



**Town of Windham
Planning Department**

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MEMO

DATE: August 5, 2021

TO: Windham Town Council
THROUGH: Barry Tibbetts, Town Manager
FROM: Amanda Lessard, Planning Director
Cc: Windham Planning Board
Natural Resources Advisory Committee

RE: Planning Board Recommendation - Chapter 199, Shoreland Zoning & Land Use Map Amendment (LR, RP, and SP Districts)

At the Planning Board's meeting on [June 28](#) and [July 26](#), 2021, a public hearing was held on the proposed amendments to the Shoreland Zoning Ordinance, Chapter 199 and the Land Use Map recommended by the Natural Resources Advisory Committee (NRAC). The purpose of the proposed changes is to comply with the Department of Environmental Protection's minimum shoreland zoning requirements by adding 10-acre freshwater wetlands as Limited Residential (LR) districts, an Inland Waterfowl / Wading Bird Habitat (IWWH) as a Resource Protection (RP) district and Outlet Brook as a Stream Protection (SP) district.

Summary of attached proposed ordinance and map amendments:

Chapter 199 Shoreland Zoning

- Replace "Shoreland Zoning Map" with "Land Use Map" to be consistent with map terminology in Chapter 140 Land Use Ordinance.
- §199- 13.A. (Resource Protection District): Addition to areas included in Resource Protection (RP) and other land areas designated as Resource Protection on the Windham Office Land Use Map.
- §199- 15.Y (Animals in Shoreland Zone Performance Standard): Delete "or 75 feet" and specify setback is from the high-water line of a waterbody.
- §199- 17. (Definitions): Expand Shoreland Zone definition to include areas as depicted on the official map as a General Development (GD), Limited Residential (LR), Resource Protection (RP), or Stream Protection (SP) district.

Town of Windham, Maine Zoning Map

- Change title to Land Use Map as described in Chapter 140 Section 402.A
- Added Inland Waterfowl / Wading bird Habitat (IWWH) to RP at Albion Road
- Added 10-acre freshwater wetlands to LR
- Added Outlet Brook from Chaffin Pond to the Presumpscot River to SP

One (1) member of the public submitted written comments and six (6) members of the public spoke against the amendment commenting that the property owner should be compensated for the change in loss of property value, landowners are being penalized for not developing their property earlier, there are concerns about existing development and uses within the proposed districts and the continuation of agricultural operations and what else can be built, the mapped location of the wetland is inaccurate, and there should be a process to reevaluate the significance of the habitat and changing the maps based on wetland delineations.

Following the public hearing members of the Board discussed that the data used to create the map is provided by the state to all municipalities to use on shoreland zoning maps, that the boundaries of the shoreland zoning districts are determined by measurements from the high-water mark or edge of the wetland regardless of the location shown on the map, that it is an unfair burden on the landowner to provide a survey to dispute the map, and that the DEP mandates these standards.

Following discussion of the proposed changes, the Board made the following motion:

To recommend approval of the proposed amendments to Chapter 199, Shoreland Zoning and the Land Use Map.

Motion: Rick Yost

Second: Marge Govoni

Vote: 3-3 (Keith Elder, Michael Devoid and Colin Swan opposed).



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Planning Department**

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MEMO

DATE: June 24, 2021

TO: Windham Planning Board
FROM: Amanda Lessard, Planning Director
Cc: Steve Puleo, Planner
Gretchen Anderson, Environmental & Sustainability Coordinator
Natural Resources Advisory Committee

RE: Ordinance Amendment – Chapter 199, Shoreland Zoning & Land Use Map
Amendment (LR & RP Districts)
Planning Board Meeting & Public Hearing – June 28, 2021

Enclosed, you will find a copy of the proposed amendments to the Shoreland Zoning Ordinance, Chapter 199 and the Land Use Map recommended by the Natural Resources Advisory Committee (NRAC). The purpose of the proposed changes is to comply with the Department of Environmental Protection's minimum shoreland zoning requirements by adding 10-acre freshwater wetlands as Limited Residential (LR) districts and an Inland Waterfowl / Wading Bird Habitats (IWWH) as a Resource Protection (RP) district.

Summary of attached proposed ordinance and map amendments:

Chapter 199 Shoreland Zoning

- Replace “Shoreland Zoning Map” with “Land Use Map” to be consistent with map terminology in Chapter 140 Land Use Ordinance.
- §199- 13.A. (Resource Protection District): Addition to areas included in Resource Protection (RP) and other land areas designated as Resource Protection on the Windham Office Land Use Map.
- §199- 15.Y (Animals in Shoreland Zone Performance Standard): Delete “or 75 feet” and specify setback is from the high-water line of a waterbody.
- §199- 17. (Definitions): Expand Shoreland Zone definition to include areas as depicted on the official map as a General Development (GD), Limited Residential (LR), Resource Protection (RP), or Stream Protection (SP) district.

Town of Windham, Maine Zoning Map

- Change title to Land Use Map as described in Chapter 140 Section 402.A
- Added Inland Waterfowl / Wading bird Habitat (IWWH) to RP at Albion Road
- Added 10-acre freshwater wetlands to LR

Zoning Amendment Process

The Planning Board must hold a public hearing prior to making a recommendation on this item to the Town Council. The Town Council will need to hold a public hearing and vote on the proposed changes to the Shoreland Zoning Ordinance and Map for the changes to be officially approved. The approved changes then will not be effective until approved by the DEP Commissioner.

A public hearing is scheduled for the June 28, 2021 Planning Board meeting. After the public hearing and discussion by the Board, the Planning Board may vote on a recommendation to the Town Council similar to the following:

MOTION: To (**recommend/recommend with comments/not recommend**) approval of the proposed amendments to Chapter 199, Shoreland Zoning and the Land Use Map (LR & RP Districts).

Town of Windham
Env. & Sustainability Department

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Gretchen Anderson
Environmental &
Sustainability Coordinator
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www.windhammaine.us

MEMO

DATE: April 6, 2021

TO: Windham Town Council
THROUGH: Barry Tibbetts, Town Manager
FROM: Gretchen Anderson, Environmental & Sustainability Coordinator
CC: Natural Resources Advisory Committee
Amanda Lessard, Planning Director
Chris Hanson, Code Enforcement Director

RE: Windham Shoreland Zoning/Surface Water Protection Ordinance Recommendations

The Natural Resources Advisory Committee's (NRAC) purpose is to serve as an advisory body to the Town Council on issues related to the protection and enhancement of the community's natural resource base. The NRAC has reviewed the strategies, goals and recommendations found in the Town's [Comprehensive Plan](#), [Open Space Master Plan](#), Watershed Prioritization Report (attached), and state shoreland zoning requirements. The NRAC recommends the Town's Zoning Map and Shoreland Zoning Ordinance is amended to comply with the Department of Environmental Protection's minimum shoreland zoning guidelines and to provide greater protection of the Town's impaired waterbodies by increasing the shoreland zones of the Pleasant River and the tributaries of all waterbodies.

The NRAC also recommends expanding the Surface Protection Ordinance Section K.5, the Stormwater and Phosphorus Management Control permitting process (commonly referred to as the points system), to the town-wide shoreland zone (Resource Protection District, Limited Residential District, General Development District, Stream Protection District). The points system has been required in the Highland Lake watershed since December 2017 and has been successfully reducing water quality impacts from development that is not subject to site plan or subdivision review. The NRAC consulted with the Code Enforcement Department to confirm that there are adequate personnel to enforce these additional requirements.

The proposed recommended ordinance and map changes are attached. Highlights of the changes are as follows:

Chapter 199 Shoreland Zoning

- Replace "Shoreland Zoning Map" with "Land Use Map" to be consistent with map terminology in Chapter 140 Land Use Ordinance.
- §199- 13.A. (Resource Protection District): Addition to areas included in Resource Protection (RP) and other land areas designated as Resource Protection on the Windham Office Land Use Map.
- §199- 15.Y (Animals in Shoreland Zone Performance Standard): Delete "or 75 feet" and specify setback is from the high-water line of a waterbody.
- §199- 17. (Definitions): Expand Shoreland Zone definition to include areas as depicted on the official map as a General Development (GD), Limited Residential (LR), Resource Protection (RP), or Stream Protection (SP) district.

Town of Windham, Maine Zoning Map

- Change title to Land Use Map as described in Chapter 140 Section 402.A
- Pleasant River north of Route 302 expanded to 250 ft RP from 100 ft RP or 100 ft SP.
 - 65 properties would be rezoned
- Added Inland Waterfowl / Wading bird Habitat (IWWH) to RP at Albion Road¹.
 - 20 properties would be rezoned
- Added 10-acre freshwater wetlands¹ to LR.
 - 85 properties would be rezoned
- Changed boundary of RP zones in North Windham based on current wetland data.
- Ensured current SP boundary was 100 ft, as required in Chapter 199 Shoreland Zoning.
- Expanded SP to all tributaries of waterbodies located in Windham.
 - 501 properties would be rezoned

Chapter 142 Surface Water Protection

- Section C.2 – Double temporary erosion control required for projects in the shoreland zone (Limited Residential, Resource Protection, General Development, and Stream Protection Districts)
- Section K.5 – Stormwater and Phosphorus Management Control Permit required in the shoreland zone (Limited Residential, Resource Protection, General Development, and Stream Protection Districts)

¹ Recommendation are comments from the Department of Environmental Protection's Shoreland Zoning Unit. These recommendations will bring the Town into compliance with the state minimum shoreland zoning requirements.

SHORELAND ZONING

Chapter 199

From the

CODE

of the

TOWN OF WINDHAM

Adopted 7/01/1974

Amended 10/26/93

Amended, 12/01/99

Amended, 3/28/00

Amended 3/11/03

Amended 6/27/2003

Amended 11/15/2005

Amended 6/09/2009

Amended 7/26/2016

Amended 5/26/2020

COUNTY OF CUMBERLAND

STATE OF MAINE

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§199- 1. Purposes

The purposes of this Ordinance are to further the maintenance of safe and healthful conditions; to prevent and control water pollution; to protect fish spawning grounds, aquatic life, bird and other wildlife habitat; to protect buildings and lands from flooding and accelerated erosion; to protect archaeological and historic resources; to protect freshwater wetlands; to control building sites, placement of structures and land uses; to conserve shore cover, and visual as well as actual points of access to inland waters; to conserve natural beauty and open space; and to anticipate and respond to the impacts of development in shoreland areas. Due to the complex nature of this ordinance, property owners with lots or portions of lots within a Shoreland zone are advised to check with the Windham Code Enforcement Department for assistance prior to cutting timber, building any structures, disturbing land or changing the land use within a Shoreland zone.

§199- 2. Authority

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

§199- 3. Applicability

This Ordinance applies to all land areas within 250 feet, horizontal distance, of the normal high-water line of any great pond, or river; within 250 feet, horizontal distance, of the upland edge of a freshwater wetland; and within 100 feet, horizontal distance, of the normal high-water line of a stream, or as shown on the official ~~Shoreland Zoning~~Land Use Map.

