

§ 185-14. Table of Land Uses. [Amended 10-12-2021; at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]

All land use activities, as indicated in Table 1, Land Uses in the shoreland zone, shall conform with all of the applicable land use standards in § 185-15. The district designation for a particular site shall be determined from the Official Land Use Map.

Key to Table 1:

YES: Allowed (no permit required but the use must comply with all applicable land use standards)

NO: Prohibited

CEO: Allowed with permit issued by the Code Enforcement Officer

LPI: Allowed with permit issued by the local Plumbing Inspector

PB: Allowed with permit issued by the Planning Board

[PB-SP: Allowed with site plan approval issued by the Planning Board in accordance with Article 8 of Chapter 120, Land Use.](#)

Abbreviations:

RP: Resource Protection

LR: Limited Residential

GD: General Development

SP: Stream Protection

Table 1. Land Uses in the Shoreland Zone				
Land Uses	Districts			
	SP	RP	LR	GD
Agriculture	YES	PB- <u>SP</u>	YES	YES
Aquaculture	PB- <u>SP</u>	PB- <u>SP</u>	PB- <u>SP</u>	YES
Campgrounds	NO	NO ^c	PB- <u>SP</u>	PB- <u>SP</u>
Clearing or removal of vegetation for activities other than timber harvesting	CEO	CEO ⁱ	YES	YES
Conversions of seasonal residences to year-round residences	LPI	LPI	LPI	LPI
Emergency operations	YES	YES	YES	YES
Essential services	PB- <u>SP</u> ^d	PB- <u>SP</u> ^d	PB- <u>SP</u>	PB- <u>SP</u>
A. Roadside distribution lines (34.5kV and lower)	CEO ^g	CEO ^g	YES ^h	YES ^h
B. Nonroadside or cross-country distribution lines involving 10 poles or fewer in the shoreland zone	CEO ^g	CEO ^g	CEO	CEO
C. Nonroadside or cross-country distribution lines involving 11 or more poles in the shoreland zone	PB ^g	PB ^g	PB	PB
Filling and earthmoving of less than 10 cubic yards	CEO	CEO	YES	YES
Filling and earthmoving of more than 10 cubic yards	CEO	PB	CEO	CEO
Fire prevention activities	YES	YES	YES	YES
Home occupations	CEO	CEO	CEO	CEO

Table 1. Land Uses in the Shoreland Zone

Land Uses	Districts			
	SP	RP	LR	GD
Individual, private campsites	CEO	CEO	CEO	CEO
Marijuana businesses				
A. Medical marijuana registered caregiver/medical marijuana registered caregiver (home occupation)	NO	NO	NO	CEO
B. Other marijuana businesses	NO	NO	NO	NO
Marinas	PB-SP	NO	PB-SP	PB-SP
Mineral exploration	NO	YES ²	YES ²	YES ²
Mineral extraction, including sand and gravel extraction	NO	PB-SP ^{1,3}	PB-SP ³	PB-SP ³
Motorized vehicular traffic on existing roads and trails	YES	YES	YES	YES
Nonintensive recreational uses not requiring structures, such as hunting, fishing and hiking	YES	YES	YES	YES
Parking facilities	NO	PB-SP	PB-SP	PB-SP
Permanent piers, docks, wharves, bridges and other structures and uses extending over or below the normal high-water line or within a wetland	PB-SP	PB-SP	PB-SP	PB-SP
Principal structures and uses				
A. One- and two-family residential, including driveways	PB-SP ⁴	PB-SP ⁹	CEO	CEO
B. Multifamily residential <u>Multifamily residential (dwelling)</u>	NO	NO	PB-SP	PB-SP
C. Commercial	NO	NO ¹⁰	NO ¹⁰	PB-SP
D. Industrial	NO	NO	NO	PB-SP
E. Governmental and institutional	NO	NO	PB-SP	PB-SP ⁸
F. Small nonresidential facilities for educational, scientific, or nature interpretation purposes	PB-SP ⁴	PB-SP	CEO	CEO
Private sewage disposal systems for allowed uses	LPI	LPI	LPI	LPI
Structures accessory to allowed uses	CEO	CEO	CEO	CEO
Public and private recreational areas involving minimal structural development	PB-SP	PB-SP	PB-SP	PB-SP
Road and driveway construction	CEO	PB-SP ⁷	CEO	CEO
Service drops, as defined, to allowed uses	YES	YES	YES	YES
Signs	CEO	CEO	CEO	CEO
Soil and water conservation practices	YES	YES	YES	YES
Structures accessory to allowed uses	CEO	CEO	CEO	CEO
Surveying and resource analyses	YES	YES	YES	YES
Uses similar to allowed uses	CEO	CEO	CEO	CEO
Uses similar to uses requiring a CEO permit	CEO	CEO	CEO	CEO
Uses similar to uses requiring a PB permit	PB	PB	PB	PB
<u>Uses similar to permitted uses requiring PB site plan approval.</u>	PB-SP	PB-SP	PB-SP	PB-SP
Wildlife management practices	YES	YES	YES	YES
Wireless telecommunications facilities	NO	NO	NO	PB ⁵

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

² Requires permit from the CEO if more than 100 square feet of surface area, in total, is disturbed.

³ In RP not permitted in areas so designated because of wildlife value.

§ 185-15. Land use standards. [Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. D)]

All land use activities within the shoreland zone shall conform with the following provisions, if applicable. Site plan review may also be applicable to development in the shoreland zone. Please refer to Chapter 120, Land Use, Article 8, Site Plan Review, of the Town Code.

A. Minimum lot standards.

(1) Requirements. Lots shall meet or exceed the following minimum requirements:

(a) Minimum lot size.

Area (square feet)	Width (feet)	Area Per Residential Dwelling Unit (square feet)	Shore Frontage (feet)
40,000	200	40,000	200
Commercial/industrial 60,000	300		300

(b) Minimum setback.

Waterline or Edge of Wetland (feet)	Side (feet)	Road (feet)	Rear (feet)
See standards in § 185-15B(1) below	15	35	35

- (2) Lot area. Land below the normal high-water line of a water body or upland edge of a wetland and land beneath roads serving more than two lots shall not be included toward calculating minimum lot area.
- (3) Lots separated by roads. Lots located on opposite sides of a public or private road shall be considered each a separate tract or parcel of land unless such road was established by the owner of land on both sides thereof after September 22, 1971.
- (4) Minimum width. The minimum width of any portion of any lot within 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 requirements for a lot with the proposed use.
- (5) 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.

B. Principal and accessory structures.

- (1) Setback. All new principal and accessory structures shall be set back at least 100 feet, horizontal distance, from the normal high-water line of great ponds classified GPA and rivers that flow to great ponds classified GPA, and 75 feet horizontal distance from the

normal high-water line of other water bodies, tributary streams, or the upland edge of a wetland as depicted on the Official Shoreland Land Use Map, except that in the General Development District, the setback from the normal high-water line shall be at least 25 feet, horizontal distance. In the Resource Protection District, the setback requirement shall be 250 feet, horizontal distance, except for structures, roads, parking spaces or other regulated objects specifically allowed in that district in which case the setback requirements specified above shall apply.

- (a) The water body, tributary stream, or wetland setback provisions shall apply neither to structures which require direct access to the water body or wetland as an operational necessity, such as piers, docks, retaining walls and dams, nor to other functionally water-dependent uses.
 - (b) On a nonconforming 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 80 square feet in area nor eight feet in height, and shall be located as far from the shoreline or tributary stream or other setbacks as practical and shall meet all other applicable standards, including lot coverage and vegetation-clearing limitations. In no case shall the structure be located closer to the shoreline or tributary stream than the principal structure.
- (2) Maximum height. Principal or accessory structures and expansions of existing structures which are permitted in the Resource Protection, Limited Residential and Stream Protection Districts, shall not exceed 35 feet in height. This provision shall not apply to structures such as transmission towers, windmills, antennas, and similar structures having no floor area.
 - (3) Flood elevation. The lowest floor elevation or openings of all buildings and structures, including basements, shall be elevated at least one foot above the elevation of the 100-year flood, the flood of record or, in the absence of these, the flood as defined by soil types identified as recent floodplain soils. In those municipalities that participate in the National Flood Insurance Program and have adopted the April 2005 version, or later version, of the Floodplain Management Ordinance, accessory structures may be placed in accordance with the standards of that ordinance and need not meet the elevation requirements of this subsection.
 - (4) Lot coverage.
 - (a) With the exception of General Development Districts located adjacent to rivers that do not flow to great ponds, nonvegetated surfaces shall not exceed a total of 20% of the portion of the lot located within the shoreland zone. This limitation does not apply to public boat launching facilities regardless of the district in which the facility is located.
 - (b) In a General Development District located adjacent to rivers that do not flow to great ponds, nonvegetated surfaces shall not exceed a total of 70% of the portion

of the lot located within the shoreland zone.

- (c) For the purposes of calculating lot coverage, nonvegetated surfaces include, but are not limited to, the following: structures, driveways, parking areas, and other areas from which vegetation has been removed. Naturally occurring ledge and rock outcroppings are not counted as nonvegetated surfaces when calculating lot coverage for lots of record on March 24, 1990, and in continuous existence since that date.
- (5) Retaining walls that are not necessary for erosion control shall meet the structure setback requirement, except for low retaining walls and associated fill, provided all of the following conditions are met:
- (a) The site has been previously altered and an effective vegetated buffer does not exist;
 - (b) The wall(s) is (are) at least 25 feet, horizontal distance, from the normal high-water line of a water body, tributary stream, or upland edge of a wetland;
 - (c) The site where the retaining wall will be constructed is legally existing lawn or is a site eroding from lack of naturally occurring vegetation, and which cannot be stabilized with vegetative plantings;
 - (d) The total height of the wall(s), in the aggregate, is no more than 24 inches;
 - (e) Retaining walls are located outside of the 100-year floodplain on rivers, streams and tributary streams, as designated on the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps or Flood Hazard Boundary Maps, or the flood of record or, in the absence of these, by soil types identified as recent floodplain soils;
 - (f) The area behind the wall is revegetated with grass, shrubs, trees, or a combination thereof, and no further structural development will occur within the setback area, including patios and decks; and
 - (g) A vegetated buffer area is established within 25 feet, horizontal distance, of the normal high-water line of a water body, tributary stream, or upland edge of a wetland when a natural buffer area does not exist. The buffer area must meet the following characteristics:
 - [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 § 185-15P(2)(a), may traverse the buffer;

NOTE: If the wall and associated soil disturbance occurs within 75 feet, horizontal distance, of a water body or tributary stream a permit pursuant to the Natural Resources Protection Act¹ is required from the Department of Environmental Protection.

- (6) Stairways. 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 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. § 480-C); and that the applicant demonstrates that no reasonable access alternative exists on the property.
- C. Permanent piers, docks, wharves, bridges and other structures and uses extending over or below the normal high-water line of a water body or within a wetland, and shoreline stabilization.
- (1) No more than one pier, dock, wharf or similar structure extending or located below the normal high-water line of a water body or within a wetland is allowed on a single lot; except that when a single lot contains at least twice the minimum shore frontage as specified in § 185-15A, a second structure may be allowed and may remain as long as the lot is not further divided.
- (2) Access from shore shall be developed on soils appropriate for such use and constructed so as to control erosion.
- (3) The location shall not interfere with existing developed or natural beach areas.
- (4) The facility shall be located so as to minimize adverse effects on fisheries.
- (5) The facility shall be no larger in dimension than necessary to carry on the activity and be consistent with existing conditions, use, and character of the area.
- (6) 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.

NOTE: A structure constructed on a float or floats is prohibited unless it is designed to function as, and is registered with, the Maine Department of Inland Fisheries and Wildlife as a watercraft.

- (7) New permanent piers and docks on nontidal waters shall not be permitted unless it is

1. Editor's Note: See 38 M.R.S.A. § 480-A et seq.

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.²

- (8) No existing structures built on, over or abutting a pier, dock, wharf or other structure extending beyond the normal high-water line of a water body or within a wetland shall be converted to residential dwelling units in any district, except in the General Development District.
- (9) Except in the General Development District, structures built on, over or abutting a pier, wharf, dock or other structure extending beyond the normal high-water line of a water body or within a wetland shall not exceed 20 feet in height above the pier, wharf, dock or other structure.
- (10) Vegetation may be removed in excess of the standards in § 185-15P of this chapter in order to conduct shoreline stabilization of an eroding shoreline, provided that a permit is obtained from the Planning Board. Construction equipment must access the shoreline by barge when feasible as determined by the Planning Board.
 - (a) When necessary, the removal of trees and other vegetation to allow for construction equipment access to the stabilization site via land must be limited to no more than 12 feet in width. When the stabilization project is complete, the construction equipment accessway must be restored.
 - (b) Revegetation must occur in accordance with § 185-15S.

NOTE: A permit pursuant to the Natural Resources Protection Act³ is required from the Department of Environmental Protection for Shoreline Stabilization activities.

