



Town of South Berwick

180 MAIN STREET
SOUTH BERWICK, MAINE 03908-1535
TEL. 207-384-3300
FAX: 207-384-3303

SOUTH BERWICK
Planning Board and Town Council
NOTICE OF PUBLIC HEARING
July 27, 2009
6:30 P.M.
Town Hall

In accordance with Title 38, Chapter 3, Subchapter I, Article 2-B, the Planning Board and Town Council will be holding a joint Public Hearing on the amendment of the existing Zoning Ordinance, creation of a Shoreland Zoning Ordinance, and Shoreland Zoning map changes that place properties identified in the Town tax maps in the Resource Protection Zone. The new standards restrict activities within 250 feet of regulated Inland Wading Waterfowl Habitats and reinstate one time exemptions for nonconforming structures. The Proposed Shoreland Zoning, Shoreland Zoning Map with the affected properties, and Zoning amendments will be available in the Town Clerk's Office July 13, 2009. You may wish to give testimony in favor or in opposition to the proposed amendments and are welcome to attend the meeting.

TO: South Berwick Planning Board
FROM: Jim Fisk, RLA, Director of Planning and Economic Development.
DATE: June 30, 2009 and July 10, 2009.
RE: Revisions, Additional purpose statements, additional notifications.

1. The Planning Board completed a final review of the proposed Chapter 110, Shoreland Zoning at their July 7, 2009 meeting and made the following changes:

1. § 110-11. **Definitions. "Limited Residential Shoreland District"**- Delete the words "...the following..." from the second sentence.
2. § 110-13.B. **Nonconforming Structures Within...**- Include the words "...within one (1) year..." to the last sentence in paragraph three so as to read, "Replanting shall be required within one (1) year as follows:".
3. § 110-17.C. **Overlay Zones. "Limited Residential Shoreland District"**- Delete the words "...the following..." so the sentence shall read, "This district shall include areas when they occur within the limits of Shoreland Zones ..."
4. § 110-18.B. **District Boundaries. "Shoreland and Slope District - SP"**- Edit (q) to read "Unnamed Stream 1" instead of "Tatnic Brook", edit (r) to read "Unnamed Stream 2" instead of "Hilton Brook", and add (s), "Hilton Brook".
5. **Table C, Shoreland Dimensional Requirements.** Add section reference to the end of note (5) so as to read, "See Section 110-18.A(3)(g)".

The Planning Board agreed that all property owners to be affected with increased setbacks of 100' to 200' along with those with new Resource Protection and Limited Residential designations should be notified for the July 27, 2009 joint Public Hearing for Shoreland Zoning.

2. At the June 16, 2009 joint workshop with the Council, there was a thorough review of the proposed strikeouts and revisions to the proposed Shoreland Zoning Ordinance. I have reviewed the checklist with Susie which include:

1. Keep and add editor's note
2. § 110-3. **Applicability.** Add "...features..."
3. § 110-9. **Official Shoreland Zoning Map.** Add "Shoreland"
4. § 110-11. **Definitions.** Add "Limited Residential"
5. § 110-17. **Overlay Zones.** Add "Floodzone and Minor Freshwater" purpose statements.
6. § 110-18. **District Boundaries.** Review "Hooper's Brook", add wellhead to Table C, add LRS to RP, add Hilton's Brook, Bickel Mountain not Bicknel Mountain,
7. § 110-20. **Agriculture.** Shoreland Zone not Planning Board. Add NRCS,
8. § 110-31. **Principal and Accessory Structures.** 250' not 100', add Shoreland Zone
9. **Table C, Shoreland Dimensional Requirements.** Add multi unit shore frontage. And note #5.

3. The purpose statements for Floodplain and Minor Freshwater Wetlands are proposed below. Floodplain could easily be grouped with Shoreland Slope District. Minor Freshwater Wetlands is taken from the DEP general purpose statement in Shoreland Zoning Act.

B. Shoreland Slope District, and 100 year Floodplain Zone.

TO: John B. Schempf and South Berwick Planning Board
FROM: Jim Fisk, RLA, Director of Planning and Economic Development.
DATE: June 5, 2009 and July 10, 2009.
RE: Documents for Shoreland Zoning workshop.

In the development of the new Shoreland Zoning Ordinance, I created a matrix comparing existing standards, proposed zoning, and DEP Chapter 1000 Shoreland Zoning. A ~~strikeout~~ of all the definitions and other areas in zoning that will be relocated in a new SLZ chapter and clean new SLZ Chapter 110 contain the official changes to the Code. Maps generated show what the DEP recommended for inclusion and regulated Inland Wading Waterfowl Habitats (IWWH) per State requirements.

This process is a result of input from you, the Council Chairman, direction from the Planning Board, input from the general public at the Public Hearing, and the Planning Board Chairman's desire to "not go backward" in the Town's standards as well as avoid adverse impacts on property owners. The main points in the proposed Chapter 110 Shoreland Zoning include maintaining a 100' setback minimum along streams, adding two new streams, adding a few new IWWH Resource Protection (RP) areas, creating Limited Residential Districts in developed areas adjacent to IWWH RP areas, and modifying Shoreland Zoning to allow for one-time expansions within the setbacks.

The documents for review and transmittal for the Joint Workshop with the Town Council and Planning Board scheduled for June 16 include:

1. ~~strikeout~~ memo,
2. mapped IWWH and LRD areas memo,
3. revised Minor Freshwater Wetland and 100 year Flood zone purpose statements memo,
4. and Shoreland Zoning Ordinance draft (v8).

Based on new information provided by the Mike Morse, DEP Assistant Shoreland Coordinator, the Planning Board is now considering further notification of property owners located in existing Shoreland Zones. Notification would include property owners not previously notified for the April 21 Planning Board Public Hearing due to the increased setback of the Resource Protection (RP) designation as well as newly designated RP properties.

I will fine tune the map for DEP review, of course, but I anticipate that the Council will want to comment and amend it to determine what should be on this map. We have to add the new stream, "Tatnic Stream" to the map, and I know the Council Chairman wants to add the unmapped beaver pond at the headwaters as a Great Pond as well as review all of the mapped areas.

Concerns raised by the public and notified property owners were addressed after the Planning Board's public hearing so I expect there will be little opposition to the inclusion of the IWWH areas. The principle map change was the inclusion of LRD adjacent to IWWH RP. The main text change is the one time expansion within setbacks.

TO: John B. Schempf, Town Manager
FROM: Planning Board and Planning Department.
DATE: April 4, 2009, and updated April 14, 2009, April 17, 2009, April 27, 2009,
May 8, 2009, May 15, 2009, May 26, 2009, June 26, 2009 and July 10, 2009.
RE: Shoreland Ordinance, proposed.

Code of Ordinances
Part II, General Legislation
Amendment to
Chapter 140. Zoning

The Mandatory Shoreland Zoning Act, 38 M.R.S.A. sections 435-449 the guidelines Board of Environmental Protection (Board) require municipalities to adopt shoreland zoning ordinances consistent with, or no less stringent than, those minimum guidelines set forth in the Act and by the Board. This amendment to the Code incorporates the most current State Shoreland Zoning into the South Berwick Chapter 110, Shoreland Zoning.

The changes through Chapter 140 and Chapter 121 of the Code are in the following Articles and Sections. These amendments are to repeal Section 140-48, Shoreland Standards and Section 140-48.1, Minor Freshwater Wetlands in order to adopt Chapter 110, Shoreland Zoning.

The Planning Board completed another review of the proposed Chapter 110, Shoreland Zoning at their July 21, 2009 meeting and made the following changes:

1. **§ 110-3. Applicability.** Include the words “...in Section 110-18.B...” to the last bullet so the sentence shall read, “Recognized features as listed in Section 110-18.B.”
2. **§ 110-17.B. Shoreland Slope District, and 100-yr. Floodplain Zone.** Delete the words “*In order...*” at the beginning of note (1) so the sentence shall begin, “To protect from activities or alterations...”
3. **§ 110-18.A. District Boundaries. “Resource Protection District - RP”.** Delete notes (6) and (7), and renumber note (8) to note (6).

An updated Shoreland Zoning Map will be provided for the July 27, 2009 joint Public Hearing by the Town Council and Planning Board.

Chapter 110

SHORELAND ZONING

ARTICLE I General Provisions

- § 110-1. Purpose.
- § 110-2. Authority.
- § 110-3. Applicability.
- § 110-4. Effective Date.
- § 110-5. Availability.
- § 110-6. Severability.
- § 110-7. Conflicts with Other Ordinances.
- § 110-8. Amendments.
- § 110-9. Official Shoreland Zoning Map.
- § 110-10. Basic Requirements.
- § 110-11. Definitions.

ARTICLE II Nonconformance

- § 110-12. Requirements.
- § 110-13. Nonconforming Structures Within Areas Regulated by Shoreland Zoning.
- § 110-14. Reconstruction of Nonconforming buildings.
- § 110-15. Nonconforming uses.
- § 110-16. Nonconforming lots of record.

ARTICLE III Establishment of Zoning

- § 110-17. Overlay Zones.
- § 110-18. District Boundaries.

ARTICLE IV Land Use Standards

- § 110-19. Performance Standards for Specific Uses.

ARTICLE V Shoreland Standards

- § 110-20. Agriculture.
- § 110-21. Beach Construction.
- § 110-22. Campgrounds.
- § 110-23. Individual Private Campsites.
- § 110-24. Clearing or Removal of Vegetation for Activities Other than Timber Harvesting.
- § 110-25. Erosion and Sedimentation Control
- § 110-26. Mineral Exploration and Extraction
- § 110-27. Additional Shoreland Structures.
- § 110-28. Roads and Driveways.
- § 110-29. Septic Waste Disposal.
- § 110-30. Signs.
- § 110-31. Principal and Accessory Structures.
- § 110-32. Parking Areas.
- § 110-33. Timber Harvesting.
- § 110-34. Essential Services.
- § 110-35. Storm Water Runoff.
- § 110-36. Archeological Site.
- § 110-37. Minor Freshwater Wetlands.

ARTICLE VI Administration

- § 110-38. Administration.
- § 110-39. Appeals and Zoning Board of Appeals.
- § 110-40. Allowed Uses.
Table C, Shoreland Dimensional Requirements.

ARTICLE I
General Provisions

§110-1. Purpose.

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

§110-2. Authority.

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

All provisions in Chapter 110, Shoreland Ordinance are in addition to Zoning, Chapter 140.

§110-3. Applicability.

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

- normal high-water line of any great pond or river,
- upland edge of a coastal wetland, including all areas affected by tidal action, or
- upland edge of a freshwater wetland, and all land areas within 100 feet, horizontal distance, of the normal high-water line of a stream.
- Shoreland Zone within 100 feet.
- Recognized features as listed in Section 110-18.B.

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

§110-4. Effective Date.

- A. Effective Date of Ordinance and Ordinance Amendments. This Ordinance, which was adopted by the municipal legislative body on _____, 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.

- B. Sections 140-48 are repealed on the statutory date established under 38 M.R.S.A. section 438-A(5), at which time Chapter 110 shall become effective. Until such time as Section 140-48 is repealed, Chapter 110 is not in effect.

§110-5 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.

§110-6. 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.

§110-7. 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.

§110-8. Amendments.

- A. An amendment to this chapter may be initiated by:

- (1) Written petition of a number of voters equal to at least 10% of the registered voters of the Town and following the provisions of the Town Charter, Article VIII, Section 2.
- (2) The Town Council, provided that a majority of the Council so voted.
- (3) The Planning Board, provided that a majority of the Board has so voted.
- (4) An application by any individual to the Planning Board, as long as a majority of the Board so votes.

- B. An amendment to this chapter may be adopted by:

- (1) The Town Council following the provisions of the Town Charter, Article II, Section 3, Subsection VI, if the amendment is initiated by the Town Council, the Planning Board or an application approved by the Planning Board.

- (2) A Special Town Meeting following the provisions of the Town Charter, Article VII, Section 2, if the amendment was initiated by a written petition in accordance with Subsection A(1) above.
 - (3) In either case, the Town Council shall hold a public hearing on the proposed amendment as required by Article VII, Section 2, or by Article II, Section 11, of the Town Charter. The Planning Board shall report its recommendation regarding the proposed amendment at the public hearing.
- C. Copies of amendments, attested and signed by the Municipal Clerk, shall be submitted to the Commissioner of the Department of Environmental Protection following adoption by the municipal legislative body and shall not be effective unless approved by the Commissioner. If the Commissioner fails to act on any amendment within forty-five (45) days of his/her receipt of the amendment, the amendment is automatically approved. Any application for a permit submitted to the municipality within the forty-five (45) day period shall be governed by the terms of the amendment, if such amendment is approved by the Commissioner.

§110-9. Official Shoreland Zoning Map.

- A. Said districts are located as shown on the Official Shoreland Zoning Map, entitled “Shoreland Zoning Map of South Berwick, Maine,” based upon the written descriptions contained in Article III, Section 110-18, District Boundaries of this chapter, dated and on file in the office of the Town Clerk. The Official Map shall be signed by the Town Clerk and Chairman of the Town Council at the time of adoption or amendment of this chapter, certifying the date of such adoption or amendment. Additional copies of the Shoreland Zoning Map may be seen in the municipal offices.
- B. In cases of disagreement between the Shoreland Zoning Map and the written descriptions in Article III, Section 110-18, District Boundaries, the written description shall prevail.
- C. The Official Shoreland Zoning Map shall be drawn at a scale of not less than: 1 inch = 2000 feet. District boundaries shall be clearly delineated and a legend indicating the symbols for each district shall be placed on the map.

§110-10. Basic Requirements.

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

§110-11. Definitions.

AGRICULTURE, LIVESTOCK

See Chapter 140-9. Definitions.

AGRICULTURE, NONLIVESTOCK

See Chapter 140-9. Definitions.

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

AREA OF SPECIAL FLOOD HAZARD - The land in the floodplain having a one-percent or greater chance of flood in any given year.

BASAL AREA - See Chapter 140-9. Definitions.

BASE FLOOD - The flood having a one-percent chance of being equaled or exceeded in any given year, alternately referred to as the "one-hundred-year flood."