This Ordinance also applies to any land use activity in, on, or above any freshwater wetland, great pond, river, stream or brook, and that may have an effect on the above or operates in a manner that causes material or soil to be washed into them. Also, when the above has occurred beyond the zoned limits outlined in this ordinance it is a violation of the above as found in Section 16-D-1 through 8.

§199- 4. Effective Date and Repeal of Formerly Adopted Ordinance

The effective date of this chapter is _____, as adopted by the Windham Town Council on _____. This Ordinance shall not be effective unless approved by the Commissioner of the Department of Environmental Protection. A certified copy of the Ordinance, or Ordinance Amendment, attested and signed by the Municipal Clerk, shall be forwarded to the Commissioner for approval. If the Commissioner fails to act on this Ordinance or Ordinance Amendment, within forty-five (45) days of his/her receipt of the Ordinance, or Ordinance Amendment, it shall be automatically approved.

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

§199- 5. Availability

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

§199- 6. Severability

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

§199- 7. Conflicts with Other Ordinances

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

§199- 8. Amendments

A. Town Council:

After review and written recommendation by the Planning Board, this chapter may be amended by the Town Council in accordance with the Town Charter. The Planning Board may hold a public hearing on proposed amendments and shall place a notice of such meeting in a newspaper of general circulation in the Town of Windham at least two (2) times and the first date at least seven (7) days prior to a public hearing to be held.

B. Re-zoning:

1). *Rezoning in Accordance with Architects Plan:* When a person petitions for re-zoning an area for proposed development in accordance with an architect's plan, the area shall not be re-zoned unless the petitioner posts a performance bond equal to at least twenty-five percent (25%) of the estimated cost of the development. Said bond shall become payable to the Town of Windham if the petitioner fails to begin construction in a substantial manner and in accordance with the plan within one (1) year of the effective date of the re-zoning.

2). *Conditional or Contract Zoning:* Pursuant to 30-A M.R.S.A. § 4352(8), conditional or contract zoning is hereby authorized for development where, for reasons such as the unusual nature or unique location of the development proposed, the Town Council finds it necessary or appropriate to impose, by agreement with the property owner or otherwise, certain conditions or restrictions not generally applicable to other properties similarly zoned. All contract or conditional zoning under this section shall establish rezoned areas which are compatible with the

existing and permitted uses within the original zones. Nothing in this section shall authorize a rezoning, or an agreement to change or retain a zone, that is inconsistent with the Town's Comprehensive Plan. Any conditional or contract zoning is subject to the requirements and procedures set forth in Section 140-43 of the Land Use Ordinance. **[Amended 5/27/2003, Effective 6/27/2003]**

C. Department of Environmental Protection:

The Department of Environmental Protection shall be notified, by certified mail, of all amendments within forty-five (45) days, of the effective date of such amendments. A file of return receipts from such mailings shall be maintained as a permanent record. Amendments shall not be effective unless approved by the Commissioner of the Department of Environmental Protection. If the Commissioner fails to act on any amendment within forty-five (45) days of his/her receipt of the amendment, the amendment is automatically approved. Any application for a permit submitted to the municipality within the forty-five (45) day period shall be governed by the terms of the amendment, if such amendment is approved by the Commissioner.

§199- 9. Districts and Zoning Map.

A. Official ~~Shoreland Zoning~~Windham Land Use Map:

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

1. Resource Protection
2. Limited Residential
3. General Development
4. Stream Protection
5. Any contract or conditional zone created under the terms of this section.

[Amended 5/27/2003, Effective 6/27/2003]

Note: Section 400 of Land Use Ordinance Chapter 140 from the Code of the Town of Windham contains a description of Windham's other zoning districts.

B. Scale of Map. The Official ~~Shoreland Zoning~~Land Use Map shall be drawn at a scale of not less than:

1 inch = 2000 feet. District boundaries shall be clearly delineated and a legend indicating the symbols for each district shall be placed on the map.

~~NOTE: Because of map scale or other reason, a municipality may have a series of maps depicting its shoreland zone.~~

C. Amendments:

The Official ~~Shoreland Zoning~~Land Use Map and all future amendments thereto is hereby made part of and incorporated into this chapter.

D. Certification of Official ~~Shoreland Zoning~~Land Use Map:

The Official ~~Shoreland Zoning~~Land Use Map shall be certified by the attested signature of the Municipal Clerk and shall be located in the appropriate municipal office.

E. Changes to the Official ~~Shoreland Zoning~~Land Use Map:

If amendments, in accordance with Section 8, are made in the district boundaries or other matter portrayed on the Official ~~Shoreland Zoning~~Land Use Map, such changes shall be made on the Official

~~Shoreland Zoning~~Land Use Map within thirty (30) days after the amendment has been approved by the Department of Environmental Protection.

§199- 10. Interpretation of District Boundaries:

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

§199- 11. Land Use Requirements:

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

§199- 12. Non-conformance:

A. Purpose.

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

B. General.

1. Transfer of ownership:

Non-conforming structures, lots, and uses may be transferred, and the new owner may continue the non-conforming use or continue to use the non-conforming structure or lot, subject to the provisions of this Ordinance. Any lawful use of buildings, structures, premises, land or parts thereof legally existing at the effective date of this chapter or amendments thereto and not in conformance with the provisions of this chapter shall be considered to be a nonconforming use.

2. Repair and Maintenance:

This Ordinance allows, with a permit, the normal upkeep and maintenance of non-conforming uses and structures including repairs or renovations that do not involve expansion

of the non-conforming use or structure, and such other changes in a non-conforming use or structure as federal, state, or local building and safety codes may require.

C. Non-conforming Structures:

1. Expansions:

All new principal and accessory structures, excluding functionally water-dependent uses, must meet the water body, tributary stream, or wetland setback requirements contained in Section 199-15(B)(1). A non-conforming structure may be added to or expanded after obtaining a permit from the same permitting authority as that for a new structure, if such addition or expansion does not increase the non-conformity of the structure and is in accordance with subparagraphs (a) and (b) below.

- a. Expansion of any portion of a structure within 25 feet of the normal high-water line of a water body, tributary stream, or upland edge of a wetland is prohibited, even if the expansion will not increase nonconformity with the water body, tributary stream or wetland setback requirement. Expansion of an accessory structure that is located closer to the normal high-water line of a water body, tributary stream, or upland edge of a wetland than the principal structure is prohibited, even if the expansion will not increase nonconformity with the water body, tributary stream, or wetland setback requirement.
- b. Notwithstanding paragraph (a), above, if a legally existing nonconforming principal structure is entirely located less than 25 feet from the normal high-water line of a water body, tributary stream, or upland edge of a wetland, that structure may be expanded as follows, as long as all other applicable municipal land use standards are met and the expansion is not prohibited by Section 12(C)(1).
 - i. The maximum total footprint for the principal structure may not be expanded to a size greater than 800 square feet or 30% larger than the footprint that existed on January 1, 1989, whichever is greater. The maximum height of the principal structure may not be made greater than 15 feet or the height of the existing structure, whichever is greater.
- c. All other legally existing nonconforming principal and accessory structures that do not meet the water body, tributary stream, or wetland setback requirements may be expanded or altered as follows, as long as other applicable municipal land use standards are met and the expansion is not prohibited by Section 12(C)(1) or Section 12(C)(1)(a), above.
 - i. For structures located less than 75 feet from the normal high-water line of a water body, tributary stream, or upland edge of a wetland, the maximum combined total footprint for all structures may not be expanded to a size greater than 1,000 square feet or 30% larger than the footprint that existed on January 1, 1989, whichever is greater.

The maximum height of any structure may not be made greater than 20 feet or the height of the existing structure, whichever is greater.

- ii. For structures located less than 100 feet from the normal high-water line of a great pond classified as GPA or a river flowing to a great pond classified as GPA, the maximum combined total footprint for all structures may not be expanded to a size greater than 1,500 square feet or 30% larger than the footprint that existed on January 1, 1989, whichever is greater. The maximum height of any structure may not be made greater than 25 feet or the height of the existing structure, whichever is greater. Any portion of those structures located less than 75 feet from the normal high-water line of a water body, tributary stream, or upland edge of a wetland must meet the footprint and height limits in Section 199-12(C)(1)(b)(i) and Section 199-12(C)(1)(c)(i), above.
- iii. In addition to the limitations in subparagraphs (i) and (ii), for structures that are legally nonconforming due to their location within the Resource Protection District when located at less than 250 feet from the normal high-water line of a water body or the upland edge of a wetland, the maximum combined total footprint for all structures may not be expanded to a size greater than 1,500 square feet or 30% larger than the footprint that existed at the time the Resource Protection District was established on the lot, whichever is greater. The maximum height of any structure may not be made greater than 25 feet or the height of the existing structure, whichever is greater, except that any portion of those structures located less than 75 feet from the normal high-water line of a water body, tributary stream, or upland edge of a wetland must meet the footprint and height limits in Section 12(C)(1)(b)(i) and Section 12(C)(1)(c)(i), above.
- d. An approved plan for expansion of a nonconforming structure must be recorded by the applicant with the registry of deeds, within 90 days of approval. The recorded plan must show the existing and proposed footprint of the non-conforming structure, the existing and proposed structure height, the footprint of any other structures on the parcel, the shoreland zone boundary and evidence of approval by the municipal review authority.

2. Foundations:

Whenever a new, enlarged, or replacement foundation is constructed under a non-conforming structure, the structure and new foundation must be placed such that the setback requirement is met to the greatest practical extent as determined by the Code Enforcement Office or its designee, basing its decision on the criteria specified in Section 199-12 (C)(3) Relocation, below.

3. Relocation:

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

In determining whether the building relocation meets the setback to the greatest practical extent, the Code Enforcement Officer shall consider the size of the lot, the slope of the land, the potential for soil erosion, the location of other structures on the property and on adjacent properties, the location of the septic system and other on-site soils suitable for septic systems, and the type and amount of vegetation to be removed to accomplish the relocation.

When it is necessary to remove vegetation within the water or wetland setback area in order to relocate a structure, the Code Enforcement Officer shall require replanting of native vegetation to compensate for the destroyed vegetation in accordance with Section 199-15(S). In addition, the area from which the relocated structure was removed must be replanted with vegetation. Replanting shall be required as follows:

(a) Trees removed in order to relocate a structure must be replanted with at least one native tree, three (3) feet in height, for every tree removed. If more than five trees are planted, no one species of tree shall make up more than 50% of the number of trees planted. Replaced trees must be planted no further from the water or wetland than the trees that were removed.

Other woody and herbaceous vegetation, and ground cover, that are removed or destroyed in order to relocate a structure must be re-established. An area at least the same size as the area where vegetation and/or ground cover was disturbed, damaged, or removed must be reestablished within the setback area. The vegetation and/or ground cover must consist of similar native vegetation and/or ground cover that was disturbed, destroyed or removed.