- (11) A deck over a river may be exempted from the shoreland setback requirements if it is part of a downtown revitalization project that is defined in a project plan approved by the Windham Town Council, and may include the revitalization of structures formerly used as mills that do not meet the structure setback requirements, if the deck meets the following requirements:
 - (a) The total deck area attached to the structure does not exceed 700 square feet;
 - (b) The deck is cantilevered over a segment of a river that is located within the boundaries of the downtown revitalization project;
 - (c) The deck is attached to or accessory to an allowed commercial use in a structure that was constructed prior to 1971 and is located within the downtown revitalization project;
 - (d) The construction of the deck complies with all other applicable standards, except

2. Editor's Note: See 38 M.R.S.A. § 480-A et seq.

3. Editor's Note: See 38 M.R.S.A. § 480-A et seq.

the shoreline setback requirements in § 185-15B; and

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

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

- D. Campgrounds. Campgrounds shall conform to the minimum requirements imposed under state licensing procedures and the following:
- (1) Minimum size. Campgrounds shall contain a minimum of 5,000 square feet of land, not including roads and driveways, for each site. Land supporting wetland vegetation, and land below the normal high-water line of a water body shall not be included in calculating land area per site.
 - (2) Setback. The areas intended for placement of a recreational vehicle, tent or shelter, and utility and service buildings shall be set back a minimum of 100 feet, horizontal distance, from the normal high-water line of a great pond classified GPA or a river flowing to a great pond classified GPA, and 75 feet, horizontal distance, from the normal high-water line of other water bodies, tributary streams, or the upland edge of a wetland as depicted on the Official Town of Windham Land Use Map, and must also meet the required rear setback of 35 feet and side setback of 15 feet from the property boundary lines. **[Amended 10-12-2021]**
- E. Individual private campsites. Individual private campsites not associated with commercial campgrounds are permitted, provided the following conditions are met:
- (1) Area requirements. One campsite per lot existing on the effective date of this chapter, or 30,000 square feet of lot area within the shoreland zone, whichever is less, may be permitted. Clustered, individual, private camp sites are permitted based upon a density of an average 30,000 square feet per camp site.
 - (2) Another principal use/structure. When an individual private campsite is proposed on a lot that contains another principal use and/or structure, the lot must contain the minimum lot dimensional requirements for the principal structure and/or use, and the individual private campsite separately.
 - (3) Setback. Campsite placement on any lot, including the area intended for a recreational vehicle or tent platform, shall be set back 100 feet, horizontal distance, from the normal high-water line of a pond, great pond classified GPA or river flowing to a pond or great pond classified GPA, and 75 feet, horizontal distance, from the normal high-water line of other water bodies, tributary streams, or the upland edge of a wetland as depicted on the Official Town of Windham Land Use Map, and must also meet the required rear setback of 35 feet and side setback of 15 feet from the property boundary lines. **[Amended 10-12-2021]**

- (4) Recreational vehicles. Only one recreational vehicle shall be allowed on a campsite. The recreational vehicles shall not be located on any type of permanent foundation except for a gravel pad, and no structure except a canopy shall be attached to the recreational vehicles.
 - (5) Clearing. The clearing of vegetation for the siting of the recreational vehicle, tent or similar shelter in a Resource Protection District shall be limited to 1,000 square feet.
 - (6) Sewage disposal. When a recreational vehicle, tent or similar shelter is placed on-site for more than 120 days per year, all requirements for residential structures shall be met, including the installation of a subsurface sewage disposal system in compliance with the State of Maine Subsurface Waste Water Disposal Rules unless the site is served by public sewage facilities.
- F. Commercial and industrial uses. The following new uses are prohibited within the shoreland zone adjacent to great ponds classified GPA, and rivers and streams which flow to great ponds classified GPA:
- (1) Auto washing facilities.
 - (2) Auto or other vehicle service and/or repair operations, including body shops.
 - (3) Chemical and bacteriological laboratories.
 - (4) Storage of chemicals, including herbicides, pesticides or fertilizers other than amounts normally associated with individual households or farms.
 - (5) Commercial painting, wood preserving, and furniture stripping.
 - (6) Dry-cleaning establishments.
 - (7) Electronic circuit assembly.
 - (8) Laundromats, unless connected to a sanitary sewer.
 - (9) Metal plating, finishing, or polishing.
 - (10) Petroleum or petroleum products 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.
- G. Parking areas.
- (1) Setback. Parking areas shall meet the shoreline and tributary stream setback requirements for structures for the district in which such areas are located, except that the setback requirements for parking areas serving public boat-launching facilities in districts other than the General Development District shall be no less than 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) Runoff. 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 as depicted on the Official Town of Windham Land Use Map and where feasible, to retain all runoff on-site. **[Amended 10-12-2021]**
- (3) Size. In determining the appropriate size of proposed parking facilities, the following shall apply:
 - (a) Typical parking space: Approximately 10 feet wide and 20 feet long, except that parking spaces for a vehicle and boat trailer shall be 40 feet long.
 - (b) Internal travel aisles: Approximately 24 feet wide.
- (4) **Minimums. For any uses listed in § 185-14, Table 1 (Land Uses in the Shoreland Zone) that require site plan approval by the Planning Board, the parking areas must meet all applicable requirements set forth in § 120-812(C), and are further subject to the minimum parking requirements set forth in the table below:**

Use	Minimum Parking Requirement
Marina	1 parking space per slip

H. **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.
 - (a) Roads and driveways shall be set back at least 100 feet, horizontal distance, from the normal high-water line of a great pond classified GPA or a river that flows to a great pond classified GPA, and 75 feet, horizontal distance, from the normal high-water line of other water bodies, tributary streams, or the upland edge of a wetland as depicted on the Official Town of Windham Land Use Map, unless no reasonable alternative exists as determined by the Code Enforcement Officer. If no other reasonable alternative exists, the road and/or driveway setback requirement shall be no less than 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. The Code Enforcement Officer may require the applicant to obtain an approved erosion and sediment control plan from the Cumberland County Soil and Water Conservation District prior to issuing any permits. **[Amended 10-12-2021]**
 - (b) New roads and driveways: On slopes of greater than 20%, the road and/or driveway setback shall be increased by 10 feet, horizontal distance, for each 5% increase in slope above 20%.
 - (c) Section 185-15H(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

Commented [MB1]: Please note that Sec. 120-812(C)(1)(h) allows for parallel parking along internal driveways or accessways. Do you want this to be allowed for shoreland uses or specify that the section doesn't apply?

Commented [SP2]: Should there be prescribed parking ratios for any other non-residential use?

Commented [SP3R2]: Want to prohibit 120-812C(1)(h), see comments in the SJP-revision dated 110424

Commented [SP4]: The Board did not think there should parking standards for any other uses

permitted structures within the setback area shall comply fully with the requirements of § 185-15H(1) except for that portion of the road or driveway necessary for direct access to the structure.

- (2) Existing 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 as depicted on the Official Town of Windham Land Use Map. **[Amended 10-12-2021]**
- (3) New roads. New roads and driveways are prohibited in a Resource Protection District except that the Planning Board may grant a permit to construct a road or driveway to provide access to permitted uses within the district. A road or driveway may also be approved by the Planning Board in a Resource Protection District, upon a finding that no reasonable alternative route or location is available outside the district. When a road or driveway is permitted in a Resource Protection District, the road and/or driveway shall be set back as far as practicable from the normal high-water line of a water body, tributary stream, or upland edge of a wetland.
- (4) Road banks. Road and driveway banks shall be no steeper than a slope of two horizontal to one vertical, and shall be graded and stabilized in accordance with the provisions for erosion and sedimentation control contained in § 185-15T.
- (5) Road grade. Road and driveway grades shall be no greater than 10% except for segments of less than 200 feet.
- (6) Drainage. 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) Ditching. Ditch relief (cross drainage) culverts, drainage dips and water turnouts shall be installed in a manner effective in directing drainage onto unscarified buffer strips before the flow gains sufficient volume or head to erode the road, driveway, or ditch. To accomplish this, the following shall apply:
 - (a) Ditch relief culverts, drainage dips and associated water turnouts shall be spaced along the road or driveway at intervals no greater than indicated in the following table:

Grade (%)	Spacing (in feet)
0 to 2	250
3 to 5	200 to 135
6 to 10	100 to 80
11 to 15	80 to 60
16 to 20	60 to 45

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21+	40

- (b) Drainage dips may be used in place of ditch relief culverts only where the grade is 10% or less.
- (c) On sections having slopes greater than 10%, ditch relief culverts shall be placed at approximately a thirty-degree angle downslope from a line perpendicular to the center line of the road or driveway.
- (d) Ditch relief culverts shall be sufficiently sized and properly installed in order to allow for effective functioning, and their inlet and outlet ends shall be stabilized with appropriate materials.
- (8) Maintenance and repair. Ditches, culverts, bridges, dips, water turnouts and other stormwater runoff control installations associated with roads and driveways shall be maintained on a regular basis to assure effective functioning. When maintenance and/or repair is performed, such performance must be in accordance with best management practice.
- (9) Parking. Parking shall not be permitted on or along any private roads, private ways, streets, driveways, internal drives or accessways located within the shoreland zone.

Commented [MB5]: This is intended to be as inclusive as possible, but I note that only "street" and "driveway" are defined terms under Sec. 185-17. I also note that "driveway" is defined to apply to residential uses only. I didn't limit this to parallel parking, as in Sec. 120-12(C)(1)(h), to avoid a loophole by proposing diagonal parking, for example.

I. Signs.

- (1) The use of signs in the General Development District shall be governed by § 120-706 of Chapter 120, Land Use (standards in Commercial Districts.) The use of signs in the Resource Protection and Limited Residential Districts shall be governed by § 120-709 of Chapter 120, Land Use. Signs advertising home occupations should conform to the guidelines stated in § 120-705D, Identification signs, of Chapter 120, Land Use.
- (2) Signs related to trespassing and hunting shall be permitted without restriction as to number, provided that no such sign shall exceed two square feet in area.

J. Stormwater runoff.

- (1) Construction. All construction and development shall minimize stormwater runoff from the site in excess of the natural pre-development conditions. Where possible, existing natural runoff control features, such as berms, swales, terraces and wooded areas shall be retained in order to reduce runoff and encourage infiltration of stormwaters.
- (2) Maintenance. Stormwater runoff control systems shall be maintained as necessary to ensure proper functioning.

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

more of disturbed area.

(3) Plan required. When required by the Code Enforcement Officer or the Planning Board, stormwater management plans shall be designed utilizing the most recent approved version of the Cumberland County Soil and Water Conservation District's "Maine Erosion and Sediment Control Handbook for Best Management Practices." Completed plans, when required above, may be reviewed by the Cumberland County Soil and Water Conservation District or other qualified group. Prior to the issuance of a building permit, the Code Enforcement Officer or Planning Board may require the applicant to obtain plan approval from the Cumberland County Soil and Water Conservation District.

(4) General. All activities within the shoreland zone are expected to employ appropriate stormwater management practices regardless of the zone or district they are located in.

K. Septic waste disposal. All subsurface sewage disposal systems shall be installed in conformance with the State of Maine Subsurface Waste Water Disposal Rules, and the following:

- (1) Clearing or removal of woody vegetation necessary to site a new system and any associated fill extensions shall not extend closer than 75 feet, horizontal distance, to the normal high-water line of a water body or the upland edge of a wetland; and
- (2) A holding tank is not allowed for a first-time residential use in the shoreland zone.

NOTE: The Maine Subsurface Waste Water Disposal Rules require new systems, excluding fill extensions, to be constructed no less than 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.

L. Essential services.

- (1) Where feasible, the installation of essential services shall be limited to existing public ways and existing service corridors.
- (2) The installation of essential services, other than roadside distribution lines, is not allowed in a Resource Protection or Stream Protection District, except to provide services to a permitted use within said district, or except where the applicant demonstrates that no reasonable alternative exists. Where allowed, such structures and facilities shall be located so as to minimize any adverse impacts on surrounding uses and resources, including visual impacts.
- (3) Damaged or destroyed public utility transmission and distribution lines, towers and related equipment may be replaced or reconstructed without a permit.

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

- (1) 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 § 185-15M(3) below.
- (2) Setbacks. No part of any extraction operation, including drainage and runoff control features, shall be permitted within 100 feet horizontal distance of the normal high-water line of a great pond classified GPA, or a river flowing to a great pond classified GPA, and within 100 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 100 feet horizontal distance of any property line without written permission of the owner of such adjacent property.
- (3) Closure. Within 12 months following the completion of extraction operations at any extraction site, which operations shall be deemed complete when less than 100 cubic yards of materials are removed in any consecutive twelve-month period, ground levels and grades shall be established in accordance with the following:
 - (a) All debris, stumps, and similar material shall be removed for disposal in an approved location, or shall be buried on-site. Only materials generated on-site may be buried or covered on-site. The State of Maine Solid Waste Laws, 38 M.R.S.A. § 1310 et seq., and the solid waste management rules of the Department of Environmental Protection, 06-096 CMR Chs. 400 through 419, may contain other applicable provisions regarding disposal of such materials.
 - (b) The final graded slope shall be two to one slope or flatter.
 - (c) Topsoil or loam shall be retained to cover all disturbed land areas which shall be reseeded and stabilized with vegetation native to the area. Additional topsoil or loam shall be obtained from off-site sources if necessary to complete the stabilization project.
- (4) Public hearing. In keeping with the purposes of this chapter, the Planning Board shall not permit the removal of stone, sand and gravel from banks or quarries and the processing of said materials until a public hearing is held thereon and a finding that such removal and processing will be performed subject to the conditions and safeguards set forth in Article 6, Mineral Extraction, of Chapter 120, Land Use.

N. Agriculture.

- (1) Manure spreading. All spreading of manure shall be accomplished in conformance with the latest revision of 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. §§ 4201 through 4209).
- (2) Manure storing. Manure shall not be stored or stockpiled within 100 feet, horizontal distance, of a great pond classified GPA or a river flowing to a great pond classified GPA, or within 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 stormwater.

- (3) Areas greater than 40,000 square feet. Agricultural activities involving tillage of soil greater than 40,000 square feet in surface area, or the spreading, disposal or storage of manure within the shoreland zone shall require a soil and water conservation plan number to be filed with the Planning Board. Nonconformance with the provisions of said plan shall be considered to be a violation of this chapter.
 - (4) Setback. There shall be no new tilling of soil within 100 feet, horizontal distance, of the normal high-water line of a great pond classified GPA; within 75 feet, horizontal distance, from other water bodies: nor within 25 feet, horizontal distance, of tributary streams, and wetlands. Operations in existence on the effective date of this chapter and not in conformance with this provision may be maintained.
 - (5) New grazing areas. Newly established livestock grazing areas shall not be permitted within 100 feet, horizontal distance, of the normal high-water line of a great pond classified GPA; within 75 feet, horizontal distance, of other water bodies; nor within 25 feet, horizontal distance, of tributary streams and freshwater wetlands. Livestock grazing associated with ongoing farm activities and which is not in conformance with the above setback provisions may continue, provided that such grazing is conducted in accordance with a conservation plan that has been filed with the Planning Board.
- O. (Repealed). Note relating to timber harvesting standards: In accordance with 38 M.R.S.A. § 438-B, the State of Maine Department of Agriculture, Conservation and Forestry's Bureau of Forestry shall administer timber harvesting standards in the shoreland zone.
- P. Clearing or removal of vegetation for activities other than timber harvesting.
- (1) RP Zone.
 - (a) Within a shoreland area zoned for Resource Protection abutting a great pond, there shall be no cutting of vegetation within the strip of land extending 75 feet, horizontal distance, inland from the normal high-water line, except to remove safety hazard trees as described in Subsection Q.
 - (b) Elsewhere, in any Resource Protection District the clearing of vegetation shall be limited to that which is necessary for uses expressly authorized in that district.
 - (2) Buffer strip. Except in areas as described in Subsection P(1), above, within a strip of land extending 100 feet, horizontal distance, inland from the normal high-water line of a great pond classified GPA or a river flowing to a great pond classified GPA, or within a strip extending 75 feet, horizontal distance, from any other water body, tributary stream, or the upland edge of a wetland, a buffer strip of vegetation shall be preserved as follows:
 - (a) There shall be no cleared opening greater than 250 square feet in the forest canopy (or other existing woody vegetation if a forested canopy is not present) as measured from the outer limits of the tree or shrub crown. However, a single footpath not to exceed six feet in width as measured between tree trunks and/or shrub stems is allowed for accessing the shoreline, provided that a cleared line of sight to the water through the buffer strip is not created.