BOATHOUSE - A nonresidential structure designed for the purpose of protecting or storing boats.

BOAT LANDING - A facility designed primarily for the launching and landing of watercraft and which may include an access ramp, docking area and parking spaces for vehicles and trailers.

BOAT 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.

BODY OF WATER - Any river, stream, brook, wetland, or pond as defined herein.

BUREAU – State of Maine Department of Conservation’s Bureau of Forestry.

CHANNEL – A natural or artificial watercourse with definite beds and banks to confine and conduct continuously or periodically flowing water. Channel flow is water flowing within the limits of the defined channel.

COASTAL WETLANDS – All tidal and sub tidal lands, including all areas below any identifiable debris left by tidal action; all areas with vegetation that is tolerant of salt water and occurs primarily in a saltwater or estuarine habitat; and any swamp, marsh, bog, beach, flat or other contiguous lowland which is subject to tidal action during the maximum spring tide level as identified in tide tables published by the National Ocean Service.

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

FLOOD - A temporary rise in stream flow or tidal surge that results in water overflowing its banks and inundating adjacent areas.

FLOOD INSURANCE MAP - The official map on which the Department of Housing and Urban Development or the Federal Emergency Management Agency has delineated both the areas of special flood hazard and the risk-premium zones applicable to the town.

FLOODPLAIN - The lands adjacent to a body of water, which have been or may be covered by the regional flood.

FLOOD PROOFING - A combination of structural provisions, changes or adjustments to properties subject to flooding, primarily for the reduction or elimination of flood damages to properties, water and sanitary facilities, structures and contents of buildings.

FLOOD, REGIONAL - The maximum known flood of a body of water; either the one-hundred-year-frequency flood, where calculated, or the flood of record or evidence of vegetative changes.

FLOODWAY - The channel of a natural stream or river and portions of the floodplain adjoining the channel which are reasonably required to carry and discharge the floodwater or flood flow of any natural stream or river.

FRESHWATER WETLANDS, MAJOR - Freshwater swamps, marshes, bogs, and similar areas (other than forested wetlands) which are:

- A. Ten or more contiguous acres; or of less than 10 contiguous acres and adjacent to a surface water body excluding any river, stream or brook such that in a natural state, the combined surface area is in excess of 10 acres; and
- B. Inundated or saturated by surface or ground water at a frequency and for duration sufficient to support, and under which under normal circumstances do support, a prevalence of wetland vegetation typically adapted for life in saturated soils. Freshwater wetlands may contain small stream channels or inclusions of land that do not conform to the criteria of this definition.

FRESHWATER WETLANDS, MINOR - A wetland of two or more contiguous acres, excluding Major Freshwater Wetlands, as identified on the Federal National Wetlands Inventory.

FRONTAGE, SHORE – The horizontal distance, measured in a straight line, between the intersections of the side lot lines with the shoreline at normal high-water elevation.

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

GREAT POND – Any inland body of water which, in a natural state, has a surface area in excess of 10 acres, and any inland body of water artificially formed or increased which has a surface area in excess of 30 acres except for the purposes of this chapter, where the artificially formed or increased inland body of water is completely surrounded by land held by a single owner.

LIMITED RESIDENTIAL SHORELAND DISTRICT – Any areas suitable for residential and recreational development which are used less intensively than those in the Business Districts and currently developed. This district shall include areas when they occur within the limits of Shoreland Zones, and those in the Resource Protection District except that areas within Minor Freshwater Wetlands Zones.

LOT, SHOREFRONT - Any lot abutting a body of water.

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

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. In the case of wetlands adjacent to rivers and great ponds, the normal high water line is the upland edge of the wetland, and not the edge of the open water.

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

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

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

RECENT FLOOD PLAIN SOILS - The following soil series as described and identified by the National Cooperative Soil Survey:

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

RIVER, STREAM, OR BROOK – A channel between defined banks. A channel is created by the action of surface water and has 2 or more of the following characteristics.

- A. It is depicted as a solid or broken blue line on the most recent edition of the U.S. Geological Survey 7.5 minutes series topographic map or, if that is not available, a 15 minutes series topographic map.
- B. It contains or is known to contain flowing water continuously for a period of at least 6 months of the year in most years.
- C. The channel bed is primarily composed of mineral material such as sand and gravel, parent materials or bedrock that has been deposited or scoured by water.
- D. The channel contains aquatic animals such as fish, aquatic insects or mollusks in the water or, if no surface water is present, within the streambed.
- E. The channel contains aquatic vegetation and is essentially devoid of upland vegetation.

“River, Stream, or Brook” does not mean a ditch or other drainage way constructed, or constructed and maintained, solely for the purpose of draining storm water or a grassy swale.

SETBACK FROM WATER - The horizontal distance from the normal high-water elevation to the nearest part of a structure, road parking space, or other regulated object or area.

SHORELAND ZONE - The land area located within two hundred and fifty (250) feet, horizontal distance, of the normal high-water line of any great pond, river, or saltwater body; within two hundred and fifty (250) feet of the upland edge of a coastal or freshwater wetland; or within two hundred and fifty (250) feet of the normal high-water line of a stream.

STREAM - A free-flowing body of water from the outlet of a great pond or the confluence of two (2) perennial streams as depicted on the most recent edition of a United States Geological Survey 7.5 minute series topographic map, or if not available, a 15-minute series topographic map, to the point where the body of water becomes a river or flows to another water body or wetland within the shoreland area.

TRIBUTARY STREAM - A channel between defined banks created by the action of surface water, whether intermittent or perennial, and which is characterized by the lack of upland vegetation or presence of aquatic vegetation and by the presence of aquatic vegetation and by the presence of a bed devoid of topsoil containing waterborne deposits on exposed soil, parent material or bedrock, and which flows to a water body or wetland as defined. This definition does not include the term "stream" as defined elsewhere in this Ordinance, and only applies to that portion of the tributary stream located within the shoreland zone of the receiving water body or wetland.

WATER BODY - Any great pond, river, stream or tidal area or wetland.

WATER CROSSING - Any project extending from one bank to the opposite bank of a river or stream, whether under, through, or over the water course, 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.

WATER-ORIENTED BUSINESS - Commercial and industrial facilities which by the nature of their operations require a shorefront location, such as but not limited to boatyards, marinas, bathhouses and commercial fisheries facilities.

WETLANDS ASSOCIATED WITH GREAT PONDS AND RIVERS - Wetlands contiguous with or adjacent to a great pond or river, and which during normal high water are connected by surface water to the great pond or river. Also included are wetlands which are separated from the great pond or river by a berm, causeway, or similar feature less than 100 feet in width, and which have a surface elevation at or below the normal high water line of the great pond or river. Wetlands associated with great ponds or rivers are considered to be part of that great pond or river except as noted herein.

ARTICLE II
Nonconformance

§110-12. Requirements.

Purpose. It is the intent of this Ordinance to promote land use conformities in addition to the provisions in §140.5.

§110-13. Nonconforming Structures Within Areas Regulated by Shoreland Zoning.

- A. Expansions.** A non-conforming structure may be added to or expanded after obtaining a permit from the same permitting authority as that for a new structure, if such addition or expansion does not increase the non-conformity of the structure and is in accordance with subparagraphs (1) and (2) below.
- (1) After January 1, 1989 if any portion of a structure is less than the required setback from the normal high-water line of a water body or tributary stream or the upland edge of a wetland, that portion of the structure shall not be expanded, as measured in floor area or volume, by 30% or more, during the lifetime of the structure. If a replacement structure conforms with the requirements of Section 110-14 and is less than the required setback from a water body, tributary stream or wetland, the replacement structure may not be expanded if the original structure existing on January 1, 1989 had been expanded by 30% in floor area and volume since that date.
- (2) Whenever a new, enlarged, or replacement foundation is constructed under a non-conforming structure, the structure and new foundation must be placed such that the setback requirement is met to the greatest practical extent as determined by the Planning Board or its designee, basing its decision on the criteria specified in Section 110-13.B, Relocation, below. If the completed foundation does not extend beyond the exterior dimensions of the structure, except for expansion in conformity with Section 110-13.A (1) above, and the foundation does not cause the structure to be elevated by more than three (3) additional feet, as measured from the uphill side of the structure (from original ground level to the bottom of the first floor sill), it shall not be considered to be an expansion of the structure.
- B. Relocation.** A non-conforming structure may be relocated within the boundaries of the parcel on which the structure is located provided that the site of relocation conforms to all setback requirements to the greatest practical extent as determined by the Planning Board or its designee, and provided that the applicant demonstrates that the present subsurface sewage disposal system meets the

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

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

When it is necessary to remove vegetation within the water or wetland setback area in order to relocate a structure, the Planning Board shall require replanting of native vegetation to compensate for the destroyed vegetation. In addition, the area from which the relocated structure was removed must be replanted with vegetation. Replanting shall be required within one (1) year as follows:

- (1) Trees removed in order to relocate a structure must be replanted with at least one native tree, three (3) feet in height, for every tree removed. If more than five trees are planted, no one species of tree shall make up more than 50% of the number of trees planted. Replaced trees must be planted no further from the water or wetland than the trees that were removed.
- (2) 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.
- (3) 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.

§110-14. Reconstruction of nonconforming buildings.

- A. Reconstruction or Replacement. Any non-conforming structure which is located less than the required setback from a water body, tributary stream, or wetland and which is removed, or damaged or destroyed, regardless of the cause, by more than 50% of the market value of the structure before such damage, destruction or removal, may be reconstructed or replaced provided that a permit is obtained within eighteen (18) months of the date of said damage, destruction, or removal, and provided that such reconstruction or replacement is in compliance with the

water body, tributary stream or wetland setback requirement to the greatest practical extent as determined by the Planning Board or its designee in accordance with the purposes of this Ordinance. In no case shall a structure be reconstructed or replaced so as to increase its non-conformity.

- B.** 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 110-13.A above, as determined by the non-conforming floor area and volume of the reconstructed or replaced structure at its new location. If the total amount of floor area and volume of the original structure can be relocated or reconstructed beyond the required setback area, no portion of the relocated or reconstructed structure shall be replaced or constructed at less than the setback requirement for a new structure.

When it is necessary to remove vegetation in order to replace or reconstruct a structure, vegetation shall be replanted in accordance with Section 110-13.B above.

- C.** 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.
- D.** In determining whether the building reconstruction or replacement meets the setback to the greatest practical extent the Planning Board or its designee shall consider, in addition to the criteria in Section 110-13.B above, the physical condition and type of foundation present, if any.
- E.** Change of Use of a Non-conforming Structure. The use of a non-conforming structure may not be changed to another use unless the Planning Board, after receiving a written application, determines that the new use will have no greater adverse impact on the water body, tributary stream, or wetland, or on the subject or adjacent properties and resources than the existing use.

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

§110-15. Nonconforming uses.

- A.** Expansions. Expansions of non-conforming uses are prohibited, except that non-conforming residential uses may, after obtaining a permit from the Planning Board, be expanded within existing residential structures or within expansions of such structures as allowed in Section 110-13.A(1) above.
- B.** Resumption Prohibited. A lot, building or structure in or on which a non-conforming use is discontinued for a period exceeding one year, or which is superseded by a conforming use, may not again be devoted to a non-conforming use except that the Planning Board may, for good cause shown by the applicant, grant up to a one year extension to that time period. This provision shall not apply to the resumption of a use of a residential structure provided that the structure has been used or maintained for residential purposes during the preceding five (5) year period.
- C.** 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 Planning Board. The determination of no greater adverse impact shall be made according to criteria listed in Section 110-13.E above.

§110-16. Nonconforming lots of record.

- A.** 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.

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

- B.** 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.

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

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

- (1) Each lot contains at least 100 feet of shore frontage and at least 20,000 square feet of lot area; or
- (2) Any lots that do not meet the frontage and lot size requirements of Section 110-16.C(1) are reconfigured or combined so that each new lot contains at least 100 feet of shore frontage and 20,000 square feet of lot area.

ARTICLE III Establishment of Shoreland Zoning

§110-17. Overlay Zones.

RP Resource Protection District.
SP Shoreland Slope District.
FEMA 100-yr. Floodplain Zone.
LRS Limited Residential Shoreland District.
MFW Minor Freshwater Wetland District.

The purposes of the land use districts are as follows:

- A. Resource Protection District. To control the use of shoreland and other areas to provide maximum protection to the land and water resources. Such areas include but are not limited to wetlands, swamps, marshes, bogs, poorly drained soils, one-hundred-year floodplains and significant wildlife habitats. [Amended 4-11-1988]
- B. Shoreland Slope District, and 100-yr. Floodplain Zone.
 - (1) To protect from activities or alterations that would unreasonably cause or increase flooding of areas or adjacent properties.
 - (2) ~~(1)~~ To provide maximum protection to the land and water resources with controls of use and development of undeveloped shoreland areas.
 - (3) ~~(2)~~ To minimize expenditures of public monies for flood-control projects.

- (4) ~~(3)~~ To minimize rescue and relief efforts undertaken at the expense of the general public.
 - (5) ~~(4)~~ To minimize flood damage to public facilities, such as water mains, sewer lines, streets, roads and bridges.
 - (6) ~~(5)~~ To protect the storage capacity of floodplains and assure retention of sufficient floodway area to convey flood flows which reasonably can be expected to occur.
 - (7) ~~(6)~~ To encourage open space uses, such as agriculture and recreation.
- C. Limited Residential Shoreland District. To allow for those areas suitable for residential and recreational development which are used less intensively than those in the Business Districts and are currently developed. This district shall include areas when they occur within the limits of Shoreland Zones, and those in the Resource Protection District except those areas within Minor Freshwater Wetlands Zones.
- D. Minor Freshwater Wetland District. 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 control building sites, placement of structures and land uses; and visual as well as actual points of access to inland and coastal waters; to conserve natural beauty and open space; and to anticipate and respond to the impacts of development in Shoreland and adjacent areas.

§110-18. District Boundaries.

- A. Resource Protection District - RP.
- (1) All land within two hundred fifty (250) feet from the normal high-water line (as measured from the edge of the associated wetland) of the following water bodies:
 - (a) Round Pond.
 - (b) Warren Pond.
 - (c) Knights Pond and its outlet Hilton Brook.
 - (d) Ogunquit Brook.
 - (e) Chicks Brook, upstream of Emery's Bridge Road.
 - (f) White Marsh Brook.