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

4. Reconstruction or Replacement:

Any non-conforming structure which is located less than the required setback from a water body, tributary stream, or wetland and which is removed, or damaged or destroyed, regardless

of the cause, by more than 50% of the market value of the structure before such damage, destruction or removal, may be reconstructed or replaced provided that a permit is obtained within eighteen (18) months of the date of said damage, destruction, or removal, and provided that such reconstruction or replacement is in compliance with the water body, tributary stream or wetland setback requirement to the greatest practical extent as determined by the Code Enforcement Office in accordance with the purposes of this Ordinance. In no case shall a structure be reconstructed or replaced so as to increase its non-conformity. If the reconstructed or replacement structure is less than the required setback it shall not be any larger than the original structure, except as allowed pursuant to Section 199-12 (C)(1) above, as determined by the non-conforming footprint of the reconstructed or replaced structure at its new location. If the total footprint of the original structure can be relocated or reconstructed beyond the required setback area, no portion of the relocated or reconstructed structure shall be replaced or constructed at less than the setback requirement for a new structure. When it is necessary to remove vegetation in order to replace or reconstruct a structure, vegetation shall be replanted in accordance with Section 199-12 (C)(3) above.

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

In determining whether the building reconstruction or replacement meets the setback to the greatest practical extent the Code Enforcement Officer shall consider, in addition to the criteria in Section 199-12 (C)(3) above, the physical condition and type of foundation present, if any.

5. Change of Use of a Non-conforming Structure:

The use of a non-conforming structure may not be changed to another use, except for a conforming use, unless the Code Enforcement Officer after receiving a written application determines that the new use will have no greater adverse impact on the water body or wetland or on the subject or adjacent properties and resources than the existing use.

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

D. Non-conforming Uses:

1. Expansions:

Expansions of non-conforming uses are prohibited, except that non-conforming residential uses may, after obtaining a permit from the Code Enforcement Officer, be expanded within existing residential structures or within expansions of such structures or within expansions of such structures as permitted in §199-12 (C) (1) above.

2. Resumption Prohibited:

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

3. Change of Use:

An existing non-conforming use may be changed to another non-conforming use provided that the proposed use has no greater adverse impact on the subject and adjacent properties and resources than the former use, as determined by the Code Enforcement Officer. The determination of no greater adverse impact shall be made according to criteria listed in §199-12 (C) (5) above.

E. Non-conforming Lots.

1. Non-conforming Lots:

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

2. Contiguous Built Lots:

If two or more contiguous lots or parcels are in a single or joint ownership of record at the time of adoption of this Ordinance, if all or part of the lots do not meet the dimensional requirements of this Ordinance, and if a principal use or structure exists on each lot, the non-conforming lots may be conveyed separately or together, provided that the State Minimum Lot Size Law (12 M.R.S.A. sections 4807-A through 4807-D) and the State of Maine Subsurface Wastewater Disposal Rules are complied with.

If two or more principal uses or structures existed on a single lot of record on the effective date of this Ordinance, each may be sold as a separate lot provided that the sale(s) comply with above referenced law and rules. When such lots are divided each lot thus created must be as conforming as possible to the dimensional requirements of this Ordinance.

3. Contiguous Lots- Vacant or Partially Built:

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

This provision shall not apply to two or more contiguous lots, at least one of which is non-conforming, owned by the same person or persons on the effective date of this Ordinance and recorded in the registry of deeds if the lot is served by a public sewer or can accommodate a subsurface sewage disposal system in conformance with the State of Maine Subsurface Wastewater Disposal Rules, and:

- a. Each lot contains at least 100 feet of shore frontage and at least 20,000 square feet of lot area; or
- b. Any lots that do not meet the frontage and lot size requirements of subparagraph (a.) are re-configured or combined so that each new lot contains at least 100 feet of shore frontage and 20,000 square feet of lot area.

§199- 13. Establishment of Districts.

A. Resource Protection District:

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

1. Areas within 250 feet, horizontal distance, of the upland edge of freshwater wetlands and wetlands associated with great ponds and rivers, which are rated “moderate” or “high” value waterfowl and wading bird habitat, including nesting and feeding areas, by the Maine Department of Inland Fisheries and Wildlife (MDIF&W) that are depicted on a Geographic Information System (GIS) data layer maintained by either MDIF&W or the Department as of May 1, 2006. For the purposes of this paragraph “wetlands associated with great ponds and rivers” shall mean areas characterized by non-forested wetland vegetation and hydric soils that are contiguous with a great pond or river, and have a surface elevation at or below the water level of the great pond or river during the period of normal high water. “Wetlands associated with great ponds or rivers” are considered to be part of that great pond or river.
2. Flood plains along rivers and flood plains along artificially formed great ponds along rivers, defined by the 100 year flood plain as designated on the Federal Emergency Management Agency’s (FEMA) Flood Insurance Rate Maps or Flood Hazard Boundary Maps, or the flood of record, or in the absence of these, by soil types identified as recent flood plain soils.

3. Areas of two or more contiguous acres with sustained slopes of 20% or greater.
4. Areas of two (2) or more contiguous acres supporting wetland vegetation and hydric soils, which are not part of a freshwater wetland as defined, and which are not surficially connected to a water body during the period of normal high water.

NOTE: These areas usually consist of forested wetlands abutting water bodies and non-forested wetlands.

5. Land areas along rivers subject to severe bank erosion, undercutting, or river bed movement, which are subject to severe erosion or mass movement.

6. Other land areas designated as Resource Protection on the Windham Official Land Use Map.

(Amended 11/15/2005. Effective 12/15/2005.)

B. Limited Residential District:

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

C. General Development District:

The General Development District includes the following types of areas:

1. Areas of two or more contiguous acres devoted to commercial, industrial or intensive recreational activities, or a mix of such activities, including but not limited to the following:
 - a. Areas devoted to manufacturing, fabrication, or other industrial activities;
 - b. Areas devoted to wholesaling, warehousing, retail trade and service activities, or other commercial activities; and
 - c. Areas devoted to intensive recreational development and activities, such as, but not limited to amusement parks, race tracks and fairgrounds.
2. Areas otherwise discernible as having patterns of intensive commercial, industrial or recreational uses. Portions of the General Development District may also include residential development. However, no area shall be designated as a General Development District based solely on residential use.
3. In areas adjacent to great ponds classified GPA and adjacent to rivers flowing to great ponds classified GPA, the designation of an area as a General Development District shall be based upon uses existing at the time of adoption of this Ordinance. There shall be no newly established General Development Districts or expansions in area of existing General

Development Districts adjacent to great ponds classified GPA, and adjacent to rivers that flow to great ponds classified GPA.

D. Stream Protection District.

The Stream Protection District includes all land areas within one hundred (100) feet, horizontal distance, of the normal high-water line of a stream, exclusive of those areas within two-hundred and fifty (250) feet, horizontal distance, of the normal high-water line of a great pond, river or within two hundred-fifty (250) feet, horizontal distance, of the upland edge of a freshwater wetland, or as shown on the official Land Use Shoreland Zoning map. Where a stream and its associated shoreland area is located within two-hundred and fifty (250) feet, horizontal distance, of the above water bodies or wetlands, that land area shall be regulated under the terms of the shoreland district associated with that water body or wetland. (Amended 9/25/95. Effective 10/25/95.)

§199- 14. Table of Land Uses

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

Abbreviations:

- RP- Resource Protection
- LR- Limited Residential
- GD- General Development
- SP- Stream Protection

TABLE 1. LAND USES IN THE SHORELAND ZONE

<u>LAND USES</u>		<u>DISTRICTS</u>			
		SP	RP	LR	GD
1.	Non-intensive recreational uses not requiring structures such as hunting fishing and hiking	YES	YES	YES	YES
2.	Motorized vehicular traffic on existing roads and trails	YES	YES	YES	YES
3.					
4.					
5.	Clearing or removal of vegetation for activities other than timber harvesting	CEO	CEO ¹	YES	YES
6.	Fire prevention activities	YES	YES	YES	YES
7.	Wildlife management practices	YES	YES	YES	YES
8.	Soil and water conservation practices	YES	YES	YES	YES
9.	Mineral exploration	NO	YES ²	YES ²	YES ₂
10.	Mineral extraction including sand and gravel extraction	NO	PB ³	PB	PB
11.	Surveying and resource analyses	YES	YES	YES	YES
12.	Emergency operations	YES	YES	YES	YES
13.	Agriculture	YES	PB	YES	YES
14.	Aquaculture	PB	PB	PB	YES
15.	Principal structures and uses A. One and two family residential, including driveways B. Multi-unit residential C. Commercial D. Industrial E. Governmental and Institutional F. Small non-residential facilities for educational, scientific, or nature interpretation purposes	CEO NO NO NO NO PB ⁴	PB ⁹ NO NO NO NO PB	CEO PB PB NO PB CEO	CEO PB PB PB PB ⁸ CEO
16.	Structures accessory to allowed uses	CEO	CEO	CEO	CEO
17.	Permanent piers, docks, wharves, bridges and other structures and uses extending over or below the normal high-water line or within a wetland	PB	PB	PB	PB
18.	Conversions of seasonal residences to year-round residences	LPI	LPI	LPI	LPI
19.	Home occupations	CEO	CEO	CEO	CEO
20.	Private sewage disposal systems for allowed uses	LPI	LPI	LPI	LPI
21.	Essential services	PB ⁵	PB ⁵	PB	PB
	A. Roadside distribution lines (34.5k V and lower)	CEO ⁵	CEO ⁵	YES ¹¹	YES ¹¹
	B. Non-roadside or cross-country distribution lines involving ten poles or less in the shoreland zone.	CEO ⁵	CEO ⁵	CEO	CEO
	C. Non-roadside or cross-country distribution lines involving eleven or more poles in the shoreland zone.	PB ⁵	PB ⁵	PB	PB
22.	Service drops, as defined, to allowed uses	YES	YES	YES	YES
23.	Public and private recreational areas involving minimal structural development	PB	PB	PB	PB
24.	Individual, private campsites	CEO	CEO	CEO	CEO
25.	Campgrounds	NO	NO ⁶	PB	PB
26.	Road and driveway construction	CEO	PB ⁷	CEO	CEO
27.	Medical marijuana registered caregiver / Medical marijuana registered caregiver (home occupation)	NO	NO	NO	CEO
28.	Other marijuana businesses	NO	NO	NO	NO
29.	Parking facilities	NO	PB	PB	PB
29.	Marinas	PB	NO	PB	PB
30.	Filling and earth moving of less than 10 (ten) cubic yards	CEO	CEO	YES	YES
31.	Filling and earth moving of more than 10 (ten) cubic yards	CEO	PB	CEO	CEO

32.	Signs	CEO	CEO	CEO	CEO
33.	Uses similar to allowed uses	CEO	CEO	CEO	CEO
34.	Uses similar to uses requiring a CEO permit	CEO	CEO	CEO	CEO
35.	Uses similar to uses requiring a PB permit	PB	PB	PB	PB
36.	Wireless Telecommunications Facilities 3/28/00	NO	NO	NO	PB

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

² Requires permit from the 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.

⁴ Provided that a variance from the setback requirements is obtained from the Board of Appeals.

⁵ See further restrictions in Section 15 L.

⁶ Except when area is zoned for RP due to flood plain criteria in which case a permit is required from the PB

⁷ Except as provided in Section 199-15(H)(4).