- (b) Selective cutting of trees within the buffer strip is allowed, provided that a well-distributed stand of trees and other natural vegetation is maintained. For the purposes of this subsection, 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 twenty-five-foot by fifty-foot rectangular (1,250 square feet) area as determined by the following rating system:

Diameter of Tree at 4 1/2 feet Above Ground Level (inches)	Points
2 to less than 4	1
4 to less than 8	2
8 to less than 12	4
12 or greater	8

- [1] 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 twenty-five-foot by fifty-foot rectangular area.

NOTE: As an example, adjacent to a great pond, if a 25-foot plot contains four trees between two inches and four inches in diameter, two trees between four inches and eight inches in diameter, three trees between eight inches and 12 inches in diameter, and two trees over 12 inches in diameter, the rating score is:

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

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.

- [2] The following shall govern in applying this point system:
- [a] The twenty-five-foot by fifty-foot rectangular plots must be established where the landowner or lessee proposes clearing within the required buffer;
 - [b] Each successive plot must be adjacent to but not overlap a previous plot;
 - [c] Any plot not containing the required points must have no vegetation removed except as otherwise allowed by this chapter;
 - [d] Any plot containing the required points may have vegetation removed down to the minimum points required or as otherwise allowed by this chapter;
 - [e] Where conditions permit, no more than 50% of the points on any twenty-

five-foot by fifty-foot rectangular area may consist of trees greater than 12 inches in diameter.

- [3] For the purposes of § 185-15P(2)(b), "other natural vegetation" is defined as retaining existing vegetation under three feet in height and other ground cover and retaining at least five saplings less than two inches in diameter at 4 1/2 feet above ground level for each twenty-five-foot by fifty-foot rectangle area. If five saplings do not exist, no woody stems less than two inches in diameter can be removed until five saplings have been recruited into the plot.
- [4] Notwithstanding the above provisions, no more than 40% of the total volume of trees four inches or more in diameter, measured at 4 1/2 feet above ground level may be removed in any ten-year period.
- (c) In order to protect water quality and wildlife habitat, existing vegetation under three 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 § 185-15P(2) and (2)(a) above.
- (d) Pruning of trees branches, on the bottom 1/3 of the tree is allowed.
- (e) In order to maintain a buffer strip of vegetation, when the removal of storm-damaged, dead or hazard trees results in the creation of cleared openings, these openings shall be replanted with native tree species in accordance with Subsection S, below, unless existing new tree growth is present.
- (f) In order to maintain the vegetation in the shoreline buffer, clearing or removal of vegetation for allowed activities, including associated construction and related equipment operation, within or outside the shoreline buffer, must comply with the requirements of § 185-15P(2). Section 185-15P(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) Distances greater than 100 feet.
- (a) At distances greater than 100 feet, horizontal distance, from a great pond classified GPA or a river flowing to a great pond classified GPA, and 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-year period, selective cutting of not more than 40% of the volume of trees four inches or more in diameter, measured 4 1/2 feet above ground level. Tree removal in conjunction with the development of permitted uses shall be included in the 40% calculation. For the purposes of these standards, volume may be considered to be equivalent to basal area.
- (b) 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 10,000 square feet, whichever is greater, including land previously cleared. This provision applies to the portion of a lot within the shoreland zone, including the buffer area,

but shall not apply to the General Development District.

- (4) Existing openings. Legally existing nonconforming cleared openings may be maintained, but shall not be enlarged, except as allowed by this chapter.
- (5) Reverted fields. Fields and other cleared openings which have reverted to primary shrubs, trees, or other woody vegetation shall be regulated under the provisions of § 185-15P.

Q. Hazard trees, storm-damaged trees, and dead tree removal.

- (1) Hazard trees in the shoreland zone may be removed without a permit after consultation with the Code Enforcement Officer if the following requirements are met:
 - (a) Within the shoreline buffer, if the removal of a hazard tree results in a cleared opening in the tree canopy greater than 250 square feet, replacement with native tree species is required, unless there is new tree growth already present. New tree growth must be as near as practicable to where the hazard tree was removed and be at least two inches in diameter, measured at 4.5 feet above the ground level. If new growth is not present, then replacement trees shall consist of native species and be at least four feet in height, and be no less than two inches in diameter. Stumps may not be removed.
 - (b) Outside of the shoreline buffer, when the removal of hazard trees exceeds 40% of the volume of trees four inches or more in diameter, measured at 4.5 feet above ground level in any ten-year period, and/or results in cleared openings exceeding 25% of the lot area within the shoreland zone, or 10,000 square feet, whichever is greater, replacement with native tree species is required, unless there is new tree growth already present. New tree growth must be as near as practicable to where the hazard tree was removed and be at least two inches in diameter, measured at 4.5 feet above the ground level. If new growth is not present, then replacement trees shall consist of native species and be at least two inches in diameter, measured at 4.5 feet above the ground level.
 - (c) The removal of standing dead trees, resulting from natural causes, is permissible without the need for replanting or a permit, as long as the removal does not result in the creation of new lawn areas, or other permanently cleared areas, and stumps are not removed. For the purposes of this provision, "dead trees" are those trees that contain no foliage during the growing season.
 - (d) The Code Enforcement Officer may require the property owner to submit an evaluation from a licensed forester or arborist before any hazard tree can be removed within the shoreland zone.
 - (e) The Code Enforcement Officer may require more than a one-for-one replacement for hazard trees removed that exceed eight inches in diameter measured at 4.5 feet above the ground level.
- (2) Storm-damaged trees in the shoreland zone may be removed without a permit after consultation with the Code Enforcement Officer if the following requirements are met:

- (a) Within the shoreline buffer, when the removal of storm-damaged trees results in a cleared opening in the tree canopy greater than 250 square feet, replanting is not required, but the area shall be required to naturally revegetate, and the following requirements must be met:
- [1] The area from which a storm-damaged tree is removed does not result in new lawn areas, or other permanently cleared areas;
 - [2] Stumps from the storm-damaged trees may not be removed;
 - [3] Limbs damaged from a storm event may be pruned even if they extend beyond the bottom 1/3 of the tree; and
 - [4] If, after one growing season, no natural regeneration or regrowth is present, replanting of native tree seedlings or saplings is required at a density of one seedling per every 80 square feet of lost canopy.
- (b) Outside of the shoreline buffer, if the removal of storm damaged trees exceeds 40% of the volume of trees four inches or more in diameter, measured at 4.5 feet above the ground level in any ten-year period, or results, in the aggregate, in cleared openings exceeding 25% of the lot area within the shoreland zone or 10,000 square feet, whichever is greater, and no natural regeneration occurs within one growing season, then native tree seedlings or saplings shall be replanted on a one-for-one basis.

R. Exemptions to clearing and vegetation removal requirements. The following activities are exempt from the clearing and vegetation removal standards set forth in § 185-15P, provided that all other applicable requirements of this chapter are complied with, and the removal of vegetation is limited to that which is necessary:

- (1) The removal of vegetation that occurs at least once every two years for the maintenance of legally existing areas that do not comply with the vegetation standards in this chapter, such as but not limited to cleared openings in the canopy or fields. Such areas shall not be enlarged, except as allowed by this section. If any of these areas, due to lack of removal of vegetation every two years, reverts back to primarily woody vegetation, the requirements of § 185-15P apply;
- (2) The removal of vegetation from the location of allowed structures or allowed uses, when the shoreline setback requirements of § 185-15B are not applicable;
- (3) The removal of vegetation from the location of public swimming areas associated with an allowed public recreational facility;
- (4) The removal of vegetation associated with allowed agricultural uses, provided best management practices are utilized, and provided all requirements of § 185-15N are complied with;
- (5) The removal of vegetation associated with brownfields or voluntary response action program (VRAP) projects, provided that the removal of vegetation is necessary for remediation activities to clean up contamination on a site in a General Development

District that is part of a state or federal brownfields program or a voluntary response action program pursuant 38 M.R.S.A § 343-E, and that is located along a river that does not flow to a great pond classified as GPA pursuant to 38 M.R.S.A § 465-A;

- (6) The removal of nonnative invasive vegetation species, provided the following minimum requirements are met:
 - (a) If removal of vegetation occurs via wheeled or tracked motorized equipment, the wheeled or tracked motorized equipment is operated and stored at least 25 feet, horizontal distance, from the shoreline, except that wheeled or tracked equipment may be operated or stored on existing structural surfaces, such as pavement or gravel;
 - (b) Removal of vegetation within 25 feet, horizontal distance, from the shoreline occurs via hand tools; and
 - (c) If applicable clearing and vegetation removal standards are exceeded due to the removal of nonnative invasive species vegetation, the area shall be revegetated with native species to achieve compliance.

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

- (7) The removal of vegetation associated with emergency response activities conducted by the Maine Department of Environmental Protection, the U.S. Environmental Protection Agency, the U.S. Coast Guard, and their agents.
- S. Revegetation requirements. When revegetation is required in response to violations of the vegetation standards set forth in § 185-15P, to address the removal of nonnative invasive species of vegetation, or as a mechanism to allow for development that may otherwise not be permissible due to the vegetation standards, including removal of vegetation in conjunction with a shoreline stabilization project, the revegetation must comply with the following requirements:
- (1) The property owner must submit a revegetation plan, prepared with and signed by a qualified professional, that describes revegetation activities and maintenance. The plan must include a scaled site plan, depicting where vegetation was, or is to be removed; where existing vegetation is to remain; and where vegetation is to be planted, including a list of all vegetation to be planted.
 - (2) Revegetation must occur along the same segment of shoreline and in the same area where vegetation was removed and at a density comparable to the preexisting vegetation, except where a shoreline stabilization activity does not allow revegetation to occur in the same area and at a density comparable to the preexisting vegetation, in which case revegetation must occur along the same segment of shoreline and as close as possible to the area where vegetation was removed.
 - (3) If part of a permitted activity, revegetation shall occur before the expiration of the

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

- (4) Revegetation activities must meet the following requirements for trees and saplings:
 - (a) All trees and saplings removed must be replaced with native noninvasive species;
 - (b) Replacement vegetation must at a minimum consist of saplings;
 - (c) If more than three trees or saplings are planted, then at least three different species shall be used;
 - (d) No one species shall make up 50% or more of the number of trees and saplings planted;
 - (e) If revegetation is required for a shoreline stabilization project, and it is not possible to plant trees and saplings in the same area where trees or saplings were removed, then trees or sapling must be planted in a location that effectively reestablishes the screening between the shoreline and structures; and
 - (f) A survival rate of at least 80% of planted trees or saplings is required for a minimum five-year period.
- (5) Revegetation activities must meet the following requirements for woody vegetation and other vegetation under three feet in height:
 - (a) All woody vegetation and vegetation under three feet in height must be replaced with native noninvasive species of woody vegetation and vegetation under three feet in height as applicable;
 - (b) Woody vegetation and vegetation under three feet in height shall be planted in quantities and variety sufficient to prevent erosion and provide for effective infiltration of stormwater;
 - (c) If more than three woody vegetation plants are to be planted, then at least three different species shall be planted;
 - (d) No one species shall make up 50% or more of the number of planted woody vegetation plants; and
 - (e) Survival of planted woody vegetation and vegetation under three feet in height must be sufficient to remain in compliance with the standards contained within this chapter for minimum of five years.
- (6) Revegetation activities must meet the following requirements for ground vegetation and ground cover:
 - (a) All ground vegetation and ground cover removed must be replaced with native herbaceous vegetation, in quantities and variety sufficient to prevent erosion and provide for effective infiltration of stormwater;

- (b) Where necessary due to a lack of sufficient ground cover, an area must be supplemented with a minimum four-inch depth of leaf mulch and/or bark mulch to prevent erosion and provide for effective infiltration of stormwater; and
- (c) Survival and functionality of ground vegetation and ground cover must be sufficient to remain in compliance with the standards contained within this chapter for minimum of five years.

T. Erosion and sedimentation control.

- (1) Plan required. All activities which involve filling, grading, excavation or other similar activities which result in unstabilized soil conditions and which require a permit shall require a written soil erosion and sedimentation control plan.
 - (a) 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.
 - (b) Activities which require site plans or approval from the Planning Board are to be prepared in accordance with prevailing best management practices as referenced in the current issue of Maine Erosion and Sediment Control Handbook for Construction: Best Management Practices. The Code Enforcement Officer may also require the applicant to obtain approval from the Soil and Water Conservation District prior to a permit being issued.
- (2) Development. 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) Duration of plan. 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) Exposed ground area. Any exposed ground area shall be temporarily or permanently stabilized within one week from the time the work was started, by use of riprap, sod, seed, and mulch, or other effective measures. In all cases, permanent stabilization shall occur within nine months of the initial date of exposure. In addition:
 - (a) Where mulch is used, it shall be applied at a rate of at least one bale per 500 square feet and shall be maintained until a catch of vegetation is established.
 - (b) Anchoring the mulch with netting, peg and twine or other suitable method may be required to maintain the mulch cover.

- (c) Additional measures shall be taken where necessary in order to avoid siltation into the water. Such measures may include the use of staked hay bales and/or silt fences.
- (5) Drainageways. Natural and man-made drainageways and drainage outlets shall be protected from erosion from water flowing through them. Drainageways shall be designed and constructed in order to carry water from a twenty-five-year storm or greater, and shall be stabilized with vegetation or lined with riprap.
- (6) Soil and erosion control methods. All best management practices must be installed at the minimum principal and accessory setback as specified in § 185-15B, or to the greatest practical extent as determined by the Code Enforcement Officer.
- U. 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 licensed professional engineers, Maine state-certified geologists and other persons who have training and experience in the recognition and evaluation of soil properties. The report shall be based upon the analyses of the characteristics of the soil and surrounding land and water areas, maximum groundwater 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. Soil conditions that are inappropriate or uncorrectable in an environmentally acceptable manner shall be sufficient grounds for denial, even though the proposed use is otherwise permitted in that zone.
- V. 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.
- W. 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 shall be submitted by the applicant to the Maine Historic Preservation Commission for review and comment at least 20 days prior to action being taken by the permitting authority. The CEO shall consider comments received from the Commission prior to rendering a decision on the application.
- X. Home occupations.
 - (1) Where allowed. The home occupation shall be carried on wholly within the dwelling or accessory structure.
 - (2) Number of employees. The home occupation shall be carried on primarily by a member or members of the family residing in the dwelling unit. Not more than two persons who are not family members residing in the dwelling unit shall be employed.

