to the nearest part of a structure or other regulated object or area. Setback shall apply to all sides of a lot having shore frontage or road frontage, unless stated otherwise within this Ordinance. For the purpose of setback requirements, fences, signs, roads, parking areas & driveways shall not be considered structures, except that roads, parking areas, and driveways must meet shoreline setbacks. Where the setback is from a private right-of-way, the setback shall be equal to the property line setback requirements of the district in which the property is located.

**SHORELINE:** The normal high-water line, or upland edge of a freshwater or coastal wetland.

**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; 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. The Shoreland Zone, as defined in the preceding sentence, shall also include the area of any lot up to where the zone designation changes as indicated on the Zoning Map.

**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 removal of woody vegetation or a timber harvest.

**SLOPE:** An inclined earth surface. Slopes are generally expressed as a percentage; percentage of slope refers to a given rise in elevation over a given run in distance. A fifty (50) percent slope, for example, refers to a 100 vertical foot rise in elevation over a horizontal distance of 200 feet. A fifty (50) percent slope is expressed in engineering terms as a 2:1 slope. (Added 5-6-2008.)

**SMALL WIND ENERGY CONVERSION SYSTEM:** A wind energy conversion system consisting of a wind turbine, a tower, footings, electrical infrastructure, fence and any other associated equipment or structures. Any single small wind energy conversion system, herein defined, shall have a rated capacity of not more than 100 kilowatts and is a legal accessory use whenever situated.”

**STREET:** (See Road).

**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 flows to another water body or wetland within the shoreland area.

**STRUCTURE:** Anything constructed or erected, as a permanent fixture on, above, or below the surface of the land, or water, including a porch, deck or patio. Anything constructed or erected that would be considered a structure but for the fact that it is temporary and not permanent which is within the shoreland zone as defined will also be considered a structure. The term structure shall not include flagpoles, church steeples, poles customarily used for the transmission of electricity, television antennas, radio antennas, driveways, roads, and subsurface wastewater disposal systems. Sign posts, as referenced in the "Ordinance Regulating the Building and Street Numbering in the Town of Mount Desert", shall not be included as structures.

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

**SUSTAINED SLOPE:** A change in elevation where the referenced percent grade is substantially maintained or exceeded throughout the measured area.

**TIDAL WATERS:** All waters affected by tidal action during the highest annual tide.

**TIMBER HARVESTING:** The cutting and removal of timber for the primary purpose of selling or processing forest products. The cutting or removal of trees in the shoreland zone on a lot that has less than two (2) acres within the shoreland zone shall not be considered timber harvesting. Such cutting or removal of trees shall be regulated pursuant to Section 6C.3 *Clearing or Removal of Vegetation for Activities Other Than Timber Harvesting*.

**TRAILER:** See CAMPER

**TRIBUTARY STREAM:** 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.

**TURNOUT AREA:** The area directly adjacent to the barn where animals are turned out.

**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) feet) tall or taller.

**USE:** The purpose for which land or a structure is arranged, designed, or intended, or for which land or a structure is or may be occupied.

**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 planes and fixed exterior wall planes as measured from the exterior faces of these walls and roof. (Excluding foundations, but including basements as defined in this section.)

**WATER BODY, WATERBODY:** Any great pond, or stream.

**WATER CROSSING:** Any project extending from one bank to the opposite bank of a 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.

**WATER-RELATED USES AND STRUCTURES:** Those uses and structures which require direct access to or location on submerged lands. These uses and structures include, but are not limited to: Commercial and recreational boating facilities, boat yards, marinas, piers, floats, boat-houses, etc. They are: **TEMPORARY:** When such structures remain in the water for less than seven months in any period of twelve consecutive months, or **PERMANENT:** When such structures remain in the water for seven months or more in any period of twelve consecutive months.

**WETLAND:** a freshwater or coastal wetland.

**WIDTH OF LOT:** The distance measured between the intersections of the side lot lines and the:

1. SHORE measured as closest distance; or  
the
2. ROAD at the front lot line measured as horizontal distance in a straight line.

**WOODY VEGETATION:** Live trees or woody, non-herbaceous shrubs.

**WORKFORCE HOUSING:** Housing that is economically viable for the year-round working community.

**YARD SALES:** See **GARAGE SALE**.