- (g) Cox Pond and its outlet to White Marsh Brook.
 - (h) Hoopers Swamp. [Added 3-13-1989]
 - (i) Leighs Mill Pond. [Added 3-13-1989]
 - (j) Salmon Falls River/Piscataqua River to its tidal limits.
 - (k) Freshwater wetlands, salt marshes, salt meadows, and wetlands associated with great ponds and rivers, which are rated "high" or "moderate" value by the Department of Inland Fisheries and Wildlife (IFW) based on their most recent mapping.
- (2) The Great Works River in the R3 and R4 Districts (as measured from the edge of the river channel).
- (3) The following resources to their boundary limits:
- (a) Coastal wetlands. [Added 12-12-1988]
 - (b) All one-hundred-year floodplains. [Added 4-11-1988]
 - (c) Major Freshwater wetlands. [Added 12-12-1988]
 - (d) Minor Freshwater Wetlands.
 - (e) Areas of two or more contiguous acres with sustained slopes of twenty (20%) or greater when located within a Shoreland and Slope District (Section 110-18.B.)
 - (f) Land areas along rivers subject to severe erosion, undercutting, or riverbed movement and lands adjacent to tidal waters, which are subject to severe erosion or mass movement, such as a coastal bluff.
 - (g) For the purpose of this Section, the Resource Protection District shall be a (300) foot radius from the wellhead. However, the Protection District from the Junction Road wellhead shall be an area as described in the Caswell, Eichler, and Hill study "Hydro Geological Evaluation of Bedrock Well at Junction Road Site, South Berwick, Maine, and September, 1994." These zones will be established only after public notice and a public hearing in accordance with Section 140-6 of the Zoning Ordinance. For all new wellhead protection areas, Resource Protection Zones will be based on hydro geological studies/recommendations and will be established according to Zoning, Section 140-6. [Adopted 5-28-96]

- (h) Vaughan Woods.
 - (i) All areas mapped as very poorly drained soils on the medium-intensity Soil Survey of York County, Maine. In the event that a soil classification boundary designating the limits of the Resource Protection District is challenged by a landowner or abutters, the landowner or abutters shall present evidence that the land in question does not contain soils, which are classified as being very poorly drained by the United States Soil Conservation Service. A high intensity soil survey performed by a registered soil scientist, licensed in the state of Maine may constitute such evidence.
- (4) The following resources as identified in the Town's Comprehensive Plan and land within two hundred and fifty feet (250) of those resources as shown on the official Shoreland Zoning Map of South Berwick.
- (a) The Balancing Rock.
 - (b) The Spring Hill Overlook.
 - (c) The Gorge.
- (5) Areas within 250 feet, horizontal distance, of the upland edge of freshwater wetlands, salt marshes and salt meadows, and wetlands associated with great ponds and rivers, which are rated "moderate" or "high" value waterfowl and wading bird habitat, including nesting and feeding areas, by the Maine Department of Inland Fisheries and Wildlife (MDIF&W) that are depicted on 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.
- (6) Limited Residential Shoreland District – LRS.
- All land within two hundred fifty (250) feet from the normal high-water line (as measured from the edge of the associated wetland) of the following water bodies:
- (a) Fife's Lane and Old South Road.

(b) York Woods.

B. Shoreland and Slope District - SP [Amended 12-12-1988]

(1) Unless previously classified as Resource Protection, all land within two hundred fifty (250) feet horizontally of the normal high-water line, as measured from the edge of the stream channel, of the following water bodies:

(a) Dennett Brook.

(b) Boyd Brook.

(c) Great Works River in the R1 and R2 Districts (the high water line shall be measured from the edge of any associated wetland.)

(d) Chicks Brook, downstream of Emery's Bridge Road.

(e) Lover's Brook.

(f) Shorey's Brook.

(g) Quamphegan Brook.

(h) Lord Brook.

(i) Hoopers Brook.

(j) Knights Brook.

(k) Warren Brook, south of Bickel Mountain.

(l) Hussey Brook, north of Great Hill.

(m) Bennett Brook.

(n) Hamilton Brook.

(o) Driscoll Brook.

(p) Salmon Falls River above Route 4 (high water line shall be measured from the edge of any associated wetland.)

(q) Unnamed Stream 1.

(r) Unnamed Stream 2.

- (s) Hilton Brook.
 - (2) Land within two hundred fifty (250) feet of a major freshwater wetland boundary. [Added 12- 12-1988]
 - (3) Land within two hundred fifty (250) feet of a coastal wetland boundary. [Added 12-12-1988]
 - (4) Any other free-flowing body of water, not listed above, which flows from the outlet of a great pond or the confluence of two (2) perennial streams as depicted on the most recent edition of a United States Geological Survey 7.5 minutes series topographic map, to the point where the body of water becomes a river.
- C. 100-yr. Floodplain Zone - FEMA. Floodplains along rivers and floodplains along artificially formed great ponds along rivers, defined by the 100-year floodplain as designated on the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps or Flood Hazard Boundary Maps, or the flood of record, or in the absence of these, by soil types identified as recent floodplain soils. This district shall also include 100-year floodplains adjacent to tidal waters as shown on FEMA's Flood Insurance Rate Maps or Flood Hazard Boundary Maps.
- D. Minor Freshwater Wetland - MFW. A wetland of two or more contiguous acres, excluding Major Freshwater Wetlands, or forested wetlands as identified on the Federal National Wetlands Inventory.

**ARTICLE IV
Land Use Standards**

§110-19. Performance Standards for Specific Uses.

Two-Family and Multifamily Dwellings.

A. New construction. New two-family and multifamily dwellings shall meet the following minimum road and Shoreland frontage as indicated in Table C.

**ARTICLE V
Shoreland Standards**

The following standards shall apply to all land areas within two hundred fifty (250) feet of all water bodies protected by the Resource Protection District in Section 110-18.A(1) and (2) and the Shoreland and Slope District in Section 110-18.B(1), (2) and (3) except that if any of these standards conflict with a stricter provision of this chapter, the more restrictive provision shall apply:

§110-20. Agriculture.

- A.** All spreading of manure shall be accomplished in conformance with the Manure Utilization Guidelines published by the Maine Department of Agriculture on November 1, 2001, and the Nutrient Management Law (7 M.R.S.A. sections 4201-4209).
- B.** 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 one hundred (100) 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.
- C.** Agricultural activities involving tillage of soil greater than forty thousand (40,000) square feet in surface area, within the Shoreland Zone shall require a Conservation Plan, as approved by the Natural Resources Conservation Service, 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.
- D.** 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 one hundred (100) feet, horizontal distance, from other water bodies and coastal wetlands; nor within twenty-five (25) feet, horizontal distance, of tributary streams and freshwater wetlands. Operations in existence on the effective date of this ordinance and not in conformance with this provision may be maintained.
- E.** 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 one hundred (100) feet, horizontal distance, of other water bodies and coastal wetlands, nor; within twenty-five (25) feet, horizontal distance, of tributary streams and freshwater wetlands. Livestock grazing associated with ongoing farm activities, and which are not in conformance with the above setback provisions may continue, provided that such grazing is conducted in accordance with a Conservation Plan, as approved by the appropriate reviewing agency.

§110-21. Beach Construction. Beach construction on any great pond or coastal wetland or on any river, stream or brook shall require a permit from the Department of Environmental Protection.

§110-22. Campgrounds.

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

- A. 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.
- B. 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 one hundred (100) feet, horizontal distance, from the normal high-water line of other water bodies, tributary streams, or the upland edge of a wetland.

§110-23. Individual Private Campsites.

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

- A. One campsite per lot existing on the effective date of this Ordinance, or thirty thousand (30,000) square feet of lot area within the Shoreland Zone, whichever is less, may be permitted.
- B. Campsite placement on any lot, including the area intended for a recreational vehicle or tent platform, shall be set back one hundred (100) feet, horizontal distance, from the normal high-water line of a great pond classified GPA or river flowing to a great pond classified GPA, and one hundred (100) feet, horizontal distance, from the normal high-water line of other water bodies, tributary streams, or the upland edge of a wetland.
- C. Only one recreational vehicle shall be allowed on a campsite. The recreational vehicle shall not be located on any type of permanent foundation except for a gravel pad, and no structure except a canopy shall be attached to the recreational vehicle.
- D. The clearing of vegetation for the siting of the recreational vehicle, tent or similar shelter in a Resource Protection District shall be limited to one thousand (1000) square feet.
- E. A written sewage disposal plan describing the proposed method and location of sewage disposal shall be required for each campsite and shall be approved by the Local Plumbing Inspector. Where disposal is off-site, written authorization from the receiving facility or land owner is required.

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

§110-24. Clearing or Removal of Vegetation for Activities Other Than Timber Harvesting.

- A. In a Resource Protection District abutting a great pond, there shall be no cutting of vegetation within the strip of land extending 100 feet, horizontal distance, inland from the normal high-water line, except to remove safety hazards.

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

- B. Except in areas as described in Section 110-24.A, above, and except to allow for the development of permitted uses, within a strip of land extending one-hundred (100) feet, horizontal distance, inland from the normal high-water line of a great pond classified GPA or a river flowing to a great pond classified GPA, and one hundred (100) feet, horizontal distance, from any other water body, tributary stream, or the upland edge of a wetland, a buffer strip of vegetation shall be preserved as follows:
 - (1) There shall be no cleared opening greater than 250 square feet in the forest canopy (or other existing woody vegetation if a forested canopy is not present) as measured from the outer limits of the tree or shrub crown. However, a footpath not to exceed six (6) feet in width as measured between tree trunks and/or shrub stems is allowed provided that a cleared line of sight to the water through the buffer strip is not created.
 - (2) Selective cutting of trees within the buffer strip is allowed provided that a well-distributed stand of trees and other natural vegetation is maintained. For the purposes of this Section a "well-distributed stand of trees" adjacent to a great pond classified GPA or a river or stream flowing to a great pond classified GPA, shall be defined as maintaining a rating score of 24 or more in each 25-foot by 50-foot rectangular (1250 square feet) area as determined by the following rating system.

Diameter of Tree at 4 1/2 feet above ground level (inches)	Points
2-4 "	1
>4-12 "	2
>12 "	4

Adjacent to areas zoned as Shoreland/Slope a well- distributed stand of trees is defined as maintaining a minimum rating score of 8 per 25 foot square area.

Adjacent to other water bodies, tributary streams, and wetlands, a "well-distributed stand of trees" is defined as maintaining a minimum rating score of 110 per 25-foot by 50-foot rectangular area.

The following shall govern in applying this point system:

- (a) The 25-foot by 50-foot rectangular plots must be established where the landowner or lessee proposes clearing within the required buffer;
 - (b) Each successive plot must be adjacent to, but not overlap a previous plot;
 - (c) Any plot not containing the required points must have no vegetation removed except as otherwise allowed by this Ordinance;
 - (d) Any plot containing the required points may have vegetation removed down to the minimum points required or as otherwise allowed by is Ordinance;
 - (e) 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.
- (3) For the purposes of this Section "other natural vegetation" is defined as retaining existing vegetation under three (3) feet in height and other ground cover and retaining at least five (5) saplings less than two (2) inches in diameter at four and one half (4 1/2) feet above ground level for each 25-foot by 50-foot rectangle area. If five saplings do not exist, no woody stems less than two (2) inches in diameter can be removed until 5 saplings have been recruited into the plot.

Notwithstanding the above provisions, no more than 40% of the total volume of trees four (4) inches or more in diameter, measured at 4 1/2 feet above ground level may be removed in any ten (10) year period.

- (a) 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 110-24, A and B.
- (b) Pruning of tree branches, on the bottom 1/3 of the tree is allowed.
- (c) In order to maintain a buffer strip of vegetation, when the removal of storm-damaged, diseased, unsafe, or dead trees results in the creation of cleared openings, these openings shall be replanted with native tree species unless existing new tree growth is present.
- (d) Section 110-24.B 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.

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

In no event shall cleared openings for any purpose, including but not limited to, principal and accessory structures, driveways, lawns and sewage disposal areas, exceed in the aggregate, 25% of the lot area within the Shoreland Zone or ten thousand (10,000) square feet, whichever is greater, including land previously cleared. This provision shall not apply to the applicable business districts.

- D.** Legally existing nonconforming cleared openings may be maintained, but shall not be enlarged, except as allowed by this Ordinance.
- E.** Fields and other cleared openings which have reverted to primarily shrubs, trees, or other woody vegetation shall be regulated under the provisions of Section 110-24.

§110-25. Erosion and Sedimentation Control.

- A.** All activities which involve filling, grading, excavation or other similar activities which result in unstabilized soil conditions and which require a permit shall also require a written soil erosion and sedimentation control plan. The plan shall be submitted to the permitting authority for approval and shall include, where applicable, provisions for:
- (1) Mulching and revegetation of disturbed soil.
 - (2) Temporary runoff control features such as hay bales, silt fencing or diversion ditches.
 - (3) Permanent stabilization structures such as retaining walls or rip rap.
- B.** 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.
- C.** 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.
- D.** Any exposed ground area shall be temporarily or permanently stabilized within one (1) week from the time it was last actively worked, by use of rip rap, sod, seed, and mulch, or other effective measures. In all cases permanent stabilization shall occur within nine (9) months of the initial date of exposure. In addition:
- (1) Where mulch is used, it shall be applied at a rate of at least one (1) bale per five hundred (500) square feet and shall be maintained until a catch of vegetation is established.
 - (2) Anchoring the mulch with netting, peg and twine or other suitable method may be required to maintain the mulch cover.
 - (3) Additional measures shall be taken where necessary in order to avoid siltation into the water. Such measures may include the use of staked hay bales and/or silt fences.
- E.** Natural and man-made drainage ways and drainage outlets shall be protected from erosion from water flowing through them. Drainageways shall be designed and constructed in order to carry water from a twenty five (25) year storm or greater, and shall be stabilized with vegetation or lined with rip rap.