- (3) Signs. There shall be no exterior display, no exterior sign other than those permitted in § 120-705, no exterior storage of materials and no other exterior indication of the home occupation or variation from the residential character of the principal building.
 - (4) Objectionable conditions. Objectionable conditions, such as noise, vibration, smoke, dust, electrical disturbance, odors, heat, glare or activity at unreasonable hours, shall not be permitted.
 - (5) Parking. In addition to the off-street parking provided to meet the normal requirements of the dwelling, adequate off-street parking shall be provided for the vehicles of each employee and the vehicles of the maximum number of users the home occupation may attract during peak operating hours.
 - (6) Allowable area. The home occupation shall not utilize more than 20% of the total floor area of the dwelling unit. The basement floor area shall be excluded in the calculation of the 20%.
- Y. Animals in a shoreland zone. Nothing shall prohibit the keeping of household pets such as cats and dogs. The keeping of horses, ponies and other large pets or the raising of more than two of each species of such animals six months old requires compliance as follows:
- (1) Within 100 feet of the normal high-water line of a water body as depicted on the Official Town of Windham Land Use Map, there shall be no feed lots, fenced runs, pens and similar intensively used facility for animal raising and care. Additionally, no footpath larger than six feet in width may be used for watering, and is only to be used for passage to and from the water and not as pasture or feed lot. Any in existence prior to 2006 shall be grandfathered. **[Amended 10-12-2021]**

§ 185-16. Administration.

A. Administering bodies and agents.

- (1) Code Enforcement Officer(s). Code Enforcement Officer(s) shall be appointed.
- (2) Board of Appeals. A Board of Appeals shall be created in accordance with the provisions of 30-A M.R.S.A. § 2691.
- (3) Planning Board. A Planning Board shall be created in accordance with the provisions of state law.

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

- (1) A permit is not required for the replacement of an existing road culvert as long as:
 - (a) The replacement culvert is not more than 25% longer than the culvert being replaced;
 - (b) The replacement culvert is not longer than 75 feet; and
 - (c) Adequate erosion control measures are taken to prevent sedimentation of the water, and the crossing does not block fish passage in the watercourse.
- (2) A permit is not required for an archaeological excavation as long as the excavation is conducted by an archaeologist listed on the State Historic Preservation Officer's Level 1 or Level 2 approved lists, and unreasonable erosion and sedimentation is prevented by means of adequate and timely temporary and permanent stabilization measures.
- (3) Any permit required by this chapter shall be in addition to any other permit required by other law or ordinance.

C. Permit application.

(1) Requirements.

- (a) Every applicant for a permit shall submit a written application, including a scaled site plan, on a form provided by the municipality, to the appropriate official as indicated in § 185-14. The Code Enforcement Officer or the Planning Board may require the submission of any information necessary to determine conformance with the provisions of this chapter.
- (b) The Code Enforcement Officer shall approve or deny those applications on which he is empowered to act as shown in § 185-14. Approval shall be granted only if the proposed use is in conformance with the provisions of this chapter.
- (c) For any of the uses listed in § 185-14 that require site plan review by the Planning Board under Article 8 of Chapter 120, applications for such uses shall be classified as major developments under § 120-803(A)(1), and the applicant must meet all applicable requirements set forth in § 120-807 (Review procedures for

major developments) and § 120-812 (Performance standards and approval criteria).

- (2) Owner's signature. All applications shall be signed by an owner or individual who can show evidence of right, title or interest in the property or by an agent, representative, tenant, or contractor of the owner with authorization from the owner to apply for a permit hereunder, certifying that the information in the application is complete and correct.
- (3) Sewage disposal. If the property is not served by a public sewer, a valid plumbing permit or a completed application for a plumbing permit, including the site evaluation approved by the local Plumbing Inspector, shall be submitted whenever the nature of the proposed structure or use would require the installation of a subsurface sewage disposal system.
- (4) Contractor certification. When an excavation contractor will perform an activity that requires or results in more than one cubic yard of soil disturbance, the person responsible for management of erosion and sedimentation control practices at the site must be certified in erosion control practices by the Maine Department of Environmental Protection. This person must be present at the site each day earthmoving activity occurs for a duration that is sufficient to ensure that proper erosion and sedimentation control practices are followed. This is required until erosion and sedimentation control measures have been installed which will either stay in place permanently or stay in place until the area is sufficiently covered with vegetation necessary to prevent soil erosion. The name and certification number of the person who will oversee the activity causing or resulting in soil disturbance shall be included on the permit application. This requirement does not apply to a person or firm engaged in agriculture or timber harvesting if best management practices for erosion and sedimentation control are used, and municipal, state and federal employees engaged in projects associated with that employment.
- (5) Photographic record. All applications shall include preconstruction photographs clearly showing shoreline vegetation on the property and the site(s) of any proposed development. If the Code Enforcement Officer or the Planning Board, as appropriate, approves an application, they shall include a condition of approval requiring that, no later than 20 days after completion of the development, the applicant provide postconstruction photographs of the same shoreline vegetation and developed site(s). **[Added 3-26-2024 by Order No. 24-044]**

D. Procedure for administering permits.

- (1) Within 35 days of the date of receiving a written application, the Planning Board or Code Enforcement Officer, as indicated in § 185-14, shall notify the applicant in writing either that the application is a complete application, or, if the application is incomplete, that specified additional material is needed to make the application complete. The Planning Board or the Code Enforcement Officer, as appropriate, shall approve, approve with conditions, or deny all permit applications, including all requested information. However, if the Planning Board has a waiting list of applications, a decision on the application shall occur within 60 days after the first available date on the Planning Board's agenda following receipt of the completed application, or within 35 days of the public hearing, if one is held. Permits shall be approved if the proposed use or structure is found to be in conformance with the purposes and provisions of this chapter. Notwithstanding the foregoing language, for any applications for uses that require site

plan review, the Planning Board must follow the review procedures for major developments under § 120-807.

- (2) The applicant shall have the burden of proving that the proposed land use activity is in conformity with the purposes and provisions of this chapter and any other chapter, if applicable.
 - (3) After the submission of a complete application to the Planning Board, the Board shall approve an application or approve it with conditions if it meets all applicable requirements contained in § 120-812, and makes a positive finding based on the information presented that the proposed use:
 - (a) Will maintain safe and healthful conditions;
 - (b) Will not result in water pollution, erosion, or sedimentation to surface waters;
 - (c) Will adequately provide for the disposal of all wastewater;
 - (d) Will not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat;
 - (e) Will conserve shore cover and visual, as well as actual, points of access to inland waters;
 - (f) Will protect archaeological and historic resources as designated in the Comprehensive Plan;
 - (g) Will avoid problems associated with floodplain development and use; and
 - (h) Is in conformance with the provisions of § 185-15, Land use standards.
 - (4) If a permit is either denied or approved with conditions, the reasons as well as conditions shall be stated in writing. No approval shall be granted for an application involving a structure if the structure would be located in an unapproved subdivision or would violate any other local ordinance, or regulation or statute administered by the municipality.
 - (5) An aggrieved party may appeal from a decision of the Planning Board to the Superior Court within 30 days after the applicant is notified of the Planning Board's decision.
- E. Conditions. Permits granted under this section may be made subject to reasonable conditions to ensure conformity with the purposes and provisions of this chapter.
- F. Expiration of permit. Permits shall expire one year from the date of issuance if a substantial start is not made in construction or in the use of the property during that period. If a substantial start is made within one year of the issuance of the permit, the applicant shall have one additional year to complete the project, at which time the permit shall expire. The foregoing language does not apply to uses requiring site plan approval, which approvals shall expire in accordance with § 120-815(A).
- G. Special exceptions. In addition to the criteria specified in § 185-16D 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 of the property, other than a location within the Resource Protection District, where the structure can be built.

- (2) The lot on which the structure is proposed is undeveloped and was established and recorded in the Registry of Deeds of the county in which the lot is located before the adoption of the Resource Protection District.
 - (3) All proposed buildings, sewage disposal systems and other improvements are:
 - (a) Located on natural ground slopes of less than 20%; and
 - (b) Located outside the floodway of the 100-year floodplain along rivers and artificially formed great ponds along rivers and outside the velocity zone in areas subject to tides, based on detailed flood insurance studies and as delineated on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate Maps; all buildings, including basements, are elevated at least one foot above the 100-year flood-plain elevation; and the development is otherwise in compliance with any applicable municipal floodplain ordinance. If the floodway is not shown on the Federal Emergency Management Agency Maps, it is deemed to be one-half the width of the 100-year floodplain.
 - (4) The total footprint, including cantilevered or similar overhanging extensions, of all principal and accessory structures is limited to a maximum of 1,500 square feet. This limitation shall not be altered by variance.
 - (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 no less than 75 feet, horizontal distance. In determining the greatest practical extent, the Planning Board shall consider the depth of the lot, the slope of the land, the potential for soil erosion, the type and amount of vegetation to be removed, the proposed building site's elevation in regard to the floodplain, and its proximity to moderate-value and high-value wetlands.
- H. Installation of public utility service. No public utility, water district, sanitary district or any utility company of any kind may install services to any new structure located in the shoreland zone unless written authorization attesting to the validity and currency of all local permits required under this chapter or any previous ordinance has been issued by the appropriate municipal officials. Following installation of service, the company or district shall forward the written authorization to the municipal officials, indicating that installation has been completed.
- I. Appeals.¹
- (1) Jurisdiction and authority. In addition to the power granted by 30-A M.R.S.A. § 2691, the Board of Appeals shall have the following jurisdiction and authority:
 - (a) Administrative appeals. Subject to the provisions of this chapter, to hear and decide administrative appeals on a de novo basis where it is alleged by an aggrieved party that there is an error in any order, requirement, decision or determination made by, or failure to act by, the Code Enforcement Officer in his or her review of and action on a permit application under this chapter. Any order, requirement, decision or determination made, or failure to act, in the enforcement of this chapter is not

1. Editor's Note: Original Sec. 199-16I1, Appointment, of the 1991 Code, which immediately followed this subsection, was repealed at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

appealable to the Board of Appeals.

- (b) Variance appeals. Subject to the provisions of this chapter, to hear and grant or deny application for variances from the terms of this chapter.
 - (c) Home occupations. Subject to the provisions of this chapter, to determine if various types of commercial activities would fall within the category of a home occupation.
- (2) Variance appeals.
- (a) A variance may be granted for lot area, lot coverage by structure, setbacks and off-street parking.
 - (b) A variance shall not be granted to permit a use or structure otherwise prohibited by this chapter.
 - (c) The Board shall not grant a variance unless it finds that:
 - [1] The proposed structure or use would meet the provisions of § 185-15 except for the specific provision which has created the nonconformity and from which relief is sought; and
 - [2] The strict application of the terms of this chapter would result in undue hardship. "Undue hardship" is defined to mean:
 - [a] That the land in question cannot yield a reasonable return unless the variance is granted;
 - [b] That the need for a variance is because of unique circumstances of the property (such as location of existing structures, topographical features, etc.) and not to the general conditions of the neighborhood;
 - [c] That the granting of a variance will not change the essential character of the locality; and
 - [d] That the hardship is not the result of action taken by the applicant or a prior owner.
 - (d) Permitted variances run with the land and thus pass from one owner to the next.
 - (e) Notwithstanding § 185-16I(2)(b) above, the Board of Appeals, or the Code Enforcement Officer if authorized in accordance with 30-A M.R.S.A. § 4353-A, may grant a variance to an owner of a residential dwelling for the purpose of making that dwelling accessible to a person with a disability who resides in or regularly uses the dwelling. The Board shall restrict any variance granted under this subsection solely to the installation of equipment or the construction of structures necessary for access to or egress from the dwelling by the person with the disability. The Board may impose conditions on the variance, including limiting the variance to the duration of the disability or to the time that the person with the disability lives in the dwelling. The term "structures necessary for access to or egress from the dwelling" shall include railing, wall or roof systems necessary

for the safety or effectiveness of the structure. Any permit issued pursuant to this subsection is subject to § 185-16I(3)(g) and J(5)(b) below.

- (f) The Board of Appeals shall limit any variances granted as strictly as possible in order to ensure conformance with the purposes and provisions of this chapter to the greatest extent possible, and in doing so may impose such conditions to a variance as it deems necessary. The party receiving the variance shall comply with any conditions imposed.
 - (g) A copy of each variance request, including the application and all supporting information supplied by the applicant, shall be forwarded by the municipal officials to the Commissioner of the Department of Environmental Protection at least 20 days prior to action by the Board of Appeals. Any comments received from the Commissioner prior to the action by the Board of Appeals shall be made part of the record and shall be taken into consideration by the Board of Appeals.
 - (h) Expiration date. The right of any variance from the terms of this chapter granted by the Board of Appeals shall expire if the work or change permitted under the variance is not begun within six months or substantially completed within one year of the date of the vote by the Board. **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]**
- (3) Administrative appeals. When the Board of Appeals reviews a decision of the Code Enforcement Officer, the Board of Appeals shall hold a de novo hearing. At this time, the Board may receive and consider new evidence and testimony, be it oral or written. When acting in a de novo capacity, the Board of Appeals shall hear and decide the matter afresh, undertaking its own independent analysis of evidence and the law, and reaching its own decision.
- (4) In hearing appeals under this section, the Board of Appeals shall require that attention be given to the following wherever applicable:
- (a) Location, character and natural features.
 - (b) Fencing and screening.
 - (c) Landscaping, topography and natural drainage.
 - (d) Vehicular access, circulation and parking.
 - (e) Pedestrian circulation.
 - (f) Signs and lighting.
 - (g) All factors which affect health, welfare and safety.
- (5) In granting appeals under this section, the Board of Appeals may impose such conditions as it deems necessary in furtherance of the intent and purpose of this chapter.