⁸ Correction Facilities are a Special Exception in the General Development (GD) District requiring both Planning Board and Zoning Board of Appeals approval. Correction Facilities must meet the Performance Standards listed under Article V, § 140-31 of the Land Use Ordinance.

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

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

¹¹ Permit not required, but must file a written “notice of intent to construct” with CEO.

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

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

§199- 15. Land Use Standards:

All land use activities within the shoreland zone shall conform with the following provisions, if applicable. No development in excess of two thousand (2,000) square feet of floor space or twenty- five thousand (25,000) square feet of development, as defined in Section 199-17, shall commence until the Planning Board has reviewed and approved the plans. Subject to this section are nonresidential uses, public and semi-public buildings and multi-family units, whether or not such development includes a subdivision or re-subdivision of a site. Excepted from this section are the construction of residential single or two-family dwellings or accessory buildings thereto or agricultural uses. All applications for site plan approval shall be accompanied by a fee payable by check to the Town of Windham. (Please refer to §140-38 of the Land Use Ordinance as amended

10/24/89 for
standards.)

A. Minimum Lot Standards

1. Requirements:

Lots shall meet or exceed the following minimum requirements:

a. Minimum lot size

AREA	WIDTH	AREA PER RESIDENTIAL DWELLING UNIT	SHORE FRONTAGE
(in square feet)	(feet)	(in square feet)	(in feet)
40,000	200	40,000	200
Commercial/Industrial 60,000	300		300

b. Minimum setback

WATERLINE OR EDGE OF WETLAND (in feet)	SIDE (in feet)	ROAD (in feet)	REAR (in feet)
See standards in Section 15(B)(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 (2) 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 one hundred (100) feet, horizontal distance, of the normal high-water line of a water body or upland edge of a wetland shall be equal to or greater than the shore frontage 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 one hundred (100) feet, horizontal distance, from the normal high-water line of great ponds classified GPA and rivers that flow to great ponds classified GPA, and seventy-five (75) feet, horizontal distance, from the normal high-water line of other water bodies, tributary streams, or the upland edge of a wetland as depicted on the official Shoreland Zoning Map, except that in the General Development District the setback from the normal high-water line shall be at least twenty-five (25) feet, horizontal distance. In the Resource Protection District the setback requirement shall be 250 feet, horizontal distance, except for structures, roads, parking spaces or other regulated objects specifically allowed in that district in which case the setback requirements specified above shall apply.

A. The water body, tributary stream, or wetland setback provisions shall neither apply 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 non-conforming lot of record on which only a residential structure exists, and it is not possible to place an accessory structure meeting the required water body, tributary stream or wetland setbacks, the code enforcement officer may issue a permit to place a single accessory structure, with no utilities, for the storage of yard tools and similar equipment. Such accessory structure shall not exceed eighty (80) square feet in area nor eight (8) feet in height, and shall be located as far from the shoreline or tributary stream 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 thirty-five (35) feet in height. This provision shall not apply to structures such as transmission towers, windmills, antennas, and similar structures having no floor area.

3. 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 flood plain soils. In those municipalities that participate in the national Flood Insurance Program and have adopted the April 2005 version, or later version, of the Floodplain Management Ordinance, accessory structures may be placed in accordance with the standards of that ordinance and need not meet the elevation requirements of this paragraph.

4. Lot coverage:

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

In a General Development District located adjacent to rivers that do not flow to great ponds, non-vegetated surfaces shall not exceed a total of seventy (70) percent of the portion of the lot located within the shoreland zone.

For the purposes of calculating lot coverage, non-vegetated 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, are 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 flood plain soils.
 - f. The area behind the wall is revegetated with grass, shrubs, trees, or a combination thereof, and no further structural development will occur within the setback area, including patios and decks; and
 - g. A vegetated buffer area is established within 25 feet, horizontal distance, of the normal high-water line of a water body, tributary stream, or upland edge of a wetland when a natural buffer area does not exist. The buffer area must meet the following characteristics:
 - (i) The buffer must include shrubs and other woody and herbaceous vegetation. Where natural ground cover is lacking the area must be supplemented with leaf or bark mulch;

- (ii) Vegetation plantings must be in quantities sufficient to retard erosion and provide for effective infiltration of stormwater runoff;
- (iii) Only native species may be used to establish the buffer area;
- (iv) A minimum buffer width of 15 feet, horizontal distance, is required, measured

perpendicularly to the normal high-water line or upland edge of a wetland;

- (v) A footpath not to exceed the standards in Section 199-15(P)(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 Resource Protection Act 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 (4) feet in width; that the structure does not extend below or over the normal high-water line of a water body or upland edge of a wetland, (unless permitted by the Dept. 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 Section 15(A), a second structure may be allowed and may remain as long as the lot is not further divided.
2. Access from shore shall be developed on soils appropriate for such use and constructed so as to control erosion.
3. The location shall not interfere with existing developed or natural beach areas.
4. The facility shall be located so as to minimize adverse effects on fisheries.
5. The facility shall be no larger in dimension than necessary to carry on the activity and be consistent with 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 non-tidal waters shall not be permitted unless it is clearly demonstrated to the Planning Board that a temporary pier or dock is not feasible, and a permit

has been obtained from the Department of Environmental Protection, pursuant to the Natural Resources Protection Act.

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

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

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

- a. When necessary, the removal of trees and other vegetation to allow for construction equipment access to the stabilization site via land must be limited to no more than 12 feet in width. When the stabilization project is complete the construction equipment accessway must be restored.
- b. Revegetation must occur in accordance with Section 15(S).

NOTE: A permit pursuant to the Natural Resource Protection Act 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 the shoreline setback requirements in section 15(B); 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. section 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 five thousand (5,000) square feet of land not including roads and driveways, for each site. Land supporting wetland vegetation, and land below the normal high-water line of a water body shall not be included in calculating land area per site.

2. 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 one hundred (100) feet, horizontal distance, from the normal high-water line of a great pond classified GPA or a river flowing to a great pond classified GPA, and seventy-five (75) feet, horizontal distance, or from the normal high-water line of other water bodies, tributary streams, or the upland edge of a wetland or as depicted on the official Town of Windham ~~Shoreland Zoning~~ Land Use Map, and must also meet the required rear-setback of thirty-five (35) feet and side-setback of fifteen (15) feet from the property boundary lines.

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 Ordinance, or thirty thousand (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 one hundred (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 seventy-five (75) feet, horizontal distance, from the normal high-water line of other water bodies, tributary streams, or the upland edge of a wetland as depicted on the official Town of Windham ~~Shoreland Zoning~~ Land Use Map, and must also meet the required rear- setback of thirty-five (35) feet and side-setback of fifteen (15) feet from the property boundary lines.

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 one thousand (1,000) square feet.

6. Sewage disposal:

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

- a. Auto washing facilities
- b. Auto or other vehicle service and/or repair operations, including body shops
- c. Chemical and bacteriological laboratories
- d. Storage of chemicals, including herbicides, pesticides or fertilizers other than amounts normally associated with individual households or farms
- e. Commercial painting, wood preserving, and furniture stripping
- f. Dry cleaning establishments
- g. Electronic circuit assembly
- h. Laundromats, unless connected to a sanitary sewer
- i. Metal plating, finishing, or polishing

- j. 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
- k. Photographic processing
- l. 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 fifty (50) feet, horizontal distance, from the shoreline or tributary stream if the Planning Board finds that no other reasonable alternative exists further from the shoreline or tributary stream.

2. 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 ~~Shoreland Zoning~~Land Use Map and where feasible, to retain all runoff on-site.

3. Size:

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

- a. Typical parking space: Approximately ten (10) feet wide and twenty (20) feet long, except that parking spaces for a vehicle and boat trailer shall be forty (40) feet long.
- b. Internal travel aisles: Approximately twenty four (24) feet wide.

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:

Roads and driveways shall be set back at least one-hundred (100) feet, horizontal distance, from the normal high-water line of a great pond classified GPA or a river that flows to a great pond classified GPA, and seventy-five (75) feet, horizontal distance, from the normal high-water line of other water bodies, tributary streams, or the upland edge of a wetland as depicted on the official Town of Windham ~~Shoreland Zoning~~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 fifty (50) feet, horizontal distance, upon clear showing by the applicant that

appropriate techniques will be used to prevent sedimentation of the water body, tributary stream, or

wetland. Such techniques may include, but are not limited to, the installation of settling basins, and/or the effective use of additional ditch relief culverts and turnouts placed so as to avoid sedimentation of the water body, tributary stream, or wetland. 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.

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

Section 15 (H)(1) does not apply to approaches to water crossings nor to roads or driveways that provide access to permitted structures, and facilities located nearer to the shoreline or tributary stream due to an operational necessity, excluding temporary docks for recreational uses. Roads and driveways providing access to permitted structures within the setback area shall comply fully with the requirements of Section 199-15(H)(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 ~~Shoreland Zoning~~ Land Use Map.

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 (2) horizontal to one (1) vertical, and shall be graded and stabilized in accordance with the provisions for erosion and sedimentation control contained in Section 199-15 (T).

5. Road grade:

Road and driveway grades shall be no greater than ten (10) percent except for segments of less than two hundred (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)
0-2	250
3-5	200-135
6-10	100-80
11-15	80-60
16-20	60-45
21+	40

- b. Drainage dips may be used in place of ditch relief culverts only where the grade is ten (10) percent or less.
- c. On sections having slopes greater than ten (10) percent, ditch relief culverts shall be placed at approximately a thirty (30) degree angle downslope from a line perpendicular to the centerline of the road or driveway.
- d. Ditch relief culverts shall be sufficiently sized and properly installed in order to allow for effective functioning, and their inlet and outlet ends shall be stabilized with appropriate materials.

8. Maintenance and Repair:

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

When maintenance and/or repair are performed, such performance must be in accordance with Best Management Practice.

I. Signs

The use of signs in the General Development District shall be governed by §140-37F of the Land Use Ordinance (standards in Commercial Districts.) The use of signs in the Resource Protection and Limited Residential Districts shall be governed by §140-37A of the Land Use Ordinance. Signs advertising home occupations should conform to the guidelines stated in §140-37 (E)(4) of the Land Use Ordinance (Identification signs.)

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

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

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 Districts "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 Water Resource Commission.

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.

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

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

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 road-side distribution lines, is not allowed in a Resource Protection or Stream Protection District, except to provide services to a permitted use within said district, or except where the applicant demonstrates that no reasonable alternative exists. Where allowed, such structures and facilities shall be located so as to minimize any adverse impacts on surrounding uses and resources, including visual impacts.
3. Damaged or destroyed public utility transmission and distribution lines, towers and related equipment may be replaced or reconstructed without a permit.

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 one hundred (100) square feet of ground surface. A permit from the Code Enforcement Officer shall be required for mineral exploration which exceeds the above limitation. All excavations, including test pits and holes, shall be immediately capped, filled or secured by other equally effective measures to restore disturbed areas and to protect the public health and safety.

Mineral extraction may be permitted under the following conditions:

1. Reclamation plan:

A reclamation plan shall be filed with, and approved by, the Planning Board before a permit is granted. Such plan shall describe in detail procedures to be undertaken to fulfill the requirements of Section 199-15 (M)(4) below.