§110-26. 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:

- A.** 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 110-26.D below.
- B.** 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 fifty (50) feet, horizontal distance, of any property line without written permission of the owner of such adjacent property.
- C.** When gravel pits must be located within the Shoreland Zone, they shall be set back as far as practicable from the normal high-water line and no less than one hundred (100) feet and screened from the river by existing vegetation.
- D.** Within twelve (12) months following the completion of extraction operations at any extraction site, which operations shall be deemed complete when less than one hundred (100) cubic yards of materials are removed in any consecutive twelve (12) month period, ground levels and grades shall be established in accordance with the following:

 - (1) All debris, stumps, and similar material shall be removed for disposal in an approved location, or shall be buried on-site. Only materials generated on-site may be buried or covered on-site.
 - (2) The final graded slope shall be two and one-half to one (2 1/2:1) slope or flatter.
 - (3) Top soil or loam shall be retained to cover all disturbed land areas, which shall be reseeded and stabilized with vegetation native to the area. Additional topsoil or loam shall be obtained from off-site sources if necessary to complete the stabilization project.

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

§110-27. Additional Shoreland Structures.

Piers, docks, wharves, breakwaters, causeways, marinas bridges, structures and uses extending over or beyond the normal high water line of a water body or within a wetland. In addition to federal or state permits which may be required for such structures and uses, they shall conform to the following:

- A.** Access from shore shall be developed on soils appropriate for such use and constructed so as to control erosion.
- B.** The location shall not interfere with existing developed or natural beach areas.
- C.** 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.
- D.** The facility shall be located so as to minimize adverse effects on fisheries.
- E.** No new structure shall be built on, over, or abutting a pier, wharf, dock or other structure extending beyond the normal high-water line of a water body or within a wetland unless the structure requires direct access to the water as an operational necessity.
- F.** 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.
- G.** Except in the applicable business 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.
- H.** 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.

§110-28. Roads and Driveways.

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

- A.** 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 one-hundred (100) feet, horizontal distance from the normal high-water line of other water bodies, tributary streams, or the upland edge of a wetland unless no reasonable alternative exists as determined by the Planning Board. If no other reasonable alternative exists, the road and/or driveway setback requirement shall be no less than fifty (50) feet, horizontal distance, upon clear showing by the applicant that appropriate techniques will be used to prevent sedimentation of the water body, tributary stream, or wetland. Such techniques may include, but are not limited to, the installation of settling basins, and/or the effective use of additional ditch relief culverts and turnouts placed so as to avoid sedimentation of the water body, tributary stream, or wetland.

On slopes of greater than twenty (20) percent the road and/or driveway setback shall be increased by ten (10) feet, horizontal distance, for each five (5) percent increase in slope above twenty (20) percent. Section 110-28.A does not apply to approaches to water crossings or to roads or driveways that provide access to permitted structures and facilities located nearer to the shoreline or tributary stream due to an operational necessity, excluding temporary docks for recreational uses. Roads and driveways providing access to permitted structures within the setback area shall comply fully with the requirements of this Section except for that portion of the road or driveway necessary for direct access to the structure.

- B.** 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.
- C.** 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 110-25.
- D.** Road and driveway grades shall be no greater than ten (10) percent except for segments of less than two hundred (200) feet.

E. 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.

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

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

Grade (Percent)	Spacing (Feet)
0-2	250
3-5	200-135
6-10	100-80
11-15	80-60
110-20	60-45
21 +	40

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

(3) 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.

(4) 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.

G. 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.

§110-29. Septic Waste Disposal.

- A. All subsurface sewage disposal systems shall be installed in conformance with the State of Maine Subsurface Wastewater Disposal Rules, and the following:
 - (1) Clearing or removal of woody vegetation necessary to site a new system and any associated fill extensions, shall not extend closer than one hundred (100) feet, horizontal distance, from the normal high-water line of a water body or the upland edge of a wetland and;
 - (2) Holding tank is not allowed for a first-time residential use in the Shoreland zone.

§110-30. Signs.

The following provisions shall govern the use of signs in the Resource Protection and applicable Residential and Business Districts:

- A. Signs relating to goods and services sold on the premises shall be allowed, provided that such signs shall not exceed six (6) square feet in area and shall not exceed two (2) signs per premises. In the applicable Business Districts, however, such signs shall not exceed sixteen (16) square feet in area. Signs relating to goods or services not sold or rendered on the premises shall be prohibited.
- B. Name signs are allowed, provided such signs shall not exceed two (2) signs per premises, and shall not exceed twelve (12) square feet in the aggregate.
- C. Residential users may display a single sign not over three (3) square feet in area relating to the sale, rental, or lease of the premises.
- D. Signs relating to trespassing and hunting shall be allowed without restriction as to number provided that no such sign shall exceed two (2) square feet in area.
- E. Signs relating to public safety shall be allowed without restriction.
- F. No sign shall extend higher than twenty (20) feet above the ground.
- G. Signs may be illuminated only by shielded, non-flashing lights.

§110-31. Principal and Accessory Structures.

- A. All new principal and accessory structures shall be set back at least two hundred and fifty (250) feet, horizontal distance, from the normal high-water line of great ponds classified GPA and rivers that flow to great ponds classified GPA, and two hundred and fifty (250) feet, horizontal distance, from the normal high-water line

of other water bodies, tributary streams, or the upland edge of a wetland, except that in the applicable Business Districts 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 two hundred and fifty (250) feet, horizontal distance, except for structures, roads, parking spaces or other regulated objects specifically allowed in that district in which case the setback requirements specified above shall apply.

In addition:

- (1) The water body, tributary stream, or wetland setback provision shall neither apply to structures which require direct access to the water body or wetland as an operational necessity, such as piers, docks and retaining walls, nor to other functionally water-dependent uses.
- (2) 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 or eight (8) feet in height, and shall be located as far from the shoreline or tributary stream as practical and shall meet all other applicable standards, including lot coverage and vegetation clearing limitations. In no case shall the structure be located closer to the shoreline or tributary stream than the principal structure.
- (3) Principal or accessory structures and expansions of existing structures which are permitted in the Resource Protection, Shoreland Zone and applicable Residential and Business 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.
- (4) 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.
- (5) The total footprint area of all structures, parking lots and other non-vegetated surfaces, within the Shoreland Zone shall not exceed twenty (20) percent of the lot or a portion thereof, located within the Shoreland Zone, including land area previously developed, except in the applicable Residential and Business Districts adjacent to tidal waters and rivers that do not flow to great ponds classified GPA.

- (6) Retaining walls that are not necessary for erosion control shall meet the structure setback requirement, except for low retaining walls and associated fill provided all of the following conditions are met:
- (a) The site has been previously altered and an effective vegetated buffer does not exist;
 - (b) The wall(s) is(are) at least 25 feet, horizontal distance, from the normal high-water line of a water body, tributary stream, or upland edge of a wetland;
 - (c) The site where the retaining wall will be constructed is legally existing lawn or is a site eroding from lack of naturally occurring vegetation, and which cannot be stabilized with vegetative plantings;
 - (d) The total height of the wall(s), in the aggregate, are no more than 24 inches;
 - (e) Retaining walls are located outside of the 100 year floodplain on rivers, streams, coastal wetlands, and tributary streams, as designated on the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps or Flood Hazard Boundary Maps, or the flood of record, or in the absence of these, by soil types identified as recent flood plain soils.
 - (f) The area behind the wall is revegetated with grass, shrubs, trees, or a combination thereof, and no further structural development will occur within the setback area, including patios and decks; and
 - (g) A vegetated buffer area is established within 25 feet, horizontal distance, of the normal high-water line of a water body, tributary stream, or upland edge of a wetland when a natural buffer area does not exist. The buffer area must meet the following characteristics:
 - [1] The buffer must include shrubs and other woody and herbaceous vegetation. Where natural ground cover is lacking the area must be supplemented with leaf or bark mulch;
 - [2] Vegetation plantings must be in quantities sufficient to retard erosion and provide for effective infiltration of stormwater runoff;

[3] Only native species may be used to establish the buffer area;

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

A footpath not to exceed the standards in Section 110-24.B (1), may traverse the buffer;

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

§110-32. Parking Areas.

- A. Parking areas shall meet the shoreline and tributary stream setback requirements for structures for the district in which such areas are located, except that in the applicable Residential and Business Districts parking areas shall be set back at least twenty-five (25) feet, horizontal distance, from the shoreline. The setback requirement for parking areas serving public boat launching facilities in Districts other than the applicable Business 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.
- B. Parking areas shall be adequately sized for the proposed use and shall be designed to prevent stormwater runoff from flowing directly into a water body, tributary stream or wetland and where feasible, to retain all runoff on-site.
- C. In determining the appropriate size of proposed parking facilities, the following shall apply:
 - (1) Typical parking space: Approximately ten (10) feet wide and twenty (20) feet long, except that parking spaces for a vehicle and boat trailer shall be forty (40) feet long.
 - (2) Internal travel aisles: Approximately twenty (20) feet wide.

§110-33. Timber Harvesting.

- A.** No accumulation of slash shall be left within fifty (50) feet of the normal high-water mark of any pond, river or salt water body as defined. At distances of greater than fifty (50) feet from the normal high-water mark of such waters and extending to the limits of the area covered by Zoning, Chapter 140, all slash shall be disposed of in such a manner that it lies on the ground and no part thereof extends more than four (4) feet above the ground.
- B.** Within a strip of land extending 250 feet inland from the normal high water line in a shoreland area zoned for Resource Protection abutting a great pond there shall be no timber harvesting except to remove safety hazards.
- C.** Except for water crossings, skid trails and other sites where the operation of machinery used in timber harvesting results in the exposure of mineral soil shall be located such that an un-scarified strip of vegetation of at least seventy five (75) feet in width for slopes up to ten (10%) percent shall be retained between the exposed mineral soil and the normal high water line of a water body or wetland edge. For each ten (10%) percent increase in slope, the un-scarified strip shall be increased by twenty (20) feet. The provisions of this paragraph apply only to a face sloping toward the water body or wetland, provided however, that no portion of such exposed mineral soil on a back face shall be closer than twenty five (25) feet from the normal high water line of a protected water body.
- D.** Timber harvesting operations shall be conducted in such a manner and at such a time that minimal soil disturbance results. Adequate provisions shall be made to prevent soil erosion and sedimentation of surface waters. Timber harvesting equipment shall not use stream channels as travel routes except when:

 - (1) Surface waters are frozen; and
 - (2) The activity will not result in any ground disturbance.
- E.** All crossings of flowing water shall require a bridge or culvert, except in areas with low banks and channel beds which are composed of gravel rock or similar hard surface which would not be eroded or other wise damaged.
- F.** Skid trail approaches to water crossings shall be located and designed so as to prevent water runoff from directly entering the water body or stream. Upon completion of timber harvesting, temporary bridges and culverts shall be removed and areas of exposed soil re-vegetated.
- G.** Except in areas as described in Section 110-33.B, above, timber harvesting shall conform to the following provisions:

- (1) Selective harvesting of no more than forty (40) percent of the total volume of trees four (4) inches or more in diameter measured at 4 1/2 feet above the ground level on any lot in any ten year period is permitted. In addition:
 - (a) Within one hundred (100) feet, horizontal distance of the normal high water of a water body zoned for Resource Protection and within one hundred (100) feet, horizontal distance of water bodies zoned for Shoreland/Slope and tributary streams, there shall be no clear-cut openings and a well distributed stand of trees shall be maintained.
 - (b) At distances greater than one hundred (100) feet, horizontal distance of any water resource zoned for Resource Protection and the Great Works and Salmon Falls rivers and greater than one hundred (100) feet, horizontal distance of the water resources zoned for Shoreland/Slope, timber harvesting operations shall not create single openings in the forest canopy greater than the height of the average tree in the stand. Such openings shall be included in the calculation of total volume removal. For the purposes of these standards volume may be considered to be equivalent to basal area.

H. Timber harvesting operations exceeding the (40%) percent limitation in paragraph G(1) above, may be allowed by the Planning Board upon a clear showing, including a forest management plan signed by a Maine licensed professional forester that such an exception is necessary for good forest management and will be carried out in accordance with the purposes of this ordinance. The Planning Board shall notify the Commissioner of the Department of Environmental protection of each exception allowed, within fourteen (14) days of the Planning Board's decision.

§110-34. Essential Services.

- A.** Where feasible, the installation of essential services shall be limited to existing public ways and existing service corridors.
- B.** The installation of essential services, other than road-side distribution lines, is not allowed in a Resource 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.
- C.** Damaged or destroyed public utility transmission and distribution lines, towers and related equipment may be replaced or reconstructed without a permit.

§110-35. Storm Water Runoff.

- A. All new construction and development shall be designed to minimize storm water runoff from the site in excess of the natural predevelopment conditions. Where possible, existing natural runoff control features, such as berms, swales, terraces and wooded areas, shall be retained in order to reduce runoff and encourage infiltration of storm waters.
- B. Storm water runoff control systems shall be maintained as necessary to ensure proper functioning.

§110-36. Archeological Site.

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

§110-37. Minor Freshwater Wetlands.

This Section pertains to work to be carried out adjacent to, but not in, a minor freshwater wetland as defined. Adjacent work includes depositing of fill, excavating, bulldozing and scraping the land when located within one hundred (100) feet of the normal high-water line of a minor freshwater wetland.

- A. In order to prevent surface water which may carry sediment from the disturbance activity from directly entering a minor freshwater wetland:
 - (1) A twenty five (25) foot undisturbed strip of vegetation shall be maintained between the normal high-water line and the activity; and
 - (2) Where sustained slopes exceed 20% a one hundred (100) foot undisturbed strip of vegetation shall be maintained between the normal high-water line and the activity.
- B. These undisturbed buffer strip requirements do not apply to:
 - (1) Providing access to an approved use.
 - (2) Maintenance of existing roadways.
 - (3) Removal of underground storage tanks.

- (4) Removal, replacement or maintenance of wastewater disposal systems.
- (5) Placement and replacement of foundations and supports for legally existing or authorized structures.

ARTICLE VI
Administration

§110-38. Administration.