J. Appeal procedure.

- (1) The Board of Appeals is established pursuant to Chapter 120, Land Use, and shall

operate according to the rules and procedures set forth therein unless otherwise modified by this chapter.² [**Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)**]

- (2) Appeals. Any person and any municipal official or board of officials aggrieved by a decision of the Code Enforcement Officer or who wishes to request a variance from this chapter or who wishes a use permit may file an application with the Board of Appeals.
 - (a) An appeal of a decision made by the Code Enforcement Officer, except for enforcement-related matters as described in § 185-16I(2)(a) above, must be filed within 30 days of the date of the official written decision.
 - (b) Applications for appeals shall be made by filing with the Board of Appeals a written notice of appeal, which includes:
 - [1] A completed application form.
 - [2] A concise written statement indicating what relief is requested and why the appeal or variance should be granted.
 - [3] A sketch drawn to scale showing lot lines, location of existing buildings and structures and other physical features of the lot pertinent to the relief sought.
 - [4] A fee as approved by the Windham Town Council, which must be submitted to the Code Enforcement Officer at the time the appeal request is submitted.
 - (c) All application materials must be submitted for the Board's review at least 14 days prior to the Board meeting at which the applicant wishes to be heard.
 - (d) All meetings of the Board are public hearings. At the public hearing, the applicant or his representative must appear before the Board to present the proposal and to answer questions. Other interested parties, such as adjacent property owners, will also be permitted to speak for or against the appeal.
 - (e) Written notice of the decision of the Board shall be sent to the appellant within seven days of the date of the decision.
 - (f) Any aggrieved party may appeal from the decision of the Board to the Superior Court within 45 days of the decision date.
 - (g) Upon receiving an application for an administrative appeal or a variance, the Code Enforcement Officer shall transmit to the Board of Appeals all of the papers constituting the record of the decision appealed from.
 - (h) The Board of Appeals shall hold a public hearing on administrative appeal or a request for a variance within 35 days of its receipt of a complete written application, unless this time period is extended by the parties.
 - (i) The person filing the appeal shall have the burden of proof.

2. Editor's Note: Original Secs. 199-16J2, Minutes, and 199-J3, Public Hearing, of the 1991 Code, which immediately followed this subsection, were repealed at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

- (3) Decision by Board of Appeals.
 - (a) A majority of the full voting membership of the Board shall constitute a quorum for the purpose of deciding an appeal.
 - (b) The Board shall decide all administrative appeals and variance appeals within 35 days after the close of the hearing, and shall issue a written decision on all appeals.
 - (c) The Board of Appeals shall state the reasons and basis for its decision, including a statement of the facts found and conclusions reached by the Board. The Board shall cause written notice of its decision to be mailed or hand-delivered to the applicant and to the Department of Environmental Protection within seven days of the Board's decision. Copies of written decisions of the Board of Appeals shall be given to the Code Enforcement Officer and the municipal officers.
 - (d) After a decision has been made by the Board of Appeals, a new appeal of similar import shall not be entertained by the Board until one year shall have elapsed from the date of said decision, except that the Board may entertain a new appeal if the Board believes that, owing to a mistake of law or misunderstanding of fact, an injustice was done or it finds that a change has taken place in some essential aspect of the case sufficient to warrant a reconsideration of the appeal.
- (4) Appeal to Superior Court. Except as provided by 30-A M.R.S.A. § 2691(3)(F), any aggrieved party who participated as a party during the proceedings before the Board of Appeals may take an appeal to Superior Court in accordance with state laws within 45 days of the date of any decision of the Board of Appeals.
- (5) Reconsideration.
 - (a) In accordance with 30-A M.R.S.A. § 2691, Subsection 3F, the Board of Appeals may reconsider any decision within 45 days of its prior decision. A request to the Board to reconsider a decision must be filed within 10 days of the decision that is being reconsidered. A vote to reconsider and the action taken on that reconsideration must occur and be completed within 45 days of the date of the vote on the original decision. Reconsideration of a decision shall require a positive vote of the majority of the Board members originally voting on the decision, and proper notification to the landowner, petitioner, Planning Board, Code Enforcement Officer, and other parties of interest, including abutters and those who testified at the original hearing(s). The Board may conduct additional hearings and receive additional evidence and testimony.
 - (b) Appeal of a reconsidered decision to Superior Court must be made within 15 days after the decision on reconsideration.

K. Enforcement.

- (1) Nuisances. Any violation of this chapter shall be deemed to be a nuisance.
- (2) Code Enforcement Officer.
 - (a) It shall be the duty of the Code Enforcement Officer to enforce the provisions of

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

- (b) The Code Enforcement Officer shall conduct on-site inspections to ensure compliance with all applicable laws and conditions attached to permit approvals. The Code Enforcement Officer shall also investigate all complaints of alleged violations of this chapter.
 - (c) The Code Enforcement Officer shall keep a complete record of all essential transactions of the office, including applications submitted, permits granted or denied, variances granted or denied, revocation actions, revocation of permits, appeals, court actions, violations investigated, violations found, and fees collected.
- (3) Legal actions. When the above action does not result in the correction or abatement of the violation or nuisance condition, the municipal officers, upon notice from the Code Enforcement Officer, are hereby directed to institute any and all actions and proceedings, either legal or equitable, including seeking injunctions of violations and the imposition of fines, that may be appropriate or necessary to enforce the provisions of this chapter in the name of the municipality. The municipal officers, or their authorized agent, are hereby authorized to enter into administrative consent agreements for the purpose of eliminating violations of this chapter and recovering fines without court action. Such agreements shall not allow an illegal structure or use to continue unless there is clear and convincing evidence that the illegal structure or use was constructed or conducted as a direct result of erroneous advice given by an authorized municipal official and there is no evidence that the owner acted in bad faith, or unless the removal of the structure or use will result in a threat or hazard to public health and safety or will result in substantial environmental damage.
- (4) Fines. Any person, including but not limited to a landowner, a landowner's agent or a contractor, who violates any provision or requirement of this chapter shall be penalized in accordance with 30-A M.R.S.A. § 4452. **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]**

§ 185-17. Definitions. [Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]

As used in this chapter, the following terms shall have the meanings indicated:

ABUTTING LAND — A lot of land currently listed by the Windham Tax Assessor having a common border with, or being separated from such a common border by a right-of-way or easement, another lot of land currently listed by the Windham Tax Assessor. For the purposes of this chapter, the "owners of properties" shall be considered to be those parties currently listed by the Windham Tax Assessor against whom taxes are assessed.

ACCESSORY STRUCTURE OR USE — A use or structure which is incidental and subordinate to the principal use or structure. Accessory uses, when aggregated, shall not subordinate the principal use of the lot. A deck or similar extension of the principal structure or a garage attached to the principal structure by a roof or a common wall is considered part of the principal structure.

ADULT USE MARIJUANA STORE — A facility licensed under 28-B M.R.S.A. Chapter 1 to purchase adult use marijuana, immature marijuana plants and seedlings from a cultivation facility, to purchase adult use marijuana and adult use marijuana products from a manufacturing facility and to sell adult use marijuana, adult use marijuana products, immature marijuana plants and seedlings to consumers.

AGGRIEVED PARTY — An owner of land whose property is directly or indirectly affected by the granting or denial of a permit or variance under this chapter; 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, storage, keeping, harvesting, grading, packaging, processing, boarding or maintenance, for sale, lease, or personal use, of plants and animals useful to humans, including but not limited to: forages and sod crops; grains and seed crops; dairy animals and dairy products; poultry and poultry products; livestock, including beef cattle, sheep, swine, horses, ponies, mules, or goats or any mutations or hybrids thereof, including the breeding and grazing of any or all of such animals; bees and apiary products; fur animals; trees and forest berries; fruits and vegetables; nursery, floral, ornamental and greenhouse products. Agriculture does not include forestry or gardens. Please refer to § 185-15V.

ANTENNA — A device for radiating or receiving radio or television signals and which is situated on a permanent foundation.

APPLICANT — The individual who completes the initial permit forms and accepts responsibility for compliance with pertinent rules, regulations and restrictions. The applicant may or may not be the owner. If the applicant is not the owner, he/she must have written permission to act on the owner's behalf. Refer to § 185-16C ~~(2)~~.

AQUACULTURE — The growing or propagation of harvestable freshwater, estuarine, or marine plant or animal species.¹

BASAL AREA — The area of cross section of a tree stem at 4 1/2 feet above ground level and inclusive of bark.

1. Editor's Note: The original definition of "backlots" of the 1991 Code, which immediately followed this definition, was repealed at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

Commented [SP1]: Strike (2) to allow the entire section to be referenced.

BASEMENT — Any portion of a structure with a floor-to-ceiling height of six 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.

BUREAU OF FORESTRY — State of Maine Department of Agriculture, Conservation and Forestry, Bureau of Forestry.

CAMPGROUND (COMMERCIAL) — Any premises providing temporary accommodation for campers in any recreational vehicle or tent and open to the public for a fee.

CAMPGROUND (PERSONAL) — Any premises providing temporary accommodation on three or fewer campsites in a recreational vehicle or tent and used exclusively by the owner of the property and his or her family and friends. The definition of a personal campground does not include the storage of recreational vehicles.

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

COMMERCIAL USE — The use of lands, buildings, or structures, other than a home occupation (defined below in this section), 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.

CORNER LOTS — In districts where setbacks are required, such corner lots, located at the intersection of two streets, shall be deemed to have a side rather than a front setback between the principal building and the side street. Such side setback shall not be less than the front setback requirements of uses located on the side street. Such corner lots located at the intersection of two streets shall be deemed to have a side rather than a rear setback between the principal building and the abutting property on the side street. Such side setback shall not be less than the above side setback requirements of uses located on the side street. All such side setbacks described shall conform with the specific regulations related to setback space and related building height contained in the district provisions of this chapter.

DAY-CARE CENTER — A home or other suitable structure which meets the state's licensing requirements for a day-care center and which cares for 13 or more children.

DAY-CARE HOME — A home or other suitable structure which meets the state's licensing requirements for day-care homes and which cares for three to 12 children.

DEGRADATION — A significant decline in water body quality from present baseline conditions, including, but not limited to, turbidity, pH, dissolved oxygen content, temperature, concentrations of total coliform bacteria, and phosphorous.

DEVELOPMENT — Any change of land use, including but not limited to the construction of buildings, parking lots, streets or utilities or the filling or cutting of land areas or the cutting of trees, which is done as part of the site preparation. Development does not, however, include normal agricultural operations, e.g., cultivation of soil, the raising of livestock or the erection of fences, nor does it include, for the purpose of subdivision or site plan review, the erection of barns and other accessory farm buildings.

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 a 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.

DRIVEWAY — A vehicular accessway less than 500 feet in length serving any permitted residential use as allowed in Table 1.

DWELLING — A structure, or portion thereof, that is used exclusively for human habitation.

DWELLING, MULTIFAMILY — A building containing three or more dwelling units. A multifamily dwelling may be attached to a nonresidential use.

DWELLING, TWO-FAMILY — A building containing two attached dwelling units. A two-family dwelling may or may not be attached to a nonresidential use.

EASEMENT — A grant of one or more of the property rights by the property owner to and/or for use by the public, a corporation, or another person or entity.

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.

ENGINEER — A civil engineer licensed by the State of Maine.

ESSENTIAL SERVICES — The construction, alteration or maintenance of gas, electrical or communication facilities; steam, fuel, electric power or water transmissions 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 USE — The addition of one or more months to a use's operating season; or the use of more footprint of a structure or ground area devoted to a particular use.

EXPANSIONS OF A STRUCTURE — An increase in the footprint of a structure, including all extensions, such as, but not limited to, attached decks, garages, porches, and greenhouses.

FAMILY — One or more persons occupying a premises and living as a single housekeeping unit.

FISHERIES, SIGNIFICANT — Areas identified by a government agency such as the Maine Department of Inland Fisheries and Wildlife, Atlantic Salmon Authority, or Maine Department of Marine Resources as having significant values as fisheries or any areas identified in the municipality's Comprehensive Plan.

FLOOD INSURANCE RATE MAP — The official map on which the Federal Emergency Management Agency has delineated both the areas of special flood hazard and the risk premium zones applicable to the Town of Windham.

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 all horizontal areas of the floor(s) of a structure enclosed by exterior walls.

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

FORESTED WETLAND — A freshwater wetland dominated by woody vegetation that is six meters tall (approximately 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 —

- A. Freshwater swamps, marshes, bogs and similar areas which are:
 - (1) Of 10 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 water or groundwater at a frequency and for a duration sufficient to support, and which under normal circumstances do support, a prevalence of wetland vegetation typically adapted for life in saturated soils.
- B. Freshwater wetlands may contain small stream channels or inclusions of land that do not conform to the criteria of this definition.

FRONT SETBACK — The required distance on a lot between the front lot line and nearest building. For a shore lot, the front setback shall be measured from the shoreline (normal high-water mark) to the nearest building, and shall be a minimum of 100 feet. For other lots, the front setback shall be measured from the road.

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, inland waters and that cannot be located away from these waters. The uses include, but are not limited to, commercial and recreational fishing and boating facilities, finfish and shellfish processing, fish-related storage and retail and wholesale fish marketing facilities, waterfront dock and port facilities, shipyards and boatbuilding facilities, marinas, navigation aids, basins and channels, shoreline structures necessary for erosion control purposes, industrial uses dependent upon waterborne transportation or requiring large volumes of cooling or processing water that cannot reasonably be located or operated at an inland site, and uses that primarily provide general public access to inland waters. Recreational boat storage buildings are not considered to be a functionally water-dependent use.

GREAT POND — Any inland body of water which in a natural state has a surface area in excess of 10 acres, and any inland body of water artificially formed or increased which has a surface

area in excess of 30 acres except for the purposes of this chapter, where the artificially formed or increased inland body of water is completely surrounded by land held by a single owner.

GREAT POND CLASSIFIED GPA — Any great pond classified GPA, pursuant to Title 38 M.R.S.A. Article 4-A, § 465-A. This classification includes some but not all impoundments of rivers that are defined as "great ponds."

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

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

HAZARDOUS MATERIAL — Hazardous material includes the following:

- A. Highly combustible or explosive products or materials that are likely to burn with extreme rapidity or that may produce poisonous fumes or explosions.
- B. Highly corrosive, toxic, or noxious alkalis, acids, or other liquids or chemicals producing flame, fume, or poisonous, irritant, or corrosive gases.
- C. Materials producing explosive mixtures of dust or that result in the division of matter into fine particles subject to spontaneous ignition.
- D. Any substance that is a present or potential danger to people or to the natural environment when deposited on land or discharged on or into water or ambient air.

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.