2. Setbacks:

No part of any extraction operation, including drainage and runoff control features shall be permitted within one hundred (100) feet, horizontal distance, of the normal high-water line of a great pond classified GPA, or a river flowing to a great pond classified GPA, and within one hundred (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 one hundred (100) feet, horizontal distance, of any property line without written permission of the owner of such adjacent property.

3. Closure:

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

- a. All debris, stumps, and similar material shall be removed for disposal in an approved location, or shall be buried on-site. Only materials generated on-site may be buried or covered on-site. The State of Maine Solid Waste Laws, Title 38 M.R.S.A. §1310 and Chapter 404 of the Department of Environmental Protection's regulations may contain other applicable provisions regarding disposal of such materials.
- b. The final graded slope shall be two to one (2:1) slope or flatter
- c. Top soil or loam shall be retained to cover all disturbed land areas which shall be reseeded and stabilized with vegetation native to the area. Additional topsoil or loam shall be obtained from off-site sources if necessary to complete the stabilization project.

4. Public hearing:

In keeping with the purposes of this Ordinance, 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 Chapter 116 Section 116-1 of the Windham Land Use Ordinance.

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. sections 4201-4209).

2. Manure storing:

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

3. Areas greater than 40,000 sq. ft.

Agricultural activities involving tillage of soil greater than forty thousand (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. Non-conformance with the provisions of said plan shall be considered to be a violation of this Ordinance.

4. Setback:

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

5. New grazing areas:

Newly established livestock grazing areas shall not be permitted within one hundred (100) feet, horizontal distance, of the normal high-water line of a great pond classified GPA; within seventy-five (75) feet, horizontal distance of other water bodies, nor; within twenty-five (25) feet, horizontal distance, of a tributary streams, and freshwater wetlands. Livestock grazing associated with ongoing farm activities, and which are not in conformance with the above setback provisions may continue, provided that such grazing is conducted in accordance with a Conservation Plan that has been filed with the planning board..

O. (Repealed).

NOTE RELATING TO TIMBER HARVESTING STANDARDS: In accordance with Title 38 M.R.S.A. section 438-B the State of Maine Department of Agriculture, Conservation 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:

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 seventy-five (75) feet, horizontal distance, inland from the normal high-water line, except to remove safety hazard trees as described in section Q.

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

- a. There shall be no cleared opening greater than two-hundred-fifty (250) square feet in the forest canopy (or other existing woody vegetation if a forested canopy is not present) as measured from the outer limits of the tree or shrub crown. However, a single footpath not to exceed six (6) feet in width as measured between tree trunks and/or shrub stems is allowed for accessing the shoreline provided that a cleared line of sight to the water through the buffer strip is not created.
- b. Selective cutting of trees within the buffer strip is allowed provided that a well-distributed stand of trees and other natural vegetation is maintained. For the purposes of Section 15(P)(2)(b) a “well-distributed stand of trees” adjacent to a great pond classified GPA or a river or stream flowing to a great pond classified GPA, shall be defined as maintaining a rating score of 24 or more in each 25-foot by 50-foot rectangular (1250 square feet) area as determined by the following rating system.

Diameter of Tree at 4- ½ feet Above Ground Level (inches)	Points
2- < 4in.	1
4- < 8in.	2
8- < 12 in.	4
12 in. or greater	8

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

NOTE: As an example, adjacent to a great pond, if a 25-foot plot contains four (4) trees between 2 and 4 inches in diameter, two trees between 4 and 8 inches in diameter, three trees between 8 and 12 inches in diameter, and two trees over 12 inches in diameter, the rating score is:

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

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

The following shall govern in applying this point system:

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

For the purposes of Section 15(P)(2)(b) “other natural vegetation” is defined as retaining existing vegetation under three (3) feet in height and other ground cover and retaining at least five (5) saplings less than two (2) inches in diameter at four and one half (4 ½) feet above ground level for each 25-foot by 50-foot rectangle area. If five saplings do not exist, no woody stems less than two (2) inches in diameter can be removed until 5 saplings have been recruited into the plot.

Notwithstanding the above provisions, no more than 40% of the total volume of trees four (4) inches or more in diameter, measured at 4 ½ feet above ground level may be removed in any ten (10) year period.

- c. In order to protect water quality and wildlife habitat, existing vegetation under three (3) feet in height and other ground cover, including leaf litter and the forest duff layer, shall not be cut, covered or removed, except to provide for a footpath or other permitted uses as described in Section 15(P) paragraphs (2) and (2)(a) above.
- d. Pruning of 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 Section Q, below unless existing new tree growth is present.
- f. In order to maintain the vegetation in the shoreline buffer, clearing or removal of vegetation for allowed activities, including associated construction and related equipment operation, within or outside the shoreline buffer, must comply with the requirements of Section 15.P(2).

Section 15(P)(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 ft.:

At distances greater than one hundred (100) feet, horizontal distance, from a great pond classified GPA or a river flowing to a great pond classified GPA, and seventy-five (75) feet, horizontal distance, from the normal high-water line of any other water body, tributary stream, or the upland edge of a wetland, there shall be allowed on any lot, in any ten (10) year period, selective cutting of not more than forty (40) percent of the volume of trees four (4) inches or more in diameter, measured 4½ feet above ground level. Tree removal in conjunction with the development of permitted uses shall be included in the forty (40) percent calculation. For the purposes of these standards volume may be considered to be equivalent to basal area.

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

4. Existing openings:

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

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 Section 15(P).

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

1. Hazard trees in the shoreland zone may be removed without a permit after consultation with the Code Enforcement Officer if the following requirements are met:
 - a. Within the shoreline buffer, if the removal of a hazard tree results in a cleared opening in the tree canopy greater than two hundred and fifty (250) square feet, replacement with native tree species is required, unless there is new tree growth already present. New tree growth must be as near as practicable to where the hazard tree was removed and be at least two (2) inches in diameter, measured at four and one half (4.5) feet above the ground level. If new growth is not present, then replacement trees shall consist of native species and be at least four (4) feet in height, and be no less than two (2) inches in diameter. Stumps may not be removed.
 - b. Outside of the shoreline buffer, when the removal of hazard trees exceeds forty (40) percent of the volume of trees four (4) inches or more in diameter, measured at four and one half (4.5) feet above ground level in any ten (10) year period, and/or results in cleared openings exceeding twenty-five (25) percent of the lot area within the shoreland zone, or ten thousand (10,000) square feet, whichever is greater, replacement with native tree species is required, unless there is new tree growth already present. New tree growth must be as near as practicable to where the hazard tree was removed and be at least two (2) inches in diameter, measured at four and one half (4.5) feet above the ground level. If new growth is not present, then replacement trees shall consist of native species and be at least two (2) inches in diameter, measured at four and one half (4.5) feet above the ground level.
 - c. The removal of standing dead trees, resulting from natural causes, is permissible without the need for replanting or a permit, as long as the removal does not result in the creation of new lawn areas, or other permanently cleared areas, and stumps are not removed. For the purposes of this provision dead trees are those trees that contain no foliage during the growing season.
 - d. The Code Enforcement Officer may require the property owner to submit an evaluation from a licensed forester or arborist before any hazard tree can be removed within the shoreland zone.
 - e. The Code Enforcement Officer may require more than a one-for-one replacement for hazard trees removed that exceed eight (8) inches in diameter measured at four and one half (4.5) feet above the ground level.
2. Storm-damaged trees in the shoreland zone may be removed without a permit after consultation with the Code Enforcement Officer if the following requirements are met:
 - a. Within the shoreline buffer, when the removal of storm-damaged trees results in a cleared opening in the tree canopy greater than two hundred and fifty (250) square feet, replanting is not required, but the area shall be required to naturally revegetate, and the following requirements must be met:

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

R. Exemptions to Clearing and Vegetation Removal Requirements

The following activities are exempt from the clearing and vegetation removal standards set forth in Section 199-15(P), provided that all other applicable requirements of this chapter are complied with, and the removal of vegetation is limited to that which is necessary:

1. The removal of vegetation that occurs at least once every two (2) years for the maintenance of legally existing areas that do not comply with the vegetation standards in this chapter, such as but not limited to cleared openings in the canopy or fields. Such areas shall not be enlarged, except as allowed by this section. If any of these areas, due to lack of removal of vegetation every two (2) years, reverts back to primarily woody vegetation, the requirements of Section 15(P) apply;
2. The removal of vegetation from the location of allowed structures or allowed uses, when the shoreline setback requirements of section 199-15(B) are not applicable;
3. The removal of vegetation from the location of public swimming areas associated with an allowed public recreational facility;
4. The removal of vegetation associated with allowed agricultural uses, provided best management practices are utilized, and provided all requirements of section 199-15(N) are complied with;
5. The removal of vegetation associated with brownfields or voluntary response action program (VRAP) projects provided that the removal of vegetation is necessary for remediation activities to clean-up contamination on a site in a general development district that is part of a state or federal brownfields program or a voluntary response action program pursuant 38 M.R.S.A

section 343-E, and that is located along a river that does not flow to a great pond classified as GPA pursuant to 38 M.R.S.A section 465-A.

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

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

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

S. Revegetation Requirements.

When revegetation is required in response to violations of the vegetation standards set forth in Section 199-15(P), to address the removal of non- native invasive species of vegetation, or as a mechanism to allow for development that may otherwise not be permissible due to the vegetation standards, including removal of vegetation in conjunction with a shoreline stabilization project, the revegetation must comply with the following requirements.

1. The property owner must submit a revegetation plan, prepared with and signed by a qualified professional, that describes revegetation activities and maintenance. The plan must include a scaled site plan, depicting where vegetation was, or is to be removed, where existing vegetation is to remain, and where vegetation is to be planted, including a list of all vegetation to be planted.
2. Revegetation must occur along the same segment of shoreline and in the same area where vegetation was removed and at a density comparable to the pre-existing vegetation, except where a shoreline stabilization activity does not allow revegetation to occur in the same area and at a density comparable to the pre-existing vegetation, in which case revegetation must occur along the same segment of shoreline and as close as possible to the area where vegetation was removed:

3. If part of a permitted activity, revegetation shall occur before the expiration of the permit. If the activity or revegetation is not completed before the expiration of the permit, a new revegetation plan shall be submitted with any renewal or new permit application.
4. Revegetation activities must meet the following requirements for trees and saplings:
 - a. All trees and saplings removed must be replaced with native noninvasive species;
 - b. Replacement vegetation must at a minimum consist of saplings;
 - c. If more than three (3) trees or saplings are planted, then at least three (3) different species shall be used;
 - d. No one species shall make up 50% or more of the number of trees and saplings planted;
 - e. If revegetation is required for a shoreline stabilization project, and it is not possible to plant trees and saplings in the same area where trees or saplings were removed, then trees or sapling must be planted in a location that effectively reestablishes the screening between the shoreline and structures; and
 - f. A survival rate of at least eighty (80) percent of planted trees or saplings is required for a minimum five (5) years period.
5. Revegetation activities must meet the following requirements for woody vegetation and other vegetation under three (3) feet in height:
 - a. All woody vegetation and vegetation under three (3) feet in height must be replaced with native noninvasive species of woody vegetation and vegetation under three (3) feet in height as applicable;
 - b. Woody vegetation and vegetation under three (3) feet in height shall be planted in quantities and variety sufficient to prevent erosion and provide for effective infiltration of stormwater;
 - c. If more than three (3) woody vegetation plants are to be planted, then at least three (3) different species shall be planted;
 - d. No one species shall make up 50% or more of the number of planted woody vegetation plants; and
 - e. Survival of planted woody vegetation and vegetation under three feet in height must be sufficient to remain in compliance with the standards contained within this chapter for minimum of five (5) years
6. Revegetation activities must meet the following requirements for ground vegetation and ground cover:

- a. All ground vegetation and ground cover removed must be replaced with native herbaceous vegetation, in quantities and variety sufficient to prevent erosion and provide for effective infiltration of stormwater;
- b. Where necessary due to a lack of sufficient ground cover, an area must be supplemented with a minimum four (4) inch depth of leaf mulch and/or bark mulch to prevent erosion and provide for effective infiltration of stormwater; and
- c. Survival and functionality of ground vegetation and ground cover must be sufficient to remain in compliance with the standards contained within this chapter for minimum of five (5) years.