A. Administering Bodies and Agents.

- (1) Code Enforcement Officer. As defined in §140-73, Duties of enforcement officer.
- (2) Board of Appeals. As defined in §140-76, Board of Appeals; appeal procedures.
- (3) Planning Board. As defined in Chapter 3, Administrative Code; Article XII, Planning Board, and Chapter A148, Planning Board Bylaws; §A148-1, General.

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

- (1) A permit is not required for the replacement of an existing road culvert as long as:
 - (a) The replacement culvert is not more than 25% longer than the culvert being replaced;
 - (b) The replacement culvert is not longer than seventy five (75) feet; and
 - (c) Adequate erosion control measures are taken to prevent sedimentation of the water, and the crossing does not block fish passage in the watercourse.

- (2) A permit is not required for an archaeological excavation as long as the excavation is conducted by an archaeologist listed on the State Historic Preservation Officer's level 1 or level 2 approved list, and unreasonable erosion and sedimentation is prevented by means of adequate and timely temporary and permanent stabilization measures.
- (3) Any permit required by this Ordinance shall be in addition to any other permit required by other law or ordinance.

C. Permit Application.

- (1) Every applicant for a permit shall submit a written application, including a scaled site plan, on a form provided by the municipality, to the appropriate official as indicated in Chapter 140, Zoning: Attachment 1, Table A, Land Use; Attachment 2, Table B, Dimensional Requirements; and Attachment 3, Table C, Shoreland Dimensional Requirements.
- (2) All applications shall be signed by an owner or individual who can show evidence of right, title or interest in the property or by an agent, representative, tenant, or contractor of the owner with authorization from the owner to apply for a permit hereunder, certifying that the information in the application is complete and correct.
- (3) All applications shall be dated, and the Code Enforcement Officer or Planning Board, as appropriate, shall note upon each application the date and time of its receipt.
- (4) If the property is not served by a public sewer, a valid plumbing permit or a completed application for a plumbing permit, including the site evaluation approved by the Plumbing Inspector, shall be submitted whenever the nature of the proposed structure or use would require the installation of a subsurface sewage disposal system.

D. Procedure for Administering Permits. Within thirty five (35) days of the date of receiving a written application, the Planning Board or Code Enforcement Officer, as indicated in Section 110-38.B, shall notify the applicant in writing either that the application is a complete application, or, if the application is incomplete, that specified additional material is needed to make the application complete. The Planning Board or the Code Enforcement Officer, as appropriate, shall approve, approve with conditions, or deny all permit applications in writing within 35 days of receiving a completed application. However, if the Planning Board has a waiting list of applications, a decision on the application shall occur within 35 days after the first available date on the Planning Board's agenda following receipt of the completed application, or within 35 days of the public hearing, if the proposed use or structure is found to be in conformance with the purposes and provisions of this Ordinance.

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

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

- (1) Will maintain safe and healthful conditions;
- (2) Will not result in water pollution, erosion, or sedimentation to surface waters;
- (3) Will adequately provide for the disposal of all wastewater;
- (4) Will not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat;
- (5) Will conserve shore cover and visual, as well as actual, points of access to inland and coastal waters;
- (6) Will protect archaeological and historic resources as designated in the comprehensive plan;
- (7) Will not adversely affect existing commercial fishing or maritime activities in a Commercial Fisheries/Maritime Activities district;
- (8) Will avoid problems associated with floodplain development and use; and
- (9) Is in conformance with the provisions of Article V, Shoreland Standards.

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

E. Special Exceptions. In addition to the criteria specified in Section 110-38.D, above, excepting structure setback requirements, the Planning Board may approve a permit for a single-family residential structure in a Resource Protection District provided that the applicant demonstrates that all of the following conditions are met:

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

- (2) The lot on which the structure is proposed is undeveloped and was established and recorded in the registry of deeds of the county in which the lot is located before the adoption of the Resource Protection District.
- (3) All proposed buildings, sewage disposal systems and other improvements are:
 - (a) Located on natural ground slopes of less than 20%; and
 - (b) Located outside the floodway of the 100-year flood-plain along rivers and artificially formed great ponds along rivers and outside the velocity zone in areas subject to tides, based on detailed flood insurance studies and as delineated on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate Maps; all buildings, including basements, are elevated at least one foot above the 100-year flood-plain elevation; and the development is otherwise in compliance with any applicable municipal flood-plain ordinance.

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

- (4) The total ground-floor area, including cantilevered or similar overhanging extensions, of all principal and accessory structures is limited to a maximum of 1,500 square feet. This limitation shall not be altered by variance.
- (5) All structures, except functionally water-dependent structures, are set back from the normal high-water line of a water body, tributary stream or upland edge of a wetland to the greatest practical extent, but not less than 100 feet, horizontal distance. In determining the greatest practical extent, the Planning Board shall consider the depth of the lot, the slope of the land, the potential for soil erosion, the type and amount of vegetation to be removed, the proposed building site's elevation in regard to the flood-plain, and its proximity to moderate-value and high-value wetlands.

F. Expiration of Permit. Permits shall expire one year from the date of issuance if a substantial start is not made in construction or in the use of the property during that period. If a substantial start is made within one year of the issuance of the permit, the applicant shall have one additional year to complete the project, at which time the permit shall expire.

G. Installation of Public Utility Service. A public utility, water district, sewer district or any utility company of any kind may not install services to any new structure located in the Shoreland zone unless written authorization attesting to

the validity and currency of all local permits required under this or any previous Ordinance has been issued by the appropriate municipal officials or other written arrangements have been made between the municipal officials and the utility.

§110-39. Appeals and Zoning Board of Appeals. See Zoning, Chapter 140, Section 76.

The Board of Appeals may, upon written application of an aggrieved party and after public notice, hear appeals from determinations of the Planning Board or Code Enforcement Officer in the administration of this chapter. Such hearing shall be held in accordance with Section 140-76.C. Following such hearing, the Board of Appeals may reverse the decision of the Planning Board or Code Enforcement Officer only upon a finding that the decision is clearly contrary to specific provisions of this chapter by the concurring vote of a majority of the votes cast.

§110-40. Allowed Uses. See Appendix I, Table A, Land Use.

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

**TABLE C
SHORELAND DIMENSIONAL REQUIREMENTS**

RESIDENTIAL & NON COMMERCIAL					
<u>B1 &B2 residential uses same as Commercial Requirements</u>					
Minimum Lot Size Requirements (square feet)	R1	R2	R3	R4	R5
Tidal	30,000 (2)	30,000 (2)	30,000 (2)	<u>NA</u>	<u>NA</u>
Non - Tidal	40,000	40,000	40,000	40,000	40,000
Shore Frontage	R1 & R1A	R2 & R2A	R3	R4	R5
Tidal	150	150	200	200 <u>NA</u>	200 <u>NA</u>
Non - Tidal	200	200	200	200	200
<u>Two-family and Multifamily Dwellings</u>					
<u>2 Units</u>	<u>400</u>	<u>400</u>	<u>400</u>	<u>400</u>	<u>400</u>
<u>3 Units</u>	<u>600</u>	<u>600</u>	<u>600</u>	<u>600</u>	<u>600</u>
<u>4 Units</u>	<u>800</u>	<u>800</u>	<u>800</u>	<u>800</u>	<u>800</u>
<u>5 Units</u>	<u>1,000</u>	<u>1,000</u>	<u>1,000</u>	<u>1,000</u>	<u>1,000</u>
<u>6 Units</u>	<u>1,200</u>	<u>1,200</u>	<u>1,200</u>	<u>1,200</u>	<u>1,200</u>
<u>Two-family and Multifamily Dwellings</u>	<u>B1</u>	<u>B2</u>			
<u>2 Units</u>	<u>200</u>	<u>400</u>	<u>NA</u>	<u>NA</u>	<u>NA</u>
<u>3 Units</u>	<u>300</u>	<u>600</u>	<u>NA</u>	<u>NA</u>	<u>NA</u>
<u>4 Units</u>	<u>400</u>	<u>800</u>	<u>NA</u>	<u>NA</u>	<u>NA</u>
<u>5 Units</u>	<u>500</u>	<u>1,000</u>	<u>NA</u>	<u>NA</u>	<u>NA</u>
<u>6 Units</u>	<u>600</u>	<u>1,200</u>	<u>NA</u>	<u>NA</u>	<u>NA</u>
Setbacks For Structures	R1 & R1A	R2 & R2A	R3	R4	R5
For Water Bodies and Recognized Features Listed Under <u>Section 110.18 A (1), (2), (3.a), (4) and (5)</u>	250 feet (3) <u>(4)</u>	250 feet (3) <u>(4)</u>	250 feet (3) <u>(4)</u>	250 feet (3) <u>(4)</u>	250 feet (3) <u>(4)</u>
For Water Bodies and Recognized Features Listed Under <u>Section 110.18 B (1 - 4) Shoreland / Slope</u>	100 feet	100 feet	100 feet	100 feet	100 feet

<u>Setbacks varies for Activities see specific activities in Article V.</u> <u>A. Agriculture.</u> <u>C. Campgrounds.</u> <u>D. Individual Private Campsites.</u> <u>E. Clearing of Vegetation for Development.</u> <u>I. Road and Driveways.</u> <u>O. Parking Areas.</u> <u>P. Timber Harvesting.</u> <u>110.38 Minor Freshwater Wetlands</u>	R1 & R1A	R2 & R2A	R3	R4	R5
For resources listed under Section 110.18 A (3) (d), minor freshwater wetlands (f), river banks.	25 feet	25 feet	25 feet	25 feet	25 feet
For resources listed under Section 110.18 A (3) (e) slopes.	100 feet	100 feet	100 feet	100 feet	100 feet
Maximum Lot Coverage	R1 & R1A	R2 & R2A	R3	R4	R5
As Defined	20%	20%	20%	20%	20%

COMMERCIAL						
Minimum Lot Coverage	B1 & B2	R1 & R1A	R2 & R2A	R3	R4	R5
Tidal	Same as Table B NA	40,000 square feet	40,000 square feet NA	40,000 square feet	40,000 square feet NA	40,000 square feet NA
Non - Tidal	Same as Table B	40,000 square feet	60,000 square feet	60,000 square feet	60,000 square feet	60,000 square feet
Shore Frontage	B1 & B2	R1 & R1A	R2 & R2A	R3	R4	R5
Tidal	Same as Table B NA	200 feet	200 feet NA	200 feet	200 feet NA	200 feet NA
Non - Tidal	Same as Table B	300 feet	300 feet	300 feet	300 feet	300 feet
Setbacks For Structures	B1 & B2	R1 & R1A	R2 & R2A	R3	R4	R5
For Water Bodies Listed Under Section 110.18 (1), (5)	25 feet	200 feet	200 feet	200 feet	200 feet	200 feet
For Water Bodies Listed Under Section 110.18 (1-4) Shoreland / Slope	25 feet	300 feet	300 feet	300 feet	300 feet	300 feet
Maximum Lot Coverage	B1 & B2	R1 & R1A	R2 & R2A	R3	R4	R5
As Defined	70%	20%	20%	20%	20%	20%

TABLE C
SHORELAND DIMENSIONAL REQUIREMENTS INDEX

- (1) Minimum lot sizes for all other districts shall remain the same as shown in Table B.
- (2) If lot is served by on – site septic the minimum lot size shall be 40,000 square feet.
- (3) For permitted uses in the Resource Protection District, the setback for structures is 100 feet.
- (4) **For areas of established development pattern, as defined by policy guidelines, at the time of adoption of this ordinance the setback from IWWH areas for structures allowed in the underlying zone is 100 feet. See Limited Residential Shoreland District.**
- (5) **Wellhead Protection shall be a 300-foot radius from a wellhead. See Section 110.18.A(3)(g).**

TO: John B. Schempf, Town Manager
FROM: Jim Fisk, RLA, Director of Planning and Economic Development.
DATE: April 4, 2009, April 10, 2009 and last updated June 26, 2009.
RE: Existing Articles in Chapter 140 proposed to be deleted and repealed to be incorporated into a new Chapter 110 Shoreland Zoning

The areas within the Code of Ordinances that require amendments or repealing are shown in ~~strikeout~~. New language is underlined.

Code of Ordinances
Part II, General Legislation
Amendment to
Chapter 140. Zoning
Note: Chapter 121 Subdivision reference.

The Mandatory Shoreland Zoning Act, 38 M.R.S.A. sections 435-449 the guidelines Board of Environmental Protection (Board) require municipalities to adopt shoreland zoning ordinances consistent with, or no less stringent than, those minimum guidelines set forth in the Act and by the Board. This amendment to the Code incorporates the most current State Shoreland Zoning into the South Berwick Chapter 110, Shoreland Zoning.

The changes through Chapter 140 and Chap 121 of the Code are in the following Articles and Sections. These amendments are to repeal Section. 140-48 Shoreland Standards and Section 140-48.1 Minor Freshwater Wetlands in order to adopt Chapter 110 Shoreland Zoning.

Chap 121 Subdivision (D)

1. In order to integrate the subdivision into both the built and man-made environment, the following information in the form of plans and statements will be required. A context plan showing the site and its surrounding scale should be appropriate to show major ecological systems, natural features, rivers, developed areas, trail systems and wetlands as defined in the Town Zoning Ordinance and Shoreland Zoning.

Editor's Note: See Ch. 140, Zoning and Ch. 110 Shoreland Zoning

Amendment to: **ARTICLE I General Provisions, Section. 140-5. Non-conformance**
Amendment to: **Article II Construction of Language; Definitions Section. 140-9. Definitions. Section., 140-6. Amendment.**
Amendment to: **ARTICLE III Establishment of Districts Section. 140-10. Zoning Districts. Section. 140-11. Official Zoning Map Section. 140-12. District Boundaries Section. 140-13. Division of Lots by District Boundaries. Section. 140-14. Overlay Districts.**
Amendment to: **ARTICLE IV Land Use District Requirements Section. Section.140-15. Purpose.**

Amendment to: **ARTICLE VA Performance Standards for Specific Uses**
 Section 140-42. Campgrounds
 Section 140-46. Two Family and Multifamily Dwellings
 Section. 140-48. Shoreland Standards
 Section 140-48.1 Minor Freshwater Wetlands

TABLE C, SHORELAND DIMENSIONAL REQUIREMENTS

ARTICLE I General Provisions, Section. 140-5. Non-conformance

Section 140-5 (C) 5. (d) The expansion of non-conforming uses in the shoreland area is governed by the provisions in ~~140-48.N.~~ Section 110.15

Section 140-5 (D) 1. (e) Within two hundred fifty (250) feet of water bodies protected either by the Resource Protection District or the Floodplain and Shoreland Slope District, in Chapter 110. No structure which is less than the required setback from the normal high-water mark of those water bodies shall be expanded toward the water.