HISTORIC OR ARCHAEOLOGICAL RESOURCES — Areas identified by a government agency such as the Maine Historic Preservation Commission as having significant value as a historic or archaeological resource or any areas identified in the municipality's Comprehensive Plan.

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 and which employs no more than two persons other than family members residing in the home.

- A. The following are examples of permitted uses under this definition:
 - (1) Office of teacher or musician.
 - (2) Office of real estate broker, salesman, insurance agent.

- (3) Dressmaking.
 - (4) Beauty shop.
 - (5) Day-care home which cares for 12 or fewer children.
 - (6) Woodworking.
 - (7) Arts and crafts studio or shop.
 - (8) Small engine repair, excluding motorized vehicles such as mopeds, motorcycles, ATVs, snowmobiles.
 - (9) Saw sharpening.
 - (10) Medical marijuana register caregiver (home occupation) that complies with the standards in § 120-537 of Chapter 120, Land Use.
- B. The following uses are specifically prohibited as a home occupation:
- (1) Auto body repair.
 - (2) Auto repair.
 - (3) Welding or any other similar activity that is noise-oriented or is objectionable.
 - (4) Slaughterhouse or smokehouse.
- C. The term "commercial structure," as used in this chapter, shall not include a single-family residential dwelling or accessory structure in which a home occupation or enterprise is carried on by a person residing in the dwelling unit, provided that such home occupation or enterprise is incidental and secondary to the use of the dwelling unit for residential purposes; such home occupation conforms to the requirements of § 185-15 of this chapter.

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 infill irregularly shaped structures.

INDIVIDUAL PRIVATE CAMPSITE — An area of land which is not associated with a campground, but which is developed for repeated camping by only one group not to exceed 10 individuals and which involves site improvements which may include but not be limited to gravel

pads, parking areas, fireplaces, or tent platforms.

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

INSTITUTIONAL — A nonprofit or quasi-public use, or institution such as a church, library, public or private school, hospital, or municipality owned or operated building, structure or land used for public purposes.

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.

MARIJUANA — The leaves, stems, flowers and seeds of a marijuana plant, whether growing or not. "Marijuana" includes marijuana concentrate but does not include hemp as defined in 7 M.R.S.A. § 2231, Subsection 1-A, or a marijuana product.

MARIJUANA BUSINESSES — Includes adult use marijuana store, marijuana testing facility, marijuana manufacturing facility, medical marijuana registered caregivers, medical marijuana caregiver retail store, and medical marijuana registered caregiver (home occupation).

MARIJUANA CULTIVATION FACILITY — A facility used to purchase marijuana plants and seeds from other cultivation facilities; to cultivate, prepare and package adult use marijuana; to cultivate medical marijuana that exceeds 1,000 square feet floor area; to sell marijuana to products manufacturing facilities, stores and to other cultivation facilities; and to sell marijuana plants and seeds to other cultivation facilities and immature marijuana plants and seedlings to marijuana stores. Cultivation facilities may be of the following types:

- A. Tier 1 marijuana cultivation facility. Not more than 500 square feet of plant canopy.
- B. Tier 2 marijuana cultivation facility. Not more than 2,000 square feet of plant canopy.
- C. Tier 3 marijuana cultivation facility. Not more than 7,000 square feet of plant canopy
- D. Tier 4 marijuana cultivation facility. Not more than 20,000 square feet of plant canopy

MARIJUANA MANUFACTURING FACILITY —

- A. A registered Tier 1 or Tier 2 manufacturing facility, as designated by state law, or a person authorized to engage in marijuana extraction under 22 M.R.S.A. § 2423-F; or
- B. A facility licensed under 28-B M.R.S.A. 28-B Subchapter 2 to purchase marijuana from a cultivation facility or another products manufacturing facility; to manufacture, label and package marijuana and marijuana products; and to sell marijuana and marijuana products to marijuana stores and to other products manufacturing facilities.

MARIJUANA TESTING FACILITY — A public or private laboratory that is authorized and accredited in accordance with state law for the research and analysis of marijuana, marijuana products or other substances for contaminants, safety or potency.

MARINA — A business establishment having frontage on navigable water and, as its principal use, providing for hire offshore moorings or docking facilities for watercraft, and which may also provide accessory services such as watercraft and related sales, watercraft repair and construction, indoor and outdoor storage of watercraft and marine equipment, bait and tackle shops and marine

fuel service facilities.

MARKET VALUE — The estimated price a property will bring in the open market and under prevailing market conditions in a sale between a willing seller and a willing buyer, both conversant with the property and with prevailing general price levels.

MEDICAL MARIJUANA CAREGIVER RETAIL STORE — A store that has attributes generally associated with retail stores, including, but not limited to, a fixed location, a sign, regular business hours, accessibility to the public and sales of goods or services directly to a consumer, and that is used by a registered caregiver to offer marijuana plants or harvested marijuana for sale to qualifying patients.

MEDICAL MARIJUANA REGISTERED CAREGIVER — A person or an assistant of that person that provides care for a qualifying patient in accordance with state law and licensing and is registered with the state in accordance with state law.

MEDICAL MARIJUANA REGISTERED CAREGIVER (HOME OCCUPATION) — A person or an assistant of that person that provides care for a qualifying patient in accordance with state law and licensing and is registered with the state in accordance with state law and in accordance with the home occupation standards of this chapter.

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-month period which removes more than 100 cubic yards of soil, topsoil, loam, sand, gravel, clay, rock, peat, or other like material from its natural location and transportation of the product removed, away from the extraction site.

MINIMUM LOT WIDTH — The closest distance between the side lot lines of a lot. When only two lot lines extend into the shoreland zone, both lot lines shall be considered to be side lot lines.

~~**MULTIUNIT RESIDENTIAL** — A residential structure containing two or more residential dwelling units.~~

NATIVE — Indigenous to the local forests.

NONCONFORMING CONDITION — Nonconforming lot, structure or use which is allowed solely because it was in lawful existence at the time this chapter or subsequent amendment took effect.

NONCONFORMING LOT — A single lot of record which, at the effective date of adoption or amendment of this chapter, does not meet the area, frontage, or width requirements of the district in which it is located.

NONCONFORMING STRUCTURE — A structure which does not meet any one or more of the following dimensional requirements: setback, height, lot coverage or footprint, but which is allowed solely because it was in lawful existence at the time this chapter or subsequent amendments took effect.

NONCONFORMING USE — Use of buildings, structures, premises, land or parts thereof which is not permitted in the district in which it is situated, but which is allowed to remain solely because it was in lawful existence at the time this chapter or subsequent amendments took effect.

Commented [SP2]: Clean-up change: LUO already defined "Two family" and "Multi-family"

NONINTENSIVE RECREATIONAL USE — Recreational use not requiring structures, i.e., hunting, fishing and hiking.

NONNATIVE INVASIVE SPECIES OF VEGETATION — Species of vegetation listed by the Maine Department of Agriculture, Conservation and Forestry as being invasive in Maine ecosystems and not native to Maine ecosystems.

NORMAL HIGH-WATER LINE — That line which is apparent from visible markings, changes in the character of soils due to prolonged action of the water or changes in vegetation, and which distinguishes between predominantly aquatic and predominantly terrestrial land. Areas contiguous with rivers and great ponds that support nonforested wetland vegetation and hydric soils and that are at the same or lower elevation as the water level of the river or great pond during the period of normal high-water are considered part of the river or great pond.

OUTLET STREAM — Any perennial or intermittent stream, as shown on the most recent highest resolution version of the national hydrography dataset available from the United States Geological Survey on the website of the United States Geological Survey or the national map, that flows from a freshwater wetland.

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 BEYOND THE NORMAL HIGH-WATER LINE OR WITHIN A WETLAND — Permanent structures which remain in or over the water for seven months or more in any period of 12 consecutive months.

PLANNING BOARD — The Planning Board of the Town of Windham, Maine.

PRINCIPAL STRUCTURE — A structure other than one which is used for purposes wholly incidental or accessory to the use of another structure or use on the same lot.

PRINCIPAL USE — A use other than one which is wholly incidental or accessory to another use on the same lot.

PUBLIC FACILITY — Any facility, including, but not limited to, buildings, property, recreation areas, and roads, which is owned, leased or otherwise operated, or funded by a governmental body or public entity.

REAR SETBACK — The required distance on a lot between the rear lot line and the nearest building. For a shore lot, the rear setback shall be measured from the nearest building to the lot line opposite the shore.

RECENT FLOODPLAIN SOILS — The following soil series are indigenous to the Town of Windham as described and identified by the National Cooperative Soil Survey:

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

RECREATIONAL FACILITY — A place designed and equipped for the conduction of sports, leisure-time activities, and other customary and usual recreational activities, excluding boat-launching facilities.

RECREATIONAL VEHICLE — A vehicle or an attachment to a vehicle designed to be towed, and designed for temporary sleeping or living quarters for one or more persons, and which may include a pickup 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 Bureau of Motor Vehicles.

REPLACEMENT SYSTEM — A system intended to replace:

- A. An existing system which is either malfunctioning or being upgraded with no significant change of design flow or use of the structure; or
- B. Any existing overboard wastewater discharge.

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

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

RIVER — A free-flowing body of water, including its associated floodplain wetlands from that point at which it provides drainage for a watershed of 25 square miles to its mouth.

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

ROAD SETBACK — The required distance on a lot between a road and the nearest building.

SAPLING — A tree species that is less than two inches in diameter at 4 1/2 feet above ground level.

SEEDLING — A young tree species that is less than 4 1/2 feet in height above ground level.

SERVICE DROP — Any utility-line extension which does not cross or run beneath any portion of a water body, provided that:

- A. In the case of electric service:
 - (1) The placement of wires and/or the installation of utility poles is located entirely upon the premises of the customer requesting service or upon a roadway right-of-way; and
 - (2) The total length of the extension is less than 1,000 feet.
- B. In the case of telephone service:
 - (1) The extension, regardless of length, will be made by the installation of telephone

wires to existing utility poles; or

- (2) The extension requiring the installation of new utility poles or placement underground is less than 1,000 feet in length.

SETBACK — The nearest horizontal distance from the normal high-water line of a water body or tributary stream, or upland edge of a wetland, to the nearest part of a structure, road, parking space or other regulated object or area.

SHORE FRONTAGE — The length of a lot bordering on a water body or wetland measured in a straight line between the intersections of the lot lines with the shoreline at normal high-water elevation.

SHORELAND ZONE — The land area located within 250 feet, horizontal distance, of the normal high-water line of any pond, great pond classified GPA or river, upland edge of a freshwater wetland; or within 100 feet of the normal high-water line of a stream; or within an area as depicted on the Official Town of Windham Land Use District Map as a General Development, Limited Residential, Resource Protection, or Stream Protection District. **[Amended 10-12-2021]**

SHORELINE — The normal high-water line or upland edge of a freshwater wetland.

SIDE YARD — The distance between a principal or accessory structure and a side lot line.

SIGN — A name, identification, description, emblem, trade name, trademark, display or illustration which is affixed to, painted or represented, directly or indirectly, upon a building, structure, parcel or lot and which relates to an object, product, place, activity, person, institution, organization or business located on the premises. See § 185-15I.

SITE PLAN — The appropriate application scale drawing which accurately reflects site conditions, and other submissions as required by the site plan submissions, prepared by the applicant or qualified professional.

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

STORY — That portion of a building included between the surface of a floor and upper surface of the floor or roof next above.

STORY ABOVE GRADE — Any story having its finished floor surface entirely above grade except that a basement shall be considered as a story above grade when the distance from grade to finished surface of the floor above the basement is more than six feet for more than 50% of the total perimeter or more than 12 feet at any point.

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

STREET — A way established or maintained under public authority or a fifty-foot-wide private way approved by the Planning Board or a way shown on a plan of a subdivision duly approved by

the Panning Board or a private road in existence prior to the adoption of this chapter.

STRUCTURE — Anything temporarily or permanently located, built, constructed or erected for the support, shelter or enclosure of persons, animals, goods or property of any kind, or anything constructed or erected on or in the ground. The term includes structures temporarily or permanently located, such as decks, patios, and satellite dishes. "Structure" does not include fences; poles and wiring and other aerial equipment normally associated with service drops, including guy wires and guy anchors; subsurface wastewater disposal systems as defined in 30-A M.R.S.A. § 4201, Subsection 5; geothermal heat exchange wells as defined in 32 M.R.S.A. § 4700-E, Subsection 3-C; or wells or water wells as defined in 32 M.R.S.A. § 4700-E, Subsection 8.

SUBDIVISION — A "subdivision" is a division of a tract or parcel of land as defined in 30-A M.R.S.A. § 4401, as amended from time to time; provided, however, that the Town of Windham does hereby elect to count lots of 40 or more acres as lots for purposes of subdivision review.

SUBDIVISION, AMENDED — The division of an existing subdivision or any change of lot size therein or the relocation of any street or lot in a subdivision.

SUBSTANTIAL START — Completion of 30% of a permitted structure or use measured as a percentage of estimated total cost.

SUBSURFACE SEWAGE DISPOSAL SYSTEM — Any system designed to dispose of waste or wastewater 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. § 414, any surface wastewater disposal system, or any municipal or quasi-municipal sewer or wastewater treatment system.

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

TIMBER HARVESTING — The cutting and removal of timber for the primary purpose of selling or processing forest products. "Timber harvesting" does not include the cutting or removal of vegetation within the shoreland zone when associated with any other land use activities. The cutting or removal of trees in the shoreland zone on a lot that has less than two acres within the shoreland zone shall not be considered timber harvesting. Such cutting or removal of trees shall be regulated pursuant to § 185-15P, Clearing or removal of vegetation for activities other than timber harvesting.

TREE — A woody perennial plant with a well-defined trunk(s) at least two inches in diameter at 4 1/2 feet above the ground, with a more or less definite crown, and reaching a height of at least 10 feet at maturity.

TRIBUTARY STREAM —

- A. 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 on 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 had been removed by human activity.

- B. This definition does not include the term "stream" as defined elsewhere in this chapter, and only applies to that portion of the tributary stream located within the shoreland zone of the receiving water body or wetland, as depicted on the Official Town of Windham Land Use Map. [**Amended 10-12-2021**]

UPLAND EDGE OF A WETLAND — The boundary between upland and wetland. 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 meters (approximately 20 feet) tall or taller.

VEGETATED SURFACE — All surface areas covered by either undisturbed tree growth, shrub growth, natural ground cover or other appropriate erosion and sediment control materials such as bark mulch.