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. The plan shall be submitted to the permitting authority for approval and shall include, where applicable, provisions for:

- a. Mulching and revegetation of disturbed soil.
 - b. Temporary runoff control features such as hay bales, silt fencing or diversion ditches.
 - c. Permanent stabilization structures such as retaining walls or riprap.
 - d. 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 (1) 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 (9) months of the initial date of exposure. In addition:

 - a. Where mulch is used, it shall be applied at a rate of at least one (1) bale per five hundred (500) square feet and shall be maintained until a catch of vegetation is established.
 - b. Anchoring the mulch with netting, peg and twine or other suitable method may be required to maintain the mulch cover.
 - c. Additional measures shall be taken where necessary in order to avoid siltation into the water. Such measures may include the use of staked hay bales and/or silt fences.
5. Drainage ways:

Natural and man-made drainage ways and drainage outlets shall be protected from erosion from water flowing through them. Drainage ways shall be designed and constructed in order to carry water from a twenty five (25) year storm or greater, and shall be stabilized with vegetation or lined with rip-rap.
6. Soil and Erosion Control Methods:

All best management practices must be installed at the minimum principal and accessory setback as specified in §199.15 (B), 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 Registered Professional Engineers, Maine State Certified Geologists and other persons who have training and experience in the recognition and evaluation of soil properties. The report shall be based upon the analyses of the characteristics of the soil and surrounding land and water areas, maximum ground water elevation, presence of ledge, drainage conditions, and other pertinent data which the evaluator deems appropriate. The soils report shall include recommendations for a proposed use to counteract soil limitations where they exist.

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 thirty (30) days prior to action being taken by the permitting authority. The CEO shall consider comments received from the Commission within sixty (60) days from receipt of the comments 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 (2) 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 §140-37, 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 twenty percent (20%) of the total floor area of the dwelling unit. The basement floor area shall be excluded in the calculation of the twenty percent (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 (2) of each species of such animals six (6) months old requires compliance as follows:

Within 100 feet ~~or 75 feet~~ of the normal high-water line of a water body as depicted on the official Town of Windham Shoreland Zoning 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 6' 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 grand fathered.

§199- 16. Administration

A. Administering Bodies and Agents.

1. Code Enforcement Officer(s)

a. Code Enforcement Officer(s) shall be appointed.

2. Board of Appeals

- a. A Board of Appeals shall be created in accordance with the provisions of 30-A M.R.S.A. §2691.

3. Planning Board

- a. A Planning Board shall be created in accordance with the provisions of State Law.

B. Permits.

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

1. A permit is not required for the replacement of an existing road culvert as long as:

- a. The replacement culvert is not more than 25% longer than the culvert being replaced;
- b. The replacement culvert is not longer than 75 feet; and
- c. Adequate erosion control measures are taken to prevent sedimentation of the water, and the crossing does not block fish passage in the water-course.

2. A permit is not required for an archaeological excavation as long as the excavation is conducted by an archaeologist listed on the State Historic Preservation Officer's level 1 or level 2 approved 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 Ordinance shall be in addition to any other permit required by other law or ordinance.

C. Permit Application

1. Requirements:

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

The Code Enforcement Officer shall approve or deny those applications on which he is empowered to act as shown in Section 14. Approval shall be granted only if the proposed use is in conformance with the provisions of this chapter.

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

D. Procedure for Administering Permits.

Within 35 days of the date of receiving a written application, the Planning Board or Code Enforcement Officer, as indicated in Section 199-14, 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 application, 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 Ordinance.

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

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

1. Will maintain safe and healthful conditions;
2. Will not result in water pollution, erosion, or sedimentation to surface waters;
3. Will adequately provide for the disposal of all wastewater;
4. Will not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat;
5. Will conserve shore cover and visual, as well as actual, points of access to inland waters;
6. Will protect archaeological and historic resources as designated in the comprehensive plan;

7. Will avoid problems associated with flood plain development and use; and
8. Is in conformance with the provisions of Section 15, Land Use Standards.

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

An aggrieved party may appeal from a decision of the Planning Board to the Superior Court within thirty (30) days after the applicant is notified of the Planning Boards 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.

G. Special Exceptions.

In addition to the criteria specified in Section 199-16(D) above, excepting structure setback requirements, the Planning Board may approve a permit for a single family residential structure in a Resource Protection District provided that the applicant demonstrates that all of the following conditions are met:

1. There is no location 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 flood-plain along rivers and artificially formed great ponds along rivers and outside the velocity zone in areas subject to tides, based on detailed flood insurance studies and as delineated on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate Maps; all buildings, including basements, are elevated at least one foot above the 100-year flood-plain elevation; and the development is otherwise in compliance with any applicable municipal flood-plain ordinance.

If the floodway is not shown on the Federal Emergency Management Agency Maps, it is deemed to be ½ the width of the 100-year flood-plain.

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 flood-plain, 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 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. Appointment:

There is hereby created a Board of Appeals of the Town of Windham created pursuant to the authority of Title 30-A M.R.S.A. §2691. The members of the Board shall be residents of the town. In accordance with the statutes, the following statutes shall apply:

- a. The Board shall consist of five (5) members. In addition, said Board shall have one (1) alternate member, who shall have all the rights of a full member, except that said alternate may vote only in the absence of a full member.
- b. The term of office of members shall be three (3) years, except that initial appointments of members shall be made for one (1) two (2) and three (3) years respectively.
- c. A municipal official or his spouse shall not be a member of the Board.
- d. When there is a vacancy, the municipal officers shall appoint a person to serve for the unexpired term.
- e. The Board shall elect a Chair and Vice Chair from its own membership.
- f. Any question of whether a particular issue involves a conflict of interest sufficient to disqualify a member from voting thereon shall be decided by a majority vote of the members, except the member who is being challenged.
- g. A member of the Board may be dismissed for cause by the municipal officers before the expiration of his term.
- h. A Secretary to the Board shall be appointed by the appropriate town officials.

2. Jurisdiction and Authority:

In addition to the power granted by Title 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 Ordinance. Any order, requirement, decision or determination made, or failure to act, in the enforcement of this ordinance is not appealable to the Board of Appeals.

b. Variance Appeals:

Subject to the provisions of this chapter, to hear and grant or deny application for variances from the terms of the Shoreland Zoning Ordinance.

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.

3. 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 Ordinance.
- c. The Board shall not grant a variance unless it finds that:

- i. The proposed structure or use would meet the provisions of Section 15 except for the specific provision which has created the non-conformity and from which relief is sought; and
 - ii. The strict application of the terms of this Ordinance would result in undue hardship. "Undue hardship" is defined to mean:
 - 1. That the land in question cannot yield a reasonable return unless the variance is granted.
 - 2. 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.
 - 3. That the granting of a variance will not change the essential character of the locality; and
 - 4. That the hardship is not the result of action taken by the applicant or a prior owner.
- c. Permitted variances run with the land and thus pass from one owner to the next.
- d. Notwithstanding Section 16 (I)(2)(b) above the Board of Appeals, or the codes enforcement officer if authorized in accordance with 30-A MRSA §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 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 Sections 16(I)(3)(f) and 16(J)(5)(c) below.
- e. The Board of Appeals shall limit any variances granted as strictly as possible in order to ensure conformance with the purposes and provisions of this Ordinance to the greatest extent possible, and in doing so may impose such conditions to a variance as it deems necessary. The party receiving the variance shall comply with any conditions imposed.
- f. A copy of each variance request, including the application and all supporting information supplied by the applicant, shall be forwarded by the municipal officials to the Commissioner of the Department of Environmental Protection at least twenty (20) days prior to action by the Board of Appeals. Any comments received from the Commissioner prior to the action by the Board of Appeals shall be made part of the record and shall be taken into consideration by the Board of Appeals.
- g. 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

(6) months or substantially completed within eighteen (18) months of the date of the vote by the Board.

4. 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.

5. 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.

6. 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. Meetings:

The Board of Appeals shall meet twice each month as called by the Chair. A quorum of the Board necessary to conduct an official Board meeting shall consist of at least three (3) members. A majority vote of the quorum is required for the passage or denial of any appeal.

2. Minutes:

The Secretary shall record a permanent record of all Board meetings. All meeting minutes and all correspondence of the Board shall be maintained in the Town Office. The transcript of testimony, if any, and exhibits, together with all papers and requests filed in the proceeding, shall constitute the record. All decisions shall become a part of the record and shall include a statement of findings and conclusions, as well as the reasons or basis therefore, upon all the material issued of fact, law or discretion presented and the appropriate order, relief or denial thereof. Notice of any decisions shall be mailed or hand delivered to the petitioner, his representative or his agent and the Dept. of Environmental Protection.

3. Public Hearing:

For all appeals, the Board shall hold a public hearing as prescribed herein. At least seven (7) days before the hearing, the Code Enforcement Officer or his assistant shall notify by mail the owners of properties abutting the property for which the appeal or application is made. Failure to receive this notice shall not invalidate the proceedings herein prescribed. The owners of properties shall be considered to be the parties listed by the Assessor as those against whom those taxes are assessed. Notice of the hearing shall also be placed at least twice in a newspaper of general circulation at least seven (7) days prior to the hearing. The Code Enforcement Officer or his assistant may attend all hearings and present to the Board all plans, photographs or other factual materials which are appropriate to an understanding of the case.

4. 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 the Shoreland Zoning Ordinance 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 Section 16(I)(2)(b) above, must be filed within thirty (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 appeals which includes;
 - (i) A completed application form.
 - (ii) A concise written statement indicating what relief is requested and why the appeal or variance should be granted.
 - (iii) 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.

- (iv) 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 Boards review at least fourteen (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 (7) days of the date of the decision.
- f. Any aggrieved party may appeal from the decision of the Board to the Superior Court within forty-five (45) days of the decision date.
- h. 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.
- i. The Board of Appeals shall hold a public hearing on administrative appeal or a request for a variance within thirty-five (35) days of its receipt of a complete written application, unless this time period is extended by the parties.
- j. The person filing the appeal shall have the burden of proof.