Section 140-5 (D) 1 (f) (e)

ARTICLE I General Provisions Section. 140-6. Amendment.

~~“C. The Department of Environmental Protection shall be notified by the Municipal Clerk of all amendments to this chapter affecting the Shoreland Zone within thirty (30) days after the effective date of such amendments.”~~

ARTICLE II Construction of Language; Definitions Section. 140-9. Definitions.

~~**AQUACULTURE:** The growing or propagation of harvestable freshwater, estuarine, or marine plant or animal species. See Chapter 110 Section 110-11~~

~~**AREA OF SPECIAL FLOOD HAZARD:** The land in the floodplain having a one percent or greater chance of flood in any given year. See Chapter 110 Section -11~~

~~**BASE FLOOD:** The flood having a one percent chance of being equaled or exceeded in any given year, alternately referred to as the "one hundred year flood." See Chapter 110 Section 11~~

~~**BOAT LANDING:** 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. See Chapter 110 Section 11~~

~~**BOATHOUSE:** A nonresidential structure designed for the purpose of protecting or storing boats. See Chapter 110 Section 11~~

BODY OF WATER: ~~Any river, stream, brook, wetland, or pond as defined herein. See Chapter 110 Section 11~~

COASTAL WETLANDS: ~~All tidal and sub tidal lands, including all areas below any identifiable debris left by tidal action; all areas with vegetation that is tolerant of salt water and occurs primarily in a saltwater or estuarine habitat; and any swamp, marsh, bog, beach, flat or other contiguous lowland which is subject to tidal action during the maximum spring tide level as identified in tide tables published by the National Ocean Service.~~

FLOOD: ~~A temporary rise in stream flow or tidal surge that results in water overflowing its banks and inundating adjacent areas. See Chapter 110 Section 11~~

FLOOD INSURANCE MAP: ~~The official map on which the Department of Housing and Urban Development or the Federal Emergency Management Agency has delineated both the areas of special flood hazard and the risk premium zones applicable to the town. See Chapter 110 Section 11~~

FLOODPLAIN: ~~The lands adjacent to a body of water which have been or may be covered by the regional flood. See Chapter 110 Section 11~~

FLOOD PROOFING: ~~A combination of structural provisions, changes or adjustments to properties subject to flooding, primarily for the reduction or elimination of flood damages to properties, water and sanitary facilities, structures and contents of buildings. See Chapter 110 Section 11~~

FLOODWAY: ~~The channel of a natural stream or river and portions of the floodplain adjoining the channel which are reasonably required to carry and discharge the floodwater or flood flow of any natural stream or river. See Chapter 110 Section 11~~

FLOOD, REGIONAL: ~~The maximum known flood of a body of water; either the one hundred year frequency flood, where calculated, or the flood of record or evidence of vegetative changes. See Chapter 110 Section 11~~

FRESHWATER WETLANDS, MINOR: ~~A wetland of two or more contiguous acres, excluding Major Freshwater Wetlands, as identified on the Federal National Wetlands 11. See Chapter 110 Section 11~~

FRESHWATER WETLANDS, MAJOR: ~~Freshwater swamps, marshes, bogs, and similar areas (other than forested wetlands) which are:~~

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

wetlands may contain small stream channels or inclusions of land that do not conform to the criteria of this definition. See Chapter 110 Section 11

FUNCTIONALLY WATER-DEPENDENT USES: ~~Those uses that require for their primary purpose, location on submerged lands or that require direct access to, or location in, coastal and inland waters and which cannot be located away from these waters. The uses include, but are not limited to commercial and recreational fishing and boating facilities, finfish and shellfish processing, fish storage and retail and wholesale fish marketing facilities, waterfront dock and port facilities, shipyards and boat building facilities, marinas, navigation aides, basins and channels, industrial uses dependent upon water borne transportation or requiring large volumes of cooling or processing water and which cannot reasonably be located or operated at an inland site, and uses which primarily provide general public access to marine or tidal waters. See Chapter 110 Section 11~~

LOT, SHOREFRONT: Any lot abutting a body of water. See Chapter 110 Section 11

MARINA: ~~A business establishment having frontage on navigable water and, as its principal use, providing for hire offshore moorings or docking facilities for boats, and which may also provide accessory services such as boat and related sales, boat repair and construction, indoor and outdoor storage of boats and marine equipment, boat and tackle shops and marine fuel service facilities. See Chapter 110 Section 11~~

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. In the case of wetlands adjacent to rivers and great ponds, the normal high water line is the upland edge of the wetland, and not the edge of the open water. See Chapter 110 Section 11~~

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

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

Permanent: Structures which remain in or over the water for seven (7) months or more in any period of twelve (12) consecutive months. See Chapter 110 Section 11

RECENT FLOOD PLAIN SOILS: The following soil series as described and identified by the National Cooperative Soil Survey: See Chapter 110 Section 11

Alluvial	Cornish	Charles
Fryeburg	Hadley	Limerick

Lovewell	Medomak	Ondawa
Podunk	Rumney	Saco
Suncook	Sunday	Winooski

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. See Chapter 110 Section 11

SETBACK FROM WATER: The horizontal distance from the normal high water elevation to the nearest part of a structure, road parking space, or other regulated object or area. See Chapter 110 Section 11

SHORELAND ZONE: The land area located within two hundred and fifty (250) feet, horizontal distance, of the normal high water line of any great pond, river, or saltwater body; within two hundred and fifty (250) feet of the upland edge of a coastal or freshwater wetland; or within two hundred and fifty (250) feet of the normal high water line of a stream. See Chapter 110 Section 11

STREAM: A free-flowing body of water from the outlet of a great pond or the confluence of two (2) perennial streams as depicted on the most recent edition of a United States Geological Survey 7.5 minute series topographic map, or if not available, a 15-minute series topographic map, to the point where the body of water becomes a river or flows to another water body or wetland within the shoreland area. See Chapter 110 Section 11

TRIBUTARY STREAM: A channel between defined banks created by the action of surface water, whether intermittent or perennial, and which is characterized by the lack of upland vegetation or presence of aquatic vegetation and by the presence of aquatic vegetation and by the presence of a bed devoid of topsoil containing waterborne deposits on exposed soil, parent material or bedrock, and which flows to a water body or wetland as defined. This definition does not include the term "stream" as defined elsewhere in this Ordinance, and only applies to that portion of the tributary stream located within the shoreland zone of the receiving water body or wetland. See Chapter 110 Section 11

WATER BODY: Any great pond, river, stream or tidal area or wetland. See Chapter 110 Section 11

WATER CROSSING: Any project extending from one bank to the opposite bank of a river or stream, whether under, through, or over the water course. 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. See Chapter 110 Section 11

WATER-ORIENTED BUSINESS: ~~Commercial and industrial facilities which by the nature of their operations require a shorefront location, such as but not limited to boatyards, marinas, bathhouses and commercial fisheries facilities. See Chapter 110 Section 11~~

WETLANDS ASSOCIATED WITH GREAT PONDS AND RIVERS: ~~Wetlands contiguous with or adjacent to a great pond or river, and which during normal high water are connected by surface water to the great pond or river. Also included are wetlands which are separated from the great pond or river by a berm, causeway, or similar feature less than 100 feet in width, and which have a surface elevation at or below the normal high water line of the great pond or river. Wetlands associated with great ponds or rivers are considered to be part of that great pond or river except as noted herein. See Chapter 110 Section 11~~

Section. 140-6. Amendment.

~~“C. The Department of Environmental Protection shall be notified by the Municipal Clerk of all amendments to this chapter affecting the Shoreland Zone within thirty (30) days after the effective date of such amendments.” See Chapter 110 Section 8~~

Article III Establishment of Districts Section. 140-10. Zoning Districts.

D. Overlay Zones: See Chapter 110 Section 17 for Shoreland Zoning

~~(1) RP — Resource Protection District.~~

~~(2) SP — Shoreland/Slope District.~~

~~(1) RO Rural Overlay Zone (R4 and R5 Districts)~~

~~(2) HPD — Historic Preservation District~~

~~(4) MFW — Minor Freshwater Wetland~~

Section 140-11

A. Said districts are located as shown on the Official Zoning Map, entitled "Zoning Map of South Berwick, Maine," based upon the written descriptions contained in § 140-12 of this chapter, dated and on file in the office of the Town Clerk. The Official Map shall be signed by the Town Clerk and Chairman of the Town Council at the time of adoption or amendment of this chapter, certifying the date of such adoption or amendment. Additional copies of the Zoning Map may be seen in the municipal offices. For Shoreland Zoning District Boundaries See Chapter 110 Section 18

B. In cases of disagreement between the Zoning Map and the written descriptions in § 140-12 and for Shoreland Zoning written descriptions See Chapter 110 Section 18, the written description shall prevail.

Section. 140-12. District Boundaries.

~~A. Resource Protection District - RP.~~

~~(1) All land within two hundred fifty (250) feet from the normal high water line (as measured from the edge of the associated wetland) of the following water bodies:~~

- ~~(a) Round Pond.~~
- ~~(b) Warren Pond.~~
- ~~(c) Knights Pond and its outlet.~~
- ~~(d) Ogunquit Brook.~~
- ~~(e) Chicks Brook, upstream of Emery's Bridge Road.~~
- ~~(f) White Marsh Brook.~~
- ~~(g) Cox Pond and its outlet to White Marsh Brook.~~
- ~~(h) Hoopers Swamp. [Added 3-13-1989]~~
- ~~(i) Leighs Mill Pond. [Added 3-13-1989]~~
- ~~(j) Salmon Falls River/Piscataqua River to its tidal limits~~
- ~~(k) Freshwater wetlands, salt marshes, salt meadows, and wetlands associated with great ponds and rivers which are rated "high" or "moderate" value by the Department of Inland Fisheries and Wildlife (IFW) based on their most recent mapping.~~

~~(2) The Great Works River in the R3 and R4 Districts (as measured from the edge of the river channel.)~~

~~(3) The following resources to their boundary limits:~~

- ~~(a) Coastal wetlands. [Added 12-12-1988]~~
- ~~(b) All one hundred year floodplains. [Added 4-11-1988]~~
- ~~(c) Major Freshwater wetlands. [Added 12-12-1988]~~
- ~~(d) Minor Freshwater Wetlands.~~
- ~~(e) Areas of two or more contiguous acres with sustained slopes of twenty (20%) or greater when located within a Shoreland and Slope District (Section 140-12.B.)~~
- ~~(f) Land areas along rivers subject to severe erosion, undercutting, or river bed movement and lands adjacent to tidal waters which are subject to severe erosion or mass movement, such as a coastal bluff.~~

~~(g) For the purpose of this section, the Resource Protection District shall be a (300) foot radius from the wellhead. However, the Protection District from the Junction Road wellhead shall be an area as described in the Caswell, Eichler, and Hill study "Hydro Geological Evaluation of Bedrock Well at Junction Road Site, South Berwick, Maine, September, 1994."~~

~~(h) Vaughan Woods.~~

~~(i) All areas mapped as very poorly drained soils on the medium intensity Soil~~

~~Survey of York County, Maine. In the event that a soil classification boundary designating the limits of the Resource Protection District is challenged by a landowner or abutters, the landowner or abutters shall present evidence that the land in question does not contain soils which are classified as being very poorly drained by the United States Soil Conservation Service. A high intensity soil survey performed by a registered soil scientist, licensed in the state of Maine may constitute such evidence~~

~~(4) The following resources as identified in the Town's Comprehensive Plan and land within two hundred and fifty feet (250) of those resources as shown on the official Zoning Map of South Berwick:~~

- ~~(a) The Balancing Rock~~
- ~~(b) The Spring Hill Overlook~~
- ~~(c) The Gorge~~

~~B. Shoreland and Slope District — SP [Amended 12-12-1988]:~~

~~(1) Unless previously classified as Resource Protection, all land within two hundred fifty (250) feet horizontally of the normal high water line, as measured from the edge of the stream channel, of the following water bodies:~~

- ~~(a) Dennett Brook.~~
- ~~(b) Boyd Brook.~~
- ~~(c) Great Works River in the R1 and R2 Districts (the high water line shall be measured from the edge of any associated wetland.)~~
- ~~(d) Chicks Brook, downstream of Emery's Bridge Road.~~
- ~~(e) Frost Brook. (note: not in the Town)~~
- ~~(f) Lover's Brook.~~
- ~~(g) Shorey's Brook.~~
- ~~(h) Quamphegan Brook.~~
- ~~(i) Lord Brook.~~
- ~~(j) Hoopers Brook.~~
- ~~(k) Knights Brook.~~
- ~~(l) Warren Brook, south of Bicknel Mountain.~~
- ~~(m) Hussey Brook, north of Great Hill.~~
- ~~(n) Bennett Brook.~~
- ~~(o) Hamilton Brook.~~
- ~~(p) Driscoll Brook.~~
- ~~(q) Salmon Falls River above Route 4 (high water line shall be measured from the edge of any associated wetland.)~~

~~(2) Land within two hundred fifty (250) feet of a major freshwater wetland boundary. [Added 12-12-1988]~~

~~(3) Land within two hundred fifty (250) feet of a coastal wetland boundary.~~

~~(4) Any other free-flowing body of water, not listed above, which flows from the outlet of a great pond or the confluence of two (2) perennial streams as depicted on the most recent edition of a United States Geological Survey 7.5 minutes series topographic map, to the point where the body of water becomes a river.~~

~~[Added 12-12-1988]~~

Section. 140-14. Overlay Districts.

Shoreland, Resource Protection Districts, Minor Freshwater Wetlands, Historic Preservation Districts, and Rural Overlay Districts, acts overlay districts to the other districts and add requirements to these districts. See Section 110.18 for District descriptions.