VEGETATION — All live trees, shrubs, ground cover, and other plants, including, without limitation, trees both over and under four inches in diameter, measured at 4 1/2 feet above ground level.

VOLUME OF A STRUCTURE — The volume of all portions of a structure enclosed by roof and fixed exterior walls as measured from the exterior faces of these walls and roof.

WATER BODY — Any pond, great pond classified GPA, river, or stream.

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

WETLAND — A freshwater wetland (see "freshwater wetland").

WILDLIFE HABITAT; SIGNIFICANT WILDLIFE HABITAT — Areas identified by a government agency such as the Maine Department of Inland Fisheries and Wildlife as having significant value as habitat for animals or any areas identified in the municipality's Comprehensive Plan.

WOODY VEGETATION — Live trees or woody, nonherbaceous shrub.

§ 120-105. Conformance required.

- A. All buildings or structures hereinafter erected, reconstructed, altered, enlarged, or moved, and uses of premises, in the Town of Windham shall be in conformity with the provisions of this chapter.
- B. No building, structure, land or water area shall be used for any purpose or in any manner except as permitted within the district in which such building, structure, land or water area is located.
- C. Notwithstanding any other provisions of this chapter, any alteration of an existing building which is required in order to meet the requirements of the Americans with Disabilities Act (ADA)¹ and/or the State Fire Code is not considered to be an enlargement or expansion of a structure, or expansion of a use, and is therefore not required to meet otherwise applicable setback requirements, provided that the Code Enforcement Officer determines that the alterations are the minimum necessary to satisfy the ADA and/or State Fire Code.
- D. Except as otherwise set forth in this chapter or Chapter 185, all areas located within shoreland areas governed by Chapter 185, Shoreland Zoning, are exempt from this chapter.

1. Editor's Note: See 42 U.S.C. § 12101 et seq.

§ 120-805. Classification of projects.

- A. The Planner shall classify each project as a major or minor development. "Minor developments" are smaller-scale projects for which a minor review process is adequate to protect the Town's interest. "Major developments" are larger, more complex projects for which a more detailed review process and additional information are necessary, or are projects subject to Chapter 185 (Shoreland Zoning) that require site plan review by the Planning Board [see § 185-14]. The following thresholds shall be used by the Planner in classifying each project. However, the Planner may, due to the scope or anticipated impacts of a project, classify any project as a major development.
- (1) Minor developments shall include those projects involving: **[Amended 8-26-2014 by Order 14-313]**
 - (a) The cumulative construction or addition of fewer than 5,000 square feet of gross nonresidential floor area.
 - (b) Any individual or cumulative construction or addition of 5,000 square feet or more of gross nonresidential floor area within an approved subdivision.
 - (c) The establishment of a new nonresidential use, even if no buildings or structures are proposed, that involves the development of more than 25,000 square feet but less than one acre of land.
 - (2) Major developments shall include projects involving:
 - (a) The individual or cumulative construction or addition of 5,000 or more square feet of gross nonresidential floor area on a lot that is not part of an approved subdivision;
 - (b) Projects involving the creation of five or more dwelling units in a five-year period;
 - (c) The individual or cumulative development of one acre or more land, unless the development is part of a site plan application in an approved subdivision [see § 120-805A(1)(b) above];
 - (d) Projects that also require subdivision (see Article 9) or conditional use approval (see Article 5); ~~or~~
 - (e) Other projects requiring review which are not classified as a minor development; or
 - (f) Any projects involving uses governed by Chapter 185 (Shoreland Zoning) and are permitted with site plan approval by the Planning Board [see § 185-14]. Such projects shall be classified as major developments [see § 120-805 below].
 - (3) An applicant may request that the Planner classify an application prior to its submission. In this case, the applicant shall make a written request for a classification. This request shall include the following information:
 - (a) The names and addresses of the record owner and the applicant and the applicant's legal interest in the property.
 - (b) The location of the project, including the Tax Map and lot number.

§ 120-812. Performance standards and approval criteria.

The following criteria shall be used by the Planning Board or Staff Review Committee in reviewing applications for site plan review and shall serve as minimum requirements for approval of the application. The application shall be approved unless the Planning Board or Staff Review Committee determines that the applicant has failed to meet one or more of these standards. In all instances, the burden of proof shall be on the applicant who shall produce evidence sufficient to warrant a finding that all applicable criteria have been met.

- A. Utilization of the site. The plan for the development shall reflect the natural capabilities of the site to support development. Buildings, lots, and support facilities shall be clustered in those portions of the site that have the most suitable conditions for development. Environmentally sensitive areas, including but not limited to wetlands, steep slopes, floodplains, significant wildlife habitats, fisheries, scenic areas, habitat for rare and endangered plants and animals, unique natural communities and natural areas, and sand and gravel aquifers shall be maintained and preserved to the maximum extent. Natural drainage areas shall also be preserved to the maximum extent. The development shall include appropriate measures for protecting these resources, including but not limited to modification of the proposed design of the site, timing of construction, and limiting the extent of excavation.
- B. Vehicular traffic. **[Amended 4-9-2019 by Order 19-053]**
 - (1) Adequacy of road system. Vehicular access to the site shall be on roads which have adequate capacity to accommodate the additional traffic generated by the development.
 - (a) Intersections on arterial streets within a half mile of any entrance road which are functioning at a level of service D or better prior to the development shall function at a minimum at level of service D after development. If any such intersection is functioning at a level of service E or lower prior to the development, the project shall not reduce the current level of service. This requirement may be waived by the Planning Board if the project is located within a growth area designated in the Town's adopted Comprehensive Plan and the Board determines that the project will not have an unnecessary adverse impact on traffic flow or safety. A development not meeting this requirement may be approved if the applicant demonstrates that:
 - [1] A public agency has committed funds to construct the improvements necessary to bring the level of access to this standard; or
 - [2] The applicant will assume financial responsibility for the improvements necessary to bring the level of service to this standard and will assure the completion of the improvements with a financial guarantee acceptable to the municipality.
 - (b) Existing streets and intersections that can be expected to carry traffic generated by the development shall have the capacity or be suitably improved to accommodate that traffic. For the purposes of this section, "suitably improved" shall mean that all of the existing private ways in the road network back to the closest public street

shall meet the applicable street construction standard (see Article 3, definition of "street classification," and Appendix B, Street Design and Construction Standards¹).

- (2) Access to the site. Vehicular access to and from the development shall be safe and convenient.
 - (a) Any driveway or proposed street shall be designed so as to provide the minimum sight distance according to the Maine Department of Transportation standards. (See standards for curb cuts in Article 5, Performance Standards.)
 - (b) Points of access and egress shall be located to avoid hazardous conflicts with existing turning movements and traffic flows.
 - (c) The grade of any proposed drive shall be not more than $\pm 3\%$ for a minimum of 50 feet, from the intersection.
 - (d) The intersection of any access/egress drive or proposed street shall function at a level of service of D following development if the project will generate 1,000 or more vehicle trips per twenty-four-hour period.
 - (e) Where a lot has frontage on two or more streets, the primary access to and egress from the lot shall be provided from the street where there is less potential for traffic congestion and for traffic and pedestrians hazards. Access from other streets may be allowed if it is safe and does not promote shortcutting through the site.
 - (f) Where it is necessary to safeguard against hazards to traffic and pedestrians and/or to avoid traffic congestion, the applicant shall be responsible for providing turning lanes, traffic directional islands, and traffic controls within public streets.
 - (g) Accessways shall be designed and have sufficient capacity to avoid queuing of entering vehicles on any public street.
 - (h) The following criteria shall be used to limit the number of driveways serving a proposed project:
 - [1] No use which generates less than 100 vehicle trips per day shall have more than one two-way driveway onto a single roadway. Such driveway shall be no greater than 40 feet wide.
 - [2] No use which generates 100 or more vehicle trips per day shall have more than two points of entry from and two points of egress to a single roadway. The combined width of all accessways shall not exceed 60 feet.
 - [3] The Planning Board or Staff Review Committee may limit a development to one point of ingress/egress onto Routes 302, 35 and 115.
- (3) Accessway location and spacing. Accessways shall meet the following standards:

1. Editor's Note: Appendix B is included as an attachment to this chapter.

- (a) Private entrances/exits shall be located in accordance with Table 2 in Appendix B, Street Design and Construction Standards.² This requirement may be reduced if the shape of the site does not allow conformance with this standard. **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]**
 - (b) Private accessways in or out of a development shall be separated by a minimum of 75 feet where possible.
 - (c) Accessways shall be aligned with accessways on the opposite side of a public street to the greatest extent possible.
- (4) Internal vehicular circulation. The layout of the site shall provide for the safe movement of passenger, service, and emergency vehicles through the site.
- (a) Nonresidential projects that will be served by delivery vehicles shall provide a clear route for such vehicles with appropriate geometric design to allow turning and backing for a minimum of SU-30 vehicles. If the project is to be served by tractor-trailer delivery vehicles, a clear route for such vehicles with appropriate geometric design shall allow for turning and backing for a minimum of WB-50 vehicles.
 - (b) Clear routes of access shall be provided and maintained for emergency vehicles to and around buildings and shall be posted with appropriate signage (fire lane - no parking).
 - (c) The layout and design of parking areas shall provide for safe and convenient circulation of vehicles throughout the lot.
 - (d) All roadways shall be designed as follows:
 - [1] To harmonize with the topographic and natural features of the site insofar as practical by minimizing filling, grading, excavation, or other similar activities which result in unstable soil conditions and soil erosion.
 - [2] By fitting the development to the natural contour of the land and avoiding substantial areas of excessive grade and tree removal, and by retaining existing vegetation during construction.
 - [3] The road network shall provide for vehicular, pedestrian, and cyclist safety, all-season emergency access, snow storage, and delivery and collection services.
 - (e) Nonresidential projects that include drive-through services shall be designed and have sufficient stacking capacity to avoid the queuing of vehicles on any public street.
- C. Parking and loading requirements. **[Amended 4-27-2010 by Order 10-075; 3-8-2011 by Order 11-037; 8-25-2015 by Order 15-122; 6-12-2018 by Order 18-099]**

2. Editor's Note: Appendix B is included as an attachment to this chapter.

- (1) Off-street parking layout.
 - (a) Parking areas with more than two parking spaces shall be arranged so that it is not necessary for vehicles to back into the street.
 - (b) All parking spaces, access drives, and impervious surfaces shall be located at least five feet from any side or rear lot line, except where a parking lot is shared between two adjoining properties, or where standards for buffer strips require a greater distance. No parking spaces shall be located within five feet of the front property line. Parking lots on adjoining lots may be connected by accessways not exceeding 24 feet in width.
 - (c) Parking stalls and aisle layout shall conform to the standards in Table 1 of this subsection.

Parking Angle	Stall Width	Skew Width	Stall Depth	Aisle Width
90°	9' 0"	0' 0"	18' 0"	24' 0" two-way
60°	8' 6"	10' 6"	18' 0"	16' 0" one-way only
45°	8' 6"	12' 9"	17' 6"	12' 0" one-way only
30°	8' 6"	17' 0"	17' 0"	12' 0" one-way only

- (d) In parking lots utilizing a parking angle of 90°, 30% of the spaces shall be created with a stall width of 10 feet zero inches and a stall depth of 20 feet zero inches. Remaining spaces shall be created with a stall width of at least nine feet zero inches and a stall depth of at least 18 feet zero inches.
- (e) In lots utilizing diagonal parking, the direction of proper traffic flow shall be indicated by signs, pavement markings or other permanent indications and maintained as necessary.
- (f) Parking areas for nonresidential uses shall be designed to permit each motor vehicle to proceed to and from the parking space provided for it without requiring the moving of any other motor vehicles. Double-stack parking may be permitted for resident parking in conjunction with residential uses if both spaces in the stack are assigned to the occupants of the same dwelling unit.
- (g) Provisions shall be made to restrict the overhang of parked vehicles when it might restrict traffic flow on adjacent through roads, restrict pedestrian or bicycle movement on adjacent walkways, or damage landscape materials.
- (h) Parallel parking spaces may be used along internal driveways or accessways, unless otherwise specified under this chapter or Chapter 185. Stall width and depth shall be at least nine feet by 20 feet, unless otherwise specified under this chapter or Chapter 185.
- (i) Automobile storage. The parking space dimension requirements in § 120-812C(1)(c) to (g), above, do not apply to vehicles stored for display, sale or repair. However, the operator of the use shall demonstrate that there is enough land area to accommodate all vehicles within any setbacks or required buffer areas of § 120-812C(1)(b) and/or the applicable zoning district. (See Article 4, Zoning

Commented [MB1]: Is this needed? Chapter 185 doesn't specify stall depth.

Districts.)

- (2) Minimum off-street parking space requirements.
 - (a) No minimum number of parking spaces are required, unless otherwise specified under this chapter or Chapter 185. The applicant should demonstrate that the number of spaces provided on-site will meet the needs of the anticipated uses on the property. Shared parking arrangements are encouraged.
 - (b) Off-site parking. Parking spaces may be located off-site if the spaces will adequately serve the principal use for which the spaces are required. In making this determination, the Planning Board, Staff Review Committee, or Code Enforcement Officer, as applicable, shall consider the following factors:
 - [1] Proximity of the off-street parking.
 - [2] Ease of pedestrian access to the off-site parking.
 - [3] Provision of sidewalks or paths between the off-site parking and the principal use.
 - [4] The applicant has sufficient legal interest in the land on which the off-site parking is provided to establish control as long as the use exists.
 - [5] Adequate lighting shall be installed to provide for safe pedestrian movement.
- D. Pedestrian traffic. The site plan shall provide for a system of pedestrian ways within the development appropriate to the type and scale of development. This system shall connect the major building entrances/exits with parking areas and with existing sidewalks, if they exist or are planned in the vicinity of the project. The pedestrian network may be located either in the street right-of-way or outside of the right-of-way in open space or recreation areas. The system shall be designed to link the project with residential, recreational, and commercial facilities, schools, bus stops, and existing sidewalks in the neighborhood or, when appropriate, to connect with amenities such as parks or open space on or adjacent to the site.
- E. Stormwater management.³
 - (1) Adequate provisions shall be made for the collection and disposal of all stormwater that runs off proposed streets, parking areas, roofs, and other surfaces, through a stormwater management plan, which shall not have adverse impacts on abutting or downstream properties.
 - (a) Stormwater management systems for minor and major site plans shall detain, retain, or result in the infiltration of stormwater from the twenty-four-hour storms of the two-year, ten-year, and twenty-five-year frequencies such that the peak flows of stormwater from the project site do not exceed the peak flows of stormwater prior to undertaking the project. The Planning Board may waive the flooding standard in accordance with the following criteria:
 - [1] Insignificant increases in peak flow rates from a project site. When requesting

3. Editor's Note: See also Ch. 201, Stormwater Management.

a waiver for a project resulting in an insignificant increase in peak flow rates from a project site, the applicant shall demonstrate that insignificant increases in peak flow rates cannot be avoided by reasonable changes in project layout, density, and stormwater management design. The applicant shall also demonstrate that the proposed increases will not unreasonably increase the extent, frequency, or duration of flooding at downstream flow controls and conveyance structures. In making its determination to allow insignificant increases in peak flow rates, the Planning Board shall consider cumulative impacts.