5. 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 thirty-five (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 (7) 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 (1) 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.

6. Appeal to Superior Court:

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

7. Reconsideration:

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

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

K. Enforcement

1. Nuisances:

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

2. Code Enforcement Officer.

- a. It shall be the duty of the Code Enforcement Officer to enforce the provisions of this Ordinance. If the Code Enforcement Officer shall find that any provisions of this Ordinance is being violated, he or she shall notify in writing the person responsible for such violation, indication 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 insure compliance with all applicable laws and conditions attached to permit approvals. The Code Enforcement Officer shall also investigate all complaints of alleged violations of this Ordinance.
- c. The Code Enforcement Officer shall keep a complete record of all essential transactions of the office, including applications submitted, permits granted or denied, variances granted or denied, revocations 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 Ordinance in the name of the municipality. The municipal officers, or their authorized agent, are hereby authorized to enter into administrative consent agreements for the purpose of eliminating violations of this Ordinance and recovering fines without Court action. Such agreements shall not allow an illegal structure or use to continue unless there is clear and convincing evidence that the illegal structure or use was constructed or conducted as a direct result of erroneous advice given by an authorized municipal official and there is no evidence that the owner acted in bad faith, or unless the removal of the structure or use will result in a threat or hazard to public health and safety or will result in substantial environmental damage.

4. Fines.

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

NOTE: Current penalties include fines of not less than \$100 nor more than \$2500 per violation for each day that the violation continues. However, in a resource protection district the maximum penalty is increased to \$5000 (38 M.R.S.A. §4452).

§199- 17. Definitions.

Please refer to previous pages for standards.

Abutting Land: A lot of land currently listed by the Windham Tax Assessor having a common border 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 Ordinance, the owners of properties shall be considered to be those parties currently listed by the Windham Tax Assessor against whom taxes are assessed.

Accessory structures 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 MRS 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 Ordinance; a person whose land abuts land for which a permit or variance has been granted; or any other person or group of persons who have suffered particularized injury as a result of the granting or denial of such permit or variance.

Agriculture: the production, 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, horse, 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 green house products. Agriculture does not include forestry or gardens, as defined in this Chapter. Please refer to §199-15 (V).

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 199-16(B)(2).

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

Backlots: A lot that does not have its required minimum frontage on a public road, a town road or a private road, and is accessed over a private right-of-way having a minimum width of fifty (50) feet, whenever possible, except for a backlot that is created for a single-family dwelling, which shall be regulated by the criteria listed in items A-F below. Facilities for the reception of CATV signals, wireless telecommunications facilities as defined in this section and water storage and distribution facilities shall be allowed on a backlot upon receiving all required permits, review and approval from the Town of Windham. Back lot use for any single-family dwelling shall be permitted, provided that: **(Amended 11/26/02) (Effective 12/26/02)**

- A. Each backlot shall be at least the minimum lot size for the zoning district in which the backlot is located. Only one (1) dwelling unit may be erected on a backlot.

- B. A minimum width of fifty (50) feet shall be required for any right-of-way serving said backlot as a means of access and egress to a street.
- C. No dwelling unit shall be erected on a backlot that is closer than two hundred (200) feet from an existing street.
- D. Only one (1) "backlot" shall be permitted in an approved subdivision.
- E. The zoning district allows single-family homes as a permitted use.
- F. Yard areas for a backlot shall be as follows: The front yard area for a backlot shall be the minimum front yard area for the zoning district in which the backlot is located, and shall be measured from the property line at which the driveway is located (i.e. the point at which the driveway enters the property from the fifty-foot right-of-way), or two hundred (200) from any existing street, whichever is greater. All other yard areas shall meet the applicable side yard areas for the zoning district in which the backlot is located. However, in no case shall any dwelling unit be located closer than two hundred (200) feet from any existing street. **(Amended 11/26/2002) (Effective 12/26/2002)**

Rights-of-way, serving one or more backlots, that are less than fifty (50) feet in width and were in existence prior to the effective date of the amendment of this definition shall be considered grandfathered. Said rights-of-way may continue to provide access to any existing backlot(s). However, any future extension of an existing right-of-way that was in existence prior to the effective date of the amendment of this definition shall be in conformance with this definition.

In addition, any backlots that were in existence prior to the effective date of the amendment of this definition and are accessed over a right-of-way that is less than fifty (50) feet in width shall be considered grandfathered. (Amended 3/14/01) (Effective 4/13/01)

Basal Area: The area of cross-section of a tree stem at 4 ½ feet above ground level and inclusive of bark.

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

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

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 for campers in any recreational vehicle or tent and used exclusively by the owner of the property and his or

campsites and may not be utilized for more than one hundred twenty (120) calendar days, excluding storage or a recreational unit. Refer to 199-15 (E)(1)

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 (2) 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 (2) 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 thirteen 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 twelve 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 access-way less than five hundred (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 (3) or more dwelling units. A multifamily dwelling may be attached to a non-residential use.

Dwelling, Two-Family: A building containing two (2) attached dwelling units. A two-family dwelling may, or may not, be attached to a non-residential 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 or 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; has, 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.

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.

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.

Family: one or more persons occupying a premise 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 hazards 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 (6) meters tall (approximately twenty (20) feet) or taller.

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

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

- a. of (10) ten or more contiguous acres; or of less than ten (10) contiguous acres and adjacent to a surface water body, excluding any river, stream or brook such that in a natural state, the combined surface area is in excess of ten (10) acres; and
- b. Inundated or saturated by surface or ground water at a frequency and for a duration sufficient to support, and which under normal circumstances do support, a prevalence of wetland vegetation typically adapted for life in saturated soils.
- c. 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 can not 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 boat building facilities, marinas, navigation aids, basins and channels, , shoreline structures necessary for erosion control purposes, industrial uses dependent upon water-borne transportation or requiring large volumes of cooling or processing water that can not reasonably be located or operated at an inland site, and uses that primarily provide general public access to 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 ten acres, and any inland body of water artificially formed or increased which has a surface area in excess of thirty (30) acres except for the purposes of this Ordinance, where the artificially formed or increased inland body of water is completely surrounded by land held by a single owner.

Great Pond classified GPA: any great pond classified GPA, pursuant to 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:

- .01 Highly combustible or explosive products or materials that are likely to burn with extreme rapidity or that may produce poisonous fumes or explosions;
- .02 Highly corrosive, toxic, or noxious alkalis, acids, or other liquids or chemicals producing flame, fume, or poisonous, irritant, or corrosive gases;
- .03 Materials producing explosive mixtures of dust or that result in the division of matter into fine particles subject to spontaneous ignition.
- .04 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:

1. Clearly incidental to and compatible with the residential use of the property and surrounding residential uses; and

2. Which employs no more than two (2) persons other than family members residing in the home. The following are examples of permitted uses under this definition:
 - a. Office of teacher or musician.
 - b. Office of real estate broker, salesman, insurance agent.
 - c. Dressmaking.
 - d. Beauty shop
 - e. Day care home which cares for 12 or less children.
 - f. Woodworking
 - g. Arts and crafts studio or shop
 - h. Small engine repair excluding motorized vehicles such as mopeds, motorcycles, ATV's, snowmobiles
 - i. Saw sharpening.
 - j. Medical Marijuana Register Caregiver (Home Occupation) that comply with the standards in Section 535 of the Land Use Ordinance.

The following uses are specifically prohibited as a home occupation:

- a. Auto body repair
- b. Auto repair
- c. Welding or any other similar activity that is noise oriented or is objectionable
- d. Slaughter house or smoke house.

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 section 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 in-fill irregularly shaped structures.

Individual private campsite: an area of land which is not associated with a campground, but which is developed for repeated camping by only one group not to exceed ten (10)

individuals and which involves site improvements which may include but not be limited to gravel pads, parking areas, fire places, or tent platforms.

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

Institutional: a non-profit or quasi-public use, or institution such as a church, library, public or private school, hospital, or 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 industrial hemp as defined in 7 M.R.S. § 2231, subsection 1 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:

- (1) Tier 1 Marijuana Cultivation Facility. Not more than 500 square feet of plant canopy.
- (2) Tier 2 Marijuana Cultivation Facility. Not more than 2,000 square feet of plant canopy.
- (3) Tier 3 Marijuana Cultivation Facility. Not more than 7,000 square feet of plant canopy
- (4) Tier 4 Marijuana Cultivation Facility. Not more than 20,000 square feet of plant canopy

Marijuana Manufacturing Facility: (1) 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 MRS §2423- F; or (2) a facility licensed under M.R.S. 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 water craft, and which may also provide accessory services such as water craft and related sales, water craft repair and construction, indoor and outdoor storage of water craft 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 ordinance.

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

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

Multi-unit residential: a residential structure containing two (2) or more residential dwelling units.

Native: indigenous to the local forests.

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

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

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

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

Non-intensive recreational use: recreational use not requiring structures, i.e. hunting, fishing and hiking.

Non-native 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 non-forested wetland vegetation and hydric soils and that are at the same or lower elevation as the water level of the river or great pond during the period of normal high-water are considered part of the river or great pond.

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:

1. Permanent Structures which remain in or over the water for seven (7) months or more in any period of twelve (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 are 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 flood plain 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 pick-up camper, travel trailer, tent trailer, camp trailer, and motor home. In order to be considered as a vehicle and not as a structure, the unit must remain with its tires on the ground, and must be registered with the State Division of Motor Vehicles.

Replacement system: a system intended to replace:

- 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 (1) 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 (6) inches in diameter, used for erosion control and soil stabilization, typically used on ground slopes of two (2) units horizontal to one (1) unit vertical or less.

River: a free-flowing body of water including its associated flood plain wetlands from that point at which it provides drainage for a watershed of twenty five (25) square miles to its mouth.

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

Road Setback: The required distance on a lot between a road and the nearest building.

Sapling - a tree species that is less than two (2) inches in diameter at four and one half (4.5) feet above ground level.

Seedling - a young tree species that is less than four and one half (4.5) 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:

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

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

Shore frontage: the length of a lot bordering on a water body or wetland measured in a straight line between the intersections of the lot lines with the shoreline at normal high-water elevation.

Shoreland Zone: the land area located within two hundred fifty (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 one hundred (100) feet of the normal high-water line of a stream; or within an area as depicted on the official Town of Windham ~~Shoreland Zoning~~ Land Use District Map as a General Development, Limited Residential, Resource Protection, or Stream Protection district.

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.

Signs: 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 199-15 (I)

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.

Stream: a free-flowing body of water from the outlet of a great pond or the confluence of two (2) perennial streams as depicted on the most recent, highest resolution version of the national hydrography dataset available from the United States Geological Survey on the website of the United States Geological Survey or 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..

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 (6) feet for more than 50% of the total perimeter on more than twelve (12) feet at any point.

Street: A way established or maintained under public authority or a fifty (50) foot wide private way approved by the Planning Board or a way shown on a plan of a subdivision duly approved by the Planning 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 waste water disposal systems as defined in Title 30-A, section 4201, subsection 5; geothermal heat exchange wells as defined in Title 32, section 4700-E, subsection 3-C; or wells or water wells as defined in Title 32, section 4700-E, subsection 8.