ARTICLE IV Land Use District Requirements Section.

Section. 140-15. Purpose.

The purposes of the land use districts are as follows:

For Shoreland Zoning See Chapter 110 Section 17

~~**A. Resource Protection District.** To control the use of shoreland and other areas to provide maximum protection to the land and water resources. Such areas include but are not limited to wetlands, swamps, marshes, bogs, poorly drained soils, one-hundred-year floodplains and significant wildlife habitats. [Amended 4-11-1988]~~

~~**B. Shoreland Slope District.**~~

~~(1) To provide maximum protection to the land and water resources with controls of use and development of undeveloped shoreland areas.~~

~~(2) To minimize expenditures of public monies for flood control projects.~~

~~(3) To minimize rescue and relief efforts undertaken at the expense of the general public.~~

~~(4) To minimize flood damage to public facilities, such as water mains, sewer lines, streets, roads and bridges.~~

~~(5) To protect the storage capacity of floodplains and assure retention of sufficient floodway area to convey flood flows which reasonably can be expected to occur.~~

~~(6) To encourage open space uses, such as agriculture and recreation.~~

ARTICLE VA Performance Standards for Specific Uses

Section 140-42 Campgrounds

A. Recreational vehicle and tenting areas shall contain approved water-carried sewage facilities and shall meet the following criteria:

(1) Each recreational vehicle, tent or shelter site shall contain a minimum of 3,11 square feet of suitable land, not including roads and driveways for each site, except it shall be 5,11 square feet when within 250 feet of the normal high-water mark of water bodies referred to in ~~§ 140-12A and B.~~ Chapter 110 Section 18A & B.

Section. 140-46. Two-Family and Multifamily Dwellings.

A. New construction. New two-family and multifamily dwellings shall meet all of the following criteria:

(2) The minimum road and shoreland frontage shall be as indicated in the chart below:
[Amended 4-11-1988] (Amended ----- 2009)

MINIMUM ROAD AND SHORELAND FRONTAGE

# of Units	R3, R4, R5		R1, R2, B2		B1	
	Road	Shore	Road	Shore	Road	Shore
2	300	400	150	400	none	200
3	400	600	200	600	none	300
4	450	800	250	800	none	400
5	500	1,000	275	1,000	none	500
6	550	1,200	300	1,200	none	600

Section. 140-48. Shoreland Standards.

The following standards shall apply to all land areas within two hundred fifty (250) feet of all water bodies protected by the Resource Protection District in Section 140-12.A.(1), the Shoreland/Slope District in Section 140-12.B.(1) and (2) and the resources identified in Section 140-12.A.(2) and (3) except that if any of these standards conflict with a stricter provision of this chapter, the more restrictive provision shall apply:

A. Agriculture.

(1) All spreading or disposal of manure shall be accomplished in conformance with the Maine Guidelines for Manure and Manure Sludge Disposal on Land, published by the University of Maine and the Maine Soil and Water Conservation Commission in July 1972, or subsequent revisions thereof.

(2) There shall be no new tilling of soil within one hundred (100) feet horizontal distance, of any great pond; within seventy five (75) feet, horizontal distance, of any stream, river or wetland rated as "high" or "moderate" value wildlife habitat; nor within twenty five (25) feet of tributary streams and any major freshwater wetland.

Operations in existence on the effective date of this section and not in conformance with this provision may be maintained after registration with the CEO.

(3) Where soil is tilled in a Resource Protection District or where in excess of twenty thousand (20,11) square feet is tilled in a Floodplain or Shoreland/Slope District, such tillage shall be carried out in conformance with the provisions of a conservation plan which meets the standards of the State Soil and Water Conservation Commission and is approved by the appropriate Soil and Water Conservation District. The spreading, disposal or storage of manure within the Shoreland/Slope or Resource Protection zone shall also require a Soil and Water Conservation Plan. The number of the plan shall be filed with the CEO.

Nonconformance with the provisions of such conservation plan shall be considered to be a violation of this chapter.

Manure shall not be stored or stockpiled within one hundred (100) feet, horizontal distance, of any Resource Protection District (Section 140-12 A.(1). or river flowing to a great pond; or within seventy five (75) feet horizontal distance, of lands classified as Shoreland/Slope (Section 140-12.B). Within five (5) years of the

~~effective date of this ordinance 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. Existing facilities which do not meet the setback requirement may remain, but must meet the no discharge provision within the five (5) year period.~~

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

~~**C. Campgrounds.** Campgrounds shall conform to the minimum requirements imposed under state licensing procedures, § 140-23 of this chapter, and the following:~~

~~(1) The area intended for placement of the recreational vehicle, tent or shelter and utility and service buildings shall be set back a minimum of 100 feet from the normal high water mark of any protected water body.~~

~~**D. Individual Private Campsites.** Individual private campsites not associated with campgrounds are allowed provided the following conditions are met:~~

~~(1) — One campsite per lot existing on the effective date of this Ordinance, or thirty thousand (30,11) square feet of lot area within the Planning Board, whichever is less, may be permitted.~~

~~(2) — Campsite placement on any lot, including the area intended for a recreational vehicle or tent platform, shall be set back one hundred (100) feet, horizontal distance, from the normal high water line of a great pond classified GPA or river flowing to a great pond classified GPA, and seventy five (75) feet, horizontal distance, from the normal high water line of other water bodies, tributary streams, or the upland edge of a wetland.~~

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

~~(4) — The clearing of vegetation for the siting of the recreational vehicle, tent or similar shelter in a Resource Protection District shall be limited to one thousand (111) square feet.~~

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

~~(6) — When a recreational vehicle, tent or similar shelter is placed on site for more than one hundred and twenty (120) days per year, all requirements for residential structures shall be met, including the installation of a subsurface sewage disposal system in compliance with the State of Maine Subsurface Wastewater Disposal Rules unless served by public sewage facilities~~

E. Clearing or Removal of Vegetation for Activities Other Than Timber Harvesting

(1) — In a Resource Protection District abutting a great pond, there shall be no cutting of vegetation within the strip of land extending 75 feet, horizontal distance, inland from the normal high water line, except to remove safety hazards. Elsewhere, in any Resource Protection District the cutting or removal of vegetation shall be limited to that which is necessary for uses expressly authorized in that district.

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

(a) — There shall be no cleared opening greater than 250 square feet in the forest canopy (or other existing woody vegetation if a forested canopy is not present) as measured from the outer limits of the tree or shrub crown. However, a footpath not to exceed six (6) feet in width as measured between tree trunks and/or shrub stems is allowed provided that a cleared line of sight to the water through the buffer strip is not created

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

Diameter of Tree at 4 1/2 feet Points

— Above Ground Level (inches)

2 < 4 in. — 1

4 < 8 in. — 2

8 < 12 in. — 4

12 in. or greater 8

Adjacent to areas zoned as Shoreland/Slope a well distributed stand of trees is defined as maintaining a minimum rating score of 8 per 25 foot square area.

(c) Notwithstanding the above provisions, selective cutting of no more than forty percent (40%) of the total volume of trees four (4) inches or more in diameter, measured at four and one half (4 1/2) feet above the ground level is allowed in any ten year period.

(d) In order to protect water quality and wildlife habitat in areas zoned for Resource Protection existing vegetation under three (3) feet in height and other ground cover shall not be removed, except to provide for a footpath or other permitted uses as

described in paragraphs 2 and 2 (a) above.

(e) Pruning of tree branches, on the bottom 1/3 of the tree is permitted.

~~(f) In order to maintain a buffer strip of vegetation, when the removal of storm damaged, diseased, unsafe, or dead trees results in the creation of cleared openings, these openings shall be replanted with native tree species unless the existing new tree growth is present.~~

~~The provisions contained in paragraph D.(2) above shall not apply to those portions of public recreational facilities adjacent to public swimming areas or to publicly held areas devoted to the provision of public access. Cleared areas, however, shall be limited to the minimum area necessary.~~

~~At distances greater than one hundred (100) feet, horizontal distance, from the normal high water line of any area zoned for Resource Protection and the Great Works and Salmon Falls rivers and seventy five (75) feet from any area zoned for Shoreland/Slope, there shall be permitted on any lot, selective cutting of not more than forty (40) percent of the volume of trees four (4) inches or more in diameter measured at 4 1/2 feet above the ground in any ten year period, except to allow for the development of permitted uses. 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.~~

~~A. In no event shall cleared openings for development, including but not limited to, principal and accessory structures, driveways and sewage disposal areas, exceed in the aggregate, 25% of the lot area or ten thousand square feet, whichever is greater, including land previously developed. This provision shall not apply to the B1, and B2 Districts.~~

~~(g) Cleared openings legally in existence on the effective date of this section may be maintained, but shall not be enlarged, except as permitted by this section.~~

~~(h) Fields which have reverted to primarily shrubs, trees or other woody vegetation shall be regulated under the provisions of this section.~~

F. Erosion and sedimentation control.

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

~~(a) Mulching and revegetation of disturbed soil.~~

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

- ~~(c) Permanent stabilization structures such as retaining walls or riprap.~~
- ~~(2) In order to create the least potential for erosion, development shall be designed to fit with the topography and soils of the site. Areas of steep slopes where high cuts and fills may be required shall be avoided wherever possible, and natural contours shall be followed as closely as possible.~~
- ~~(3) Erosion and sedimentation control measures shall apply to all aspects of the proposed project involving land disturbance and shall be in operation during all stages of the activity. The amount of exposed soil at every phase of construction shall be minimized to reduce the potential for erosion.~~
- ~~(4) Any exposed ground area shall be temporarily or permanently stabilized within one week from the time it was last actively worked, by using riprap, sod, seed and mulch, or other effective measures. In all cases permanent stabilization shall occur within nine months of the initial date of exposure. In addition:~~
- ~~(a) Where mulch is used, it shall be applied at a rate of at least one bale per 500 square feet and shall be maintained until a catch of vegetation is established.~~
- ~~(b) Anchoring the mulch with netting, peg and twine or other suitable method may be required to maintain the mulch cover.~~
- ~~(c) Additional measures shall be taken where necessary in order to avoid silt ration into the water. Such measures may include the use of staked hay bales and/or silt fences.~~
- ~~(5) Natural and man-made drainageways and drainage outlets shall be protected from erosion from water flowing through them. Drainageways shall be designed and constructed in order to carry water from a twenty-five year storm or greater, and shall be stabilized with vegetation or lined with riprap.~~

~~**G. Mineral exploration.** 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. A permit from the Planning Board shall be required for mineral exploration which exceeds the above limitations.~~

~~**H. Additional shoreland structures;** piers, docks, wharfs, breakwaters, causeways, marinas, bridges, structures and uses extending over or beyond the normal highwater line of a water body or within a wetland. In addition to federal or state permits which may be required for such structures and uses, they shall conform to the following:~~

- ~~(1) Access from shore shall be developed on soils appropriate for such use and constructed so as to control erosion.~~
- ~~(2) The location shall not interfere with existing developed or natural beach areas.~~
- ~~(3) 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.~~
- ~~(4) The facility shall be located so as to minimize adverse effects on fisheries.~~
- ~~(5) No new structure shall be built on, over, or abutting a pier, wharf, dock or other structure extending beyond the normal high water line of a water body or within a wetland unless the structure requires direct access to the water as an operational necessity.~~
- ~~(6) 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.~~

~~(7) Except in the B1 and B2 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 20 feet in height above the pier, wharf, dock or other structure.~~

I. Road and driveways.

~~(1) Roads and driveways shall be set back at least 100 feet from the normal high water line of any area zoned for Resource Protection and the Salmon Falls and Great Works Rivers and 75 feet from the normal high water line of any area zoned as Shoreland/Slope and tributary streams, unless no reasonable alternative exists as determined by the Planning Board. If no other reasonable alternative exists, the Planning Board may reduce the road and/or driveway setback requirement to no less than 50 feet upon clear showing by the applicant that appropriate techniques will be used to prevent sedimentation of the water body. 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.~~

~~(a) On slopes greater than 20%, the road and/or driveway setback shall be increased by 10 feet for each 5% increase in slope above 20%.~~

~~(b) This subsection shall neither apply to approaches to water crossings nor to roads or driveways that provide access to permitted structures and facilities located nearer to the shoreline due to an operational necessity. This subsection shall neither apply to approaches to water crossings nor to roads or driveways that provide access to permitted structures and facilities located nearer to the shoreline due to an operational necessity.~~

~~(2) Existing public roads can be expanded within the legal road right of way regardless of its setback from a water body.~~

~~(3) New roads and driveways are prohibited in a Resource Protection District except to provide access to permitted uses within the district, or as approved by the Planning Board upon a finding that no reasonable alternative route or location is available outside the district, in which case the road and/or driveway shall be set back as far as practical from the normal high water line of a water body, tributary stream or upland edge of a wetland. Road banks shall be no steeper than a slope of two horizontal to one vertical and shall be graded and stabilized in accordance with the provisions for erosion and sedimentation control contained in Subsection I(5). Road grades shall be no greater than 10% except for short segments of less than 200 feet.~~

~~(5) In order to prevent road surface drainage from directly entering water bodies, roads 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, stream or wetland. Road 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.~~

~~(6) 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 in the road or ditches gains sufficient volume or head to erode the road 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 at intervals no greater than indicated in the following table:~~

	Road Grade (percent)	Spacing (feet)
	0 to 2	250
	3 to 5	200 to 135
	6 to 10	100 to 80
	11 to 15	80 to 60
	16 to 20	60 to 45
	21+	40

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

~~(c) On road sections having slopes greater than 10%, ditch relief culverts shall be placed across the road at approximately a thirty degree angle downslope from a line perpendicular to the center line of the road.~~

~~(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.~~

~~(7) Ditches, culverts, bridges, dips, water turnouts and other stormwater runoff control installations associated with roads shall be maintained on a regular basis to assure effective functioning.~~

~~**J. Sanitary standards.** All subsurface sewage disposal facilities shall be installed in conformance with the State of Maine Subsurface Wastewater Disposal Rules.~~

~~**K. Signs.** Signs shall conform to the requirements of § 140-32 and the following:~~

~~(1) Signs and billboards relating to goods and services sold on the premises shall not exceed six square feet in area on each side and shall not exceed two signs per premises. Billboards and signs relating to goods and services not rendered on the premises shall be prohibited.~~

~~(2) Name signs shall be permitted, provided that such signs shall not exceed two signs per premises.~~

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

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

~~(5) Signs related to public safety shall be permitted without restriction.~~

L Structures.