- (b) The applicant shall demonstrate that on- and off-site downstream channel or system capacity is sufficient to carry the flow of a minimum twenty-five-year storm without adverse effects, including but not limited to flooding and erosion of drainage channels and shoreland areas, or that he/she will be responsible for whatever improvements are needed to provide the required increase in capacity and/or mitigation. The Staff Review Committee or Planning Board may require capacity for a storm of greater than 25 years due to soil, topographic, or other factors that affect stormwater drainage.
- (c) All natural drainageways shall be preserved at their natural gradients and shall not be filled or converted to a closed system unless approved as part of the site plan review.
- (d) The design of the stormwater drainage system shall provide for the disposal of stormwater without damage to streets, adjacent properties, downstream properties, soils, and vegetation.
- (e) The design of the storm drainage systems shall be fully cognizant of upstream runoff which shall pass over or through the site to be developed and provide for this movement.
- (f) Major site plans, regardless of size, shall submit a stormwater management plan that complies with Section 4C(2) and Section 4C(3) of the General Standards of the DEP Chapter 500, Stormwater Management, as amended.⁴
- (g) Major and minor site plan projects located within the Highland Lake watershed shall also meet the following standards: **[Amended 5-22-2018 by Order 18-905]**

[1] Projects in the Highland Lake watershed must include a stormwater plan designed to meet the standards of DEP Chapter 500, Section 4D, Phosphorous standards.⁵ The option to pay the compensation fee for exceeding the parcel's phosphorus allocation is not allowed in this watershed. Notwithstanding 1 M.R.S.A. § 302, this amendment shall be applicable to and shall govern any application for site plan approval that did not receive lawful final approval by, and so was pending on or at any time after, September 5, 2017, regardless of whether that application was a pending proceeding under 1 M.R.S.A. § 302.

4. Editor's Note: See 06-096 CMR Ch. 500.

5. Editor's Note: See 06-096 CMR Ch. 500.

- (2) Mineral extraction stormwater management plan compliance. Any person owning, operating, leasing or having control over stormwater management facilities required by a stormwater management plan approved as part of a mineral extraction operation in accordance with Article 6 of this chapter shall demonstrate compliance with that plan as follows: **[Amended 4-9-2019 by Order 19-053]**
- (a) A qualified third-party inspector hired by that person shall, at least annually, inspect the stormwater management facilities, including but not limited to any parking areas, catch basins, drainage swales, detention basins and ponds, pipes and related structures, in accordance with all municipal and state inspection, cleaning and maintenance requirements of the approved stormwater management plan.
 - (b) If the stormwater management facilities require maintenance to function as intended by the approved stormwater management plan, that person shall take corrective action(s) to address the deficiency or deficiencies.
 - (c) A qualified third-party inspector hired by that person shall, on or by May 1 of each year, provide a completed and signed certification to the enforcement authority, in a form provided by the Town of Windham, certifying that the person has inspected the stormwater management facilities and that they are adequately maintained and functioning as intended by approved stormwater management plan, or that they require maintenance or repair, describing any required maintenance and any deficiencies found during inspection of the stormwater management facilities, and, if the stormwater management facilities require maintenance or repair of deficiencies in order to function as intended by approved stormwater management plan, the person shall provide a record of the required maintenance or deficiency and corrective action(s) taken.

F. Erosion control. **[Amended 5-23-2023 by Order No. 23-092]**

- (1) All building, site, and roadway designs and layouts shall harmonize with existing topography and conserve desirable natural surroundings to the fullest extent possible, such that filling, excavation and earth moving activity shall be kept to a minimum. Parking lots on sloped sites should be terraced to avoid undue cut and fill and/or the need for retaining walls. Natural vegetation shall be preserved and protected wherever possible.
- (2) An erosion control plan shall show the use of erosion and sediment control best management practices (BMPs) at the construction site consistent with the minimum standards outlined in the Maine DEP Stormwater Rule Chapter 500 Appendix A – Erosion and Sediment Control, Appendix B – Inspections and Maintenance, Appendix C – Housekeeping. Erosion and Sedimentation Control. BMPs shall be designed, installed and maintained in accordance with the standards contained in the latest revisions of the following Maine DEP Documents:
 - (a) Maine DEP Erosion and Sediment Control Best Management Practices (BMPs) Manual for Designers and Engineers.
 - (b) Maine Erosion and Sediment Control Practices Field Guide for Contractors.

- (c) Applicants are required to utilize contractors who are certified in erosion control through the Maine Department of Environmental Protection's Voluntary Contractor Certification Program.

G. Water supply provisions.

- (1) The development shall be provided with a system of water supply that provides each use with an adequate supply of water.
- (2) If the project is to be served by a public water supply, the applicant shall secure and submit a written statement from the Portland Water District that the proposed water supply system conforms with its design and construction standards, will not result in an undue burden on the source or distribution system, and will be installed in a manner adequate to provide needed domestic and fire protection flows.

H. Sewage disposal provisions. The development shall be provided with a method of disposing of sewage which is in compliance with the State Plumbing Code.

- (1) All sanitary sewage from new or expanded uses shall be discharged into a public sewage collection and treatment system when such facilities are currently available or can reasonably be made available at the lot line and have adequate capacity to handle the projected waste generation.
- (2) If the public collection system is not at the lot line, but can be extended in the public right-of-way, the collection system shall be extended by the owner and the new or expanded use connected to the public system. Such extension shall be required if the public system is within 100 feet of a new use with a design sewage flow of less than 500 gallons per day or within 300 feet of a new use with a design sewage flow of 500 or more gallons per day and the system has adequate capacity to accommodate the additional flow. The Planning Board may waive this requirement if the use is already served by a properly functioning subsurface disposal system that is properly sized for the projected flows, provided that connection to the public system shall occur if and when the subsurface system needs to be replaced.
- (3) If the public system cannot serve or be extended to serve a new or expanded use, the sewage shall be disposed of by an on-site sewage disposal system meeting the requirements of the Subsurface Waste Water Disposal Rules.⁶
- (4) When two or more lots or buildings in different ownership share the use of a common subsurface disposal system, the system shall be owned and maintained in common by an owners' association. Covenants in the deeds for each lot shall require mandatory membership in the association and provide for adequate funding of the association to assure proper maintenance of the system.
- (5) Industrial or commercial wastewater may be discharged to public sewers in such quantities and/or of such quality as to be compatible with sewage treatment operations. Such wastes may require pretreatment at the industrial or commercial site in order to render them amenable to public treatment processes. Pretreatment includes, but is not

6. Editor's Note: See 10-144 CMR Ch. 241, Maine Subsurface Waste Water Disposal Rules.

limited to, screening, grinding, sedimentation, pH adjustment, surface skimming, chemical oxidation and reduction and dilution. The pretreatment standards shall be determined by the Portland Water District.

- I. Utilities. The development shall be provided with electrical, telephone, and telecommunication service adequate to meet the anticipated use of the project. New utility facilities shall be screened from view to the extent feasible. Utility lines shall be placed underground.
- J. Groundwater protection. The proposed site development and use shall not adversely impact either the quality or quantity of groundwater available to abutting properties or to public water supply systems. Applicants whose projects involve on-site water supply or sewage disposal systems with a capacity of 2,000 gallons per day or greater shall demonstrate that the groundwater at the property line will comply, following development, with the standards for safe drinking water as established by the State of Maine.
- K. Water quality protection. All aspects of the project shall be designed so that:
 - (1) No person shall locate, store, discharge, or permit the discharge of any treated, untreated, or inadequately treated liquid, gaseous, or solid materials of such nature, quantity, obnoxiousness, toxicity, or temperature that may run off, seep, percolate, or wash into surface waters or groundwater so as to contaminate, pollute, or harm such waters or cause nuisances, such as objectionable shore deposits, floating or submerged debris, oil or scum, color, odor, taste, or unsightliness or be harmful to human, animal, plant, or aquatic life.
 - (2) All storage facilities for fuel, chemicals, chemical or industrial wastes, and biodegradable raw materials shall meet the standards of the Maine Department of Environmental Protection and the State Fire Marshal's Office.
 - (3) If the project is located within the direct watershed of a body of water most at risk from development, as identified by the Maine Department of Environmental Protection (DEP), the following standards shall apply: **[Added 3-26-2019 by Order 19-020]**
 - (a) If the project does not require review under Chapter 500 of the Maine DEP Stormwater Law,⁷ the Planning Board may require a phosphorus control plan. The plan shall be submitted to the Town for review by an appropriate third-party reviewer at the applicant's expense.
- L. Hazardous, special, and radioactive materials.
 - (1) The handling, storage, and use of all materials identified by the standards of a federal or state agency as hazardous, special or radioactive shall be done in accordance with the standards of these agencies.
 - (2) No flammable or explosive liquids, solids or gases shall be stored in bulk above the ground unless they are located at least 75 feet from any lot line, or 40 feet in the case of underground storage. All materials shall be stored in a manner and location which is in

7. Editor's Note: See 06-096 CMR Ch. 500.

compliance with appropriate rules and regulations of the Maine Department of Public Safety and other appropriate federal, state, and local regulations.

M. Shoreland relationship.

- (1) The development shall not adversely affect the water quality or shoreline of any adjacent water body.
- (2) The plan shall meet the requirements of Chapter 185, Shoreland Zoning, where applicable.

N. Technical and financial capacity.

- (1) Financial capacity. The applicant shall have adequate financial resources to construct the proposed improvements and meet the criteria of the standards of these regulations. In making its determination, the Planning Board or Staff Review Committee shall consider all relevant evidence to the effect that the developer has the financial capacity to construct, operate, and maintain all aspects of the development.
- (2) Technical capacity. The applicant shall retain qualified contractors and consultants to supervise, construct and inspect the required improvements in the proposed site plan. In determining the applicant's technical ability, the Planning Board or Staff Review Committee shall consider the applicant's previous experience, the experience and training of the applicant's consultants and contractors, and the existence of violations of previous approvals granted to the applicant. A violation for the purposes of this article includes any order, consent decree or consent agreement with which the applicant, owner or proposed operator of the facility is not currently in full compliance. **[Amended 4-9-2019 by Order 19-053]**

O. Solid waste management. The proposed development shall provide for adequate disposal of solid wastes. All solid waste shall be disposed of at a licensed disposal facility having adequate capacity to accept the project's wastes.

P. Historic and archaeological resources. If any portion of the site has been identified as containing historic or archaeological resources, the development shall include appropriate measures for protecting these resources, including but not limited to modification of the proposed design of the site, timing of construction, and limiting the extent of excavation.

Q. Floodplain management. If any portion of the site is located within a special flood hazard area as identified by the Federal Emergency Management Agency, all use and development of that portion of the site shall be consistent with the Town's floodplain management provisions.⁸

R. Exterior lighting. The proposed development shall have adequate exterior lighting to provide for its safe use during operating hours.

- (1) Lighting may be used which serves security, safety and operational needs but which does not directly or indirectly produce deleterious effects on abutting properties or

8. Editor's Note: See Ch. 82, Floodplain Management.

which would impair the vision of a vehicle operator on adjacent roadways.

- (a) Lighting fixtures shall be shielded or hooded so that the lighting elements are not exposed to normal view by motorists or pedestrians or from adjacent dwellings and so that they do not unnecessarily light the night sky.
- (b) Direct or indirect illumination shall not exceed 0.5 footcandle at the lot line or upon abutting residential properties.

(2) Wiring to light poles and other exterior light fixtures shall be underground.

S. Noise.

- (1) The maximum permissible sound pressure level of any continuous, regular or frequent or intermittent source of sound produced by any activity on the site shall be limited by the time period and by the abutting land use as listed below. Sound levels shall be measured at least four feet above ground at the closest occupied structure not owned or under the control of the owner or operator of the proposed development or use.

Sound Pressure Level Limits Using the Sound Equivalent Level of One Minute (leq 1) [Measured in dB(a) Scale]		
Abutting Use	7:00 a.m. to 10:00 p.m.	10:01 p.m. to 6:59 a.m.
Residential	55	45
Residential located in a commercial or industrial district	65	55
Public, semipublic and institutional	60	55
Vacant or rural	60	55
Commercial	65	55
Industrial	70	60

- (2) Noise shall be measured by a meter set on the A-weighted response scale, fast response. The meter shall meet the American National Standards Institute (ANSI S1 4-1961) "American Standards Specification for General Purpose Sound Level Meters."
- (3) No person shall engage in construction activities on a site abutting any residential use between the hours of 10:00 p.m. and 6:00 a.m.
- (4) These standards shall not apply to the temporary use of such machinery as chain saws, lawn mowers and snowmobiles.

T. Storage of materials.

- (1) Exposed nonresidential storage areas, exposed machinery, and areas used for the storage or collection of discarded automobiles, auto parts, metals or other articles of salvage or refuse shall have sufficient setbacks and screening (such as a stockade fence or a dense evergreen hedge) to provide a visual buffer sufficient to minimize their impact on abutting residential uses and users of public streets.
- (2) All dumpsters or similar large collection receptacles for trash or other wastes shall be located on level surfaces which are paved or graveled. The dumpster or receptacle shall be screened by fencing or landscaping.

- (3) Where a potential safety hazard to children is likely to arise, physical screening sufficient to deter small children from entering the premises shall be provided and maintained in good condition.

- (c) A brief description of the proposed activities in such detail as to allow a classification to be made.

- (4) When the Planner classifies a project based upon a request for classification rather than an application, the subsequent application shall be consistent with the activities described in the request for classification. The Planner shall review such application to determine if the classification is still correct and may reclassify the application if the scope of activities has been changed.

- B. Within 10 working days of the receipt of a site plan application or a request for a classification, the Planner shall notify the applicant and the Chair of the Planning Board of the classification of the project in writing.