Subdivision: A subdivision is a division of a tract or parcel of land as defined in Title 30-A, Section 4401, of the Maine Revised Statutes 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. *See Appendix A for the State of Maine Subdivision definition.*

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

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

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 (2) acres within the shoreland zone shall not be considered timber harvesting. Such cutting or removal of trees shall be regulated pursuant to Section 15 (P), *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 (2) inches in diameter at four and one half (4.5) feet above the ground, with a more or less definite crown, and reaching a height of at least ten (10) feet at maturity.

Tributary stream: means a channel between defined banks created by the action of surface water, which is characterized by the lack of terrestrial vegetation or by the presence of a bed, devoid of topsoil, containing waterborne deposits 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.

This definition does not include the term "stream" as defined elsewhere in this Ordinance, and only applies to that portion of the tributary stream located within the shoreland zone of the receiving water body or wetland, as depicted on the official Town of Windham [Shoreland Zoning Land Use Map](#).

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 (6) meters (approximately twenty (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 (4) inches in diameter, measured as 4½ 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, no-herbaceous shrub

Windham, Maine

Proposed Shoreland Zoning

10 acre Wetlands (LR 250'), IWWH (RP 250')
& Outlet Brook (SP 100')

NOTE: THE DEPICTION OF THE SHORELAND DISTRICTS ON THE SHORELAND ZONING MAP FOR THE TOWN OF WINDHAM ARE MERELY ILLUSTRATIVE OF THEIR GENERAL LOCATION. THE BOUNDARIES OF THESE DISTRICTS SHALL BE DETERMINED BY MEASUREMENT OF THE DISTANCE INDICATED IN THE ORDINANCE FROM THE NORMAL HIGH-WATER MARK OF THE WATER BODY OR UPLAND EDGE OF WETLAND VEGETATION, REGARDLESS OF THE LOCATION OF THE BOUNDARY SHOWN ON THE MAP.

BASIS-SHORELAND ZONING DESIGNATIONS

RESOURCE PROTECTION

- 1 MDIF&W MODERATE OF HIGH VALUE RATED WATERFOWL AND WADING BIRD HABITAT
- 2 FEMA FLOOD PLAIN
- 3 STEEP SLOPES
- 4 WETLAND VEGETATION & HYDRIC SOILS
- 5 SEVERE RIVER BANK EROSION

GENERAL DEVELOPMENT

- 2 EXISTING DAM
- 3 INDUSTRIAL DEVELOPMENT
- 4 INDUSTRIAL, COMMERCIAL, AND CONCENTRATED RESIDENTIAL USE

Legend

- LR Proposed (250')
- RP Proposed (250') IWWH
- SP Proposed (100')
- RP Revised/Removed
- GD = General Development District
- RP = Resource Protection District (250')
- SP = Stream Protection District (75'/100')
- LR = Limited Residential District (250')

- Zoning Districts
- C-1 = Commercial 1
 - C-2 = Commercial 2
 - C-3 = Commercial 3
 - VC = Village Commercial
 - ED = Enterprise Development
 - F = Farm
 - FR = Farm Residential
 - I = Industrial
 - RL = Residential Limited
 - RM = Residential Medium

SHORELAND ZONING: ESTABLISHMENT OF DISTRICTS § 106-13.

A. RESOURCE PROTECTION DISTRICT

THE RESOURCE PROTECTION DISTRICT INCLUDES AREA IN WHICH DEVELOPMENT COULD ADVERSELY AFFECT WATER QUALITY, PRODUCTIVE HABITAT, BIOLOGICAL, SCIENTIFIC, OR SCENIC AND NATURAL VALUES. THIS DISTRICT SHALL INCLUDE THE FOLLOWING AREAS WHEN THEY OCCUR WITHIN THE LIMITS OF THE SHORELAND ZONE, EXCLUSIVE OF THE STREAM PROTECTION DISTRICT, EXCEPT AREAS WHICH ARE CURRENTLY DEVELOPED, AND AREAS WHICH MEET THE CRITERIA FOR THE GENERAL DEVELOPMENT DISTRICT.

1. AREAS WITHIN 600 FEET HORIZONTAL DISTANCE OF THE UPLAND EDGE OF FRESHWATER WETLANDS AND WETLANDS ASSOCIATED WITH GREAT PONDS AND RIVERS, WHICH ARE RATED "MODERATE" OR "HIGH" VALUE BY THE MAINE DEPARTMENT OF INLAND FISHERIES AND WILDLIFE (MDIF&W) THAT ARE DEPICTED ON A GIS DATA LAYER MAINTAINED BY MDIF&W OR DERIVED AS OF 11/1/2006.
2. FLOOD PLAINS DEFINED BY THE 100-YEAR FLOOD PLAIN AS DESIGNATED ON THE FEDERAL EMERGENCY MANAGEMENT AGENCY'S FEMA FLOOD INSURANCE RATE MAPS OR FLOOD HAZARD BOUNDARY MAPS.
3. AREAS OF TWO OR MORE CONTIGUOUS ACRES WITH SUSTAINED SLOPES OF TWENTY PERCENT (20%) OR GREATER.
4. AREAS OF TWO OR MORE CONTIGUOUS ACRES SUPPORTING WETLAND VEGETATION AND HYDRIC SOILS WHICH ARE NOT PART OF A FRESHWATER WETLAND, AND WHICH ARE NOT SURFACE CONNECTED TO A WATER BODY DURING THE PERIOD OF NORMAL HIGH WATER.
5. LAND AREAS ALONG RIVERS SUBJECT TO SEVERE BANK EROSION, UNDERCUTTING, OR RIVER BED MOVEMENT.
6. OTHER LAND AREAS DESIGNATED AS RESOURCE PROTECTION ON THE WINDHAM OFFICIAL LAND USE MAP.

B. LIMITED RESIDENTIAL DISTRICT

THE LIMITED RESIDENTIAL DISTRICT INCLUDES THOSE AREAS SUITABLE FOR RESIDENTIAL AND RECREATIONAL DEVELOPMENT. IT INCLUDES AREAS OTHER THAN THOSE IN THE RESOURCE PROTECTION DISTRICT OR THOSE IN THE GENERAL DEVELOPMENT DISTRICT AND AREAS WHICH ARE USED LESS INTENSIVELY THAN THOSE IN THE GENERAL DEVELOPMENT DISTRICT.

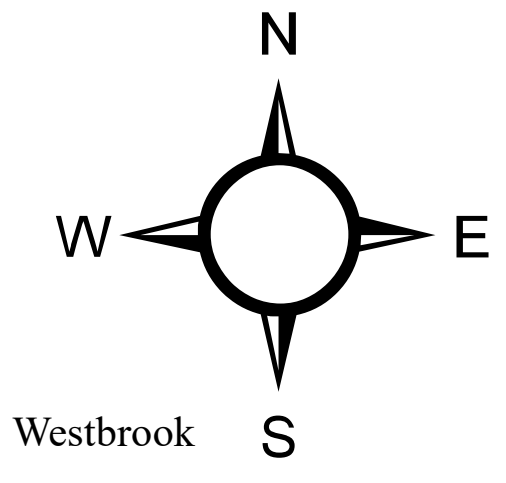
C. GENERAL DEVELOPMENT DISTRICT

THE GENERAL DEVELOPMENT DISTRICT INCLUDES THE FOLLOWING TYPES OF AREAS:

1. AREAS OF TWO OR MORE CONTIGUOUS ACRES DEVOTED TO COMMERCIAL, INDUSTRIAL OR INTENSIVE RECREATIONAL ACTIVITIES OR A MIX OF SUCH ACTIVITIES INCLUDING BUT NOT LIMITED TO THE FOLLOWING:
 - AREAS DEVOTED TO MANUFACTURING, FABRICATION, OR OTHER INDUSTRIAL ACTIVITIES.
 - AREAS DEVOTED TO WHOLESALE, WAREHOUSING, RETAIL, TRADE AND SERVICE ACTIVITIES OR OTHER COMMERCIAL ACTIVITIES AND
 - AREAS DEVOTED TO INTENSIVE RECREATIONAL DEVELOPMENT AND ACTIVITIES SUCH AS, BUT NOT LIMITED TO, AMUSEMENT PARKS, RACE TRACKS AND FAIRGROUNDS.
2. AREAS OTHERWISE DESCRIBABLE AS HAVING PATTERNS OF INTENSIVE COMMERCIAL, INDUSTRIAL OR RECREATIONAL USES. PORTIONS OF THE GENERAL DEVELOPMENT DISTRICT MAY ALSO INCLUDE RESIDENTIAL DEVELOPMENT, HOWEVER, NO AREA SHALL BE DESIGNATED AS A GENERAL DEVELOPMENT DISTRICT BASED SOLELY ON RESIDENTIAL USE.
3. IN AREAS ADJACENT TO GREAT PONDS CLASSIFIED GVA AND ADJACENT TO RIVERS FLOWING TO GREAT PONDS CLASSIFIED GVA, THE DESIGNATION OF AN AREA AS A GENERAL DEVELOPMENT DISTRICT SHALL BE BASED UPON USES EXISTING AT THE TIME OF ADOPTION OF THE ORDINANCE. THERE SHALL BE NO NEWLY ESTABLISHED GENERAL DEVELOPMENT DISTRICTS OR EXPANSIONS IN AN AREA OF EXISTING GENERAL DEVELOPMENT DISTRICTS ADJACENT TO GREAT PONDS CLASSIFIED GVA, AND ADJACENT TO RIVERS WHICH FLOW TO GREAT PONDS CLASSIFIED GVA.

D. STREAM PROTECTION DISTRICT

INCLUDES ALL LAND AREAS WITHIN ONE HUNDRED (100) FEET HORIZONTAL DISTANCE OF THE NORMAL HIGH-WATER LINE OF A STREAM EXCLUSIVE OF THOSE AREAS WITHIN TWO HUNDRED AND FIFTY (250) FEET HORIZONTAL DISTANCE OF THE NORMAL HIGH-WATER LINE OF A GREAT POND, RIVER, OR WITHIN TWO HUNDRED FIFTY (250) FEET HORIZONTAL DISTANCE OF THE UPLAND EDGE OF A FRESHWATER WETLAND OR AS SHOWN ON THE OFFICIAL LAND USE MAP, WHERE A STREAM AND ITS ASSOCIATED SHORELAND AREA IS LOCATED WITHIN TWO HUNDRED AND FIFTY (250) FEET HORIZONTAL DISTANCE OF THE ABOVE WATER BODIES OR WETLAND. THAT LAND AREA SHALL BE REGULATED UNDER THE TERMS OF THE SHORELAND DISTRICT ASSOCIATED WITH THAT WATER BODY OR ESTABLISHMENT OF DISTRICTS.



Sources:
Greater Portland Council Of Governments
Maine Office of GIS
Windham Assessing & GIS Dept.
Maine Department of Inland Fisheries & Wildlife

Prepared by: Windham Planning Department
Date: August 5, 2021