~~(1) All new principal and accessory structures shall be set back at least 250 feet from the normal high water line of any water body zoned as Resource Protection and 100 feet from the normal high water line of any water body zoned as Shoreland/Slope and tributary streams, except that within the B1 and B2 Districts a twenty five-foot setback shall apply.~~

~~(2) The first floor elevation or openings of all buildings and structures, including basements, shall be elevated at least one foot above the elevation of the one hundred year flood, the flood of record or, in the absence of these, the flood as defined by soil types identifiable as recent floodplain soils.~~

~~(3) Lot coverage within the Shoreland Zone shall not exceed 20% of the lot or a portion thereof located within the Shoreland Zone, including land area previously developed except in the B1 and B2 Districts where lot coverage shall not exceed 70%.~~

~~(4) Notwithstanding the requirements stated above, stairways or similar structures may be allowed, with a permit from the Code Enforcement Officer, to provide shoreline access in areas of steep slopes or unstable soils, provided that the structure is limited to a maximum of four feet in width that the structure does not extend below or over the normal high water line of a protected resource and that the applicant demonstrates that no reasonable access alternative exists on the property.~~

M. Non-conforming Structures

~~(1) **Expansions:** A non-conforming structure may be added to or expanded after obtaining a permit from the same permitting authority as that for a new structure, if such addition or expansion does not increase the non-conformity of the structure. In addition:~~

~~(2) **Relocation:** A nonconforming structure may be relocated within the boundaries of the parcel on which the structure is located provided that the site of relocation conforms to all setback requirements to the greatest practical extent as determined by the Planning Board through a Site Plan review, and provided that the applicant demonstrates that the present subsurface sewage disposal system meets the requirements of State law and the State of Maine Subsurface Wastewater Disposal Rules or that a new system can be installed in compliance with the law and said rules. In no case shall a structure be relocated in a manner that causes the structure to be more non-conforming.~~

~~In determining whether the building relocation meets the setback to the greatest practical extent, the Planning Board 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 adjacent properties, the location of the septic system and other on-site soils suitable for a septic systems, and the type and amount of vegetation to be removed to accomplish the relocation.~~

~~(3) **Reconstruction or Replacement:** Any non-conforming structure which is located less than the required setback from the normal high water line of a water body, stream or wetland edge and which is removed or damaged or destroyed 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 Site Plan Review permit is obtained within one year of the date of said damage, destruction or removal and provided that such reconstruction or replacement is in compliance with the water setback requirement to the greatest practical extent as determined by the Planning Board 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~~

~~Any non-conforming structure which is damaged or destroyed by 50% or less of the market value of the structure, excluding normal maintenance and repair, may be reconstructed in place with a permit, from the Code Enforcement Officer~~

~~In determining whether the building reconstruction or replacement meets the water setback to the greatest practical extent the Planning Board shall consider in addition to the criteria in paragraph 2 above, the physical condition and type of foundation present, if any.~~

~~(4) — **Change of Use of a Non-conforming Structure:** The use of a non-conforming structure may not be changed to another use unless the Planning Board, after receiving a Site Plan Review 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 Planning Board shall require written documentation from the applicant, regarding the probable effects on public health and safety, erosion and sedimentation, water quality, fish and wildlife habitat, vegetative cover, visual and actual points of public access to waters, natural beauty, flood plain management, archaeological and historic resources and commercial fishing and maritime activities and other functionally water dependent uses.~~

~~N. Non-conforming Uses~~

~~(1) — **Expansions:** Expansions of non-conforming uses are prohibited, except that non-conforming residential uses may, after obtaining a Site Plan Review permit from the Planning Board, be expanded within existing residential structures or within expansions of such structures as permitted 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 non-conforming use, may not again be devoted to a non-conforming use except that the Planning Board may, for good cause shown by the applicant, grant up to a one year extension to that time period. This provision shall not apply to the resumption of a use of a residential structure provided that the structure has been used or maintained for residential purposes during the preceding five (5) year period.~~

- ~~(3) **Change of Use:** An existing non-conforming use may be changed to another non-conforming use provided that the proposed use has no greater adverse impact on the subject and adjacent properties and resources, including water dependent uses, than the former use, as determined by the Planning Board through a Site Plan Review. The determination of no greater adverse impact shall be made according to criteria listed in Section 140-48.M(4) above.~~

~~**O. Parking Areas**~~

- ~~(1) Parking areas shall meet the shoreline setback requirements for structures for the District in which such areas are located except in the B1 and B2 zones where these areas shall be set back at least twenty five (25) feet from the normal high water line of a protected resource. The setback for parking areas serving public boat launching facilities may be reduced to no less than fifty (50) feet from the normal high water line of a protected resource if the Planning Board finds that no other reasonable alternative exists.~~
- ~~(2) Parking areas shall be adequately sized for the proposed use and shall be designed to prevent storm water runoff from flowing directly into a water body, and where feasible to retain all runoff on-site.~~

~~**P. Timber Harvesting**~~

- ~~(1) No accumulation of slash shall be left within fifty (50) feet of the normal high water mark of any pond, river or salt water body as defined. At distances of greater than fifty (50) feet from the normal high water mark of such waters and extending to the limits of the area covered by this chapter, all slash shall be disposed of in such a manner that it lies on the ground and no part thereof extends more than four (4) feet above the ground.~~
- ~~(2) Within a strip of land extending 250 feet inland from the normal high water line in a shoreland area zoned for Resource Protection abutting a great pond there shall be no timber harvesting except to remove safety hazards.~~
- ~~(3) Except for water crossings, skid trails and other sites where the operation of machinery used in timber harvesting results in the exposure of mineral soil shall be located such that an un-scarified strip of vegetation of at least seventy five (75) feet in width for slopes up to ten (10%) percent shall be retained between the exposed mineral soil and the normal high water line of a water body or wetland edge. For each ten (10%) percent increase in slope, the un-scarified strip shall be increased by twenty (20) feet. The provisions of this paragraph apply only to a face sloping toward the water body or wetland, provided however, that no portion of such exposed mineral soil on a back face shall be closer than twenty five (25) feet from the normal high water line of a protected water body.~~
- ~~(4) Timber harvesting operations shall be conducted in such a manner and at such a time that minimal soil disturbance results. Adequate provisions shall be made to~~

~~prevent soil erosion and sedimentation of surface waters. Timber harvesting equipment shall not use stream channels as travel routes except when:~~

- ~~(a) — Surface waters are frozen; and~~
- ~~(b) — The activity will not result in any ground disturbance.~~
- ~~(5) — All crossings of flowing water shall require a bridge or culvert, except in areas with low banks and channel beds which are composed of gravel rock or similar hard surface which would not be eroded or otherwise damaged.~~
- ~~(6) — Skid trail approaches to water crossings shall be located and designed so as to prevent water runoff from directly entering the water body or stream. Upon completion of timber harvesting, temporary bridges and culverts shall be removed and areas of exposed soil re-vegetated.~~
- ~~(7) — Except in areas as described in Section 140 48, P(.2.) above, timber harvesting shall conform to the following provisions:~~
 - ~~(a) Selective harvesting of no more than forty (40) percent of the total volume of trees four (4) inches or more in diameter measured at 4 1/2 feet above the ground level on any lot in any ten year period is permitted. In addition:~~
 - ~~[1] Within one hundred feet (100) horizontal distance of the normal high water of a water body zoned for Resource Protection and within seventy five feet, horizontal distance, of water bodies zoned for Shoreland/Slope and tributary streams, there shall be no clear-cut openings and a well distributed stand of trees shall be maintained.~~
 - ~~[2] At distances greater than one hundred (100) feet, horizontal distance of any water resource zoned for Resource Protection and the Great Works and Salmon Falls rivers and greater than seventy five (75) feet, horizontal distance of the water resources zoned for Shoreland/Slope, timber harvesting operations shall not create single openings in the forest canopy greater than the height of the average tree in the stand. Such openings shall be included in the calculation of total volume removal. For the purposes of these standards volume may be considered to be equivalent to basal area.~~
- ~~(8) — Timber harvesting operations exceeding the (40%) percent limitation in paragraph (7)(a) above, may be allowed by the Planning Board upon a clear showing, including a forest management plan signed by a Maine licensed professional forester that such an exception is necessary for good forest management and will be carried out in accordance with the purposes of this ordinance. The Planning Board shall notify the Commissioner of the Department of Environmental protection of each exception allowed, within fourteen (14) days of the Planning~~

Board's decision.

Q. — Essential Services

- (1) ~~Where feasible, the installation of essential services shall be limited to existing public ways and existing service corridors.~~
- (2) ~~The installation or expansion of essential services is not permitted in a Resource Protection District or Shoreland/Slope District except to provide services to a permitted use within said district, or except where the applicant demonstrates that no reasonable alternative exists. Where permitted, such structures and facilities shall be located so as to minimize any adverse impacts on surrounding uses and resources, including visual impacts.~~

R. — Water Quality: ~~No activity shall deposit on or into the ground or discharge to the waters of the State any pollutant that, by itself, or in combination with other activities or substances will impair designated uses or the water classification of the water body.~~

S. — Archaeological Sites: ~~Any proposed land use activity involving structural development or soil disturbance on or adjacent to sites listed on, or eligible to be listed on the National Register of Historic Places, or in an area classified as being a "potential archaeological site" in the South Berwick Comprehensive Plan, as determined by the permitting authority, shall be submitted by the applicant to the Maine Historic Preservation Commission for review and comment, at least twenty (20) days prior to action being taken by the permitting authority. The permitting authority shall consider comments received from the Commission prior to rendering a decision on the application.~~

T. — ~~All uses allowed within the Industrial Zone shall be deemed to be permitted uses within the Resource Protection District and shoreland Slope District for all within those overlay districts and within the Industrial Zone. This amendment shall not be deemed to amend the permitted uses within the Resource Protection District or Shoreland/Slope District outside of the Industrial Zone. [Amended 1-13-97]~~

Section 140-48.1 Minor Freshwater Wetlands

~~This section pertains to work to be carried out adjacent to, but not in, a minor freshwater wetland as defined. Adjacent work includes depositing of fill, excavating, bulldozing and scraping the land when located within 100 feet of the normal high water line of a minor freshwater wetland.~~

~~A. In order to prevent surface water which may carry sediment from the disturbance activity from directly entering a minor freshwater wetland:~~

- (1) ~~A twenty five (25) foot undisturbed strip of vegetation shall be maintained between the normal high water line and the activity; and,~~
- (2) ~~Where sustained slopes exceed twenty (20%), a 100 foot undisturbed strip of~~

vegetation shall be maintained between the normal high water line and the activity.

B. These undisturbed buffer strip requirements do not apply to:

- (1) Providing access to an approved use
- (2) Maintenance of existing roadways
- (3) Removal of underground storage tanks
- (4) Removal, replacement or maintenance of wastewater disposal systems
- (5) Placement and replacement of foundations and supports for legally existing or authorized structures.

TABLE C
SHORELAND DIMENSIONAL REQUIREMENTS

RESIDENTIAL	-	-	-	-	-
-	-	-	-	-	-
Minimum Lot Size Requirements (square feet)	R1	R2	-	-	-
Tidal	30,11 (2)	30,11 (2)	-	-	-
Non-Tidal	40,11	40,11	-	-	-
-	-	-	-	-	-
Shore Frontage	R1 & R1A	R2 & R2A	R3	R4	R5
Tidal	150	150	200	200	200
Non-Tidal	200	200	200	200	200
-	-	-	-	-	-
Setbacks For Structures	R1 & R1A	R2 & R2A	R3	R4	R5
For Water Bodies Listed Under Section 140-12 A (1)	250 feet (3)	250 feet (3)	250 feet (3)	250 feet (3)	250 feet (3)
For Water Bodies Listed Under Section 140-12 B (1-4) Shoreland / Slope	100 feet	100 feet	100 feet	100 feet	100 feet
-	-	-	-	-	-
Maximum Lot Coverage	R1 & R1A	R2 & R2A	R3	R4	R5
As Defined	20%	20%	20%	20%	20%

SHORELAND DIMENSIONAL REQUIREMENTS

COMMERCIAL	-	-	-	-	-	-
-	-	-	-	-	-	-
Minimum Lot Coverage	B1 & B2	R1 & R1A	R2 & R2A	R3	R4	R5
Tidal	Same as Table B	40,11 square feet	40,11 square feet	40,11 square feet	40,11 square feet	40,11 square feet
Non-Tidal	Same as Table B	40,11 square feet	60,11 square feet	60,11 square feet	60,11 square feet	60,11 square feet
-	-	-	-	-	-	-
Shore Frontage	B1 & B2	R1 & R1A	R2 & R2A	R3	R4	R5
Tidal	Same as Table B	200 feet	200 feet	200 feet	200 feet	200 feet
Non-Tidal	Same as Table B	300 feet	300 feet	300 feet	300 feet	300 feet
-	-	-	-	-	-	-
Setbacks For Structures	B1 & B2	R1 & R1A	R2 & R2A	R3	R4	R5
For Water Bodies Listed Under Section 140-12 (1)	25 feet	200 feet	200 feet	200 feet	200 feet	200 feet
For Water Bodies Listed Under Section 140-12 (1-4) Shoreland / Slope	25 feet	300 feet	300 feet	300 feet	300 feet	300 feet
-	-	-	-	-	-	-
Maximum Lot Coverage	B1 & B2	R1 & R1A	R2 & R2A	R3	R4	R5
As Defined	70%	20%	20%	20%	20%	20%

SHORELAND DIMENSIONAL REQUIREMENTS INDEX

- (1) Minimum lot sizes for all other districts shall remain the same as shown in Table B.
- (2) If lot is served by on-site septic the minimum lot size shall be 40,000 square feet.
- (3) For permitted uses in the Resource Protection District the setback for structures is 100 feet.

DRAFT

Legend

DWP_WellsIntakes

Limited Residential Shoreland

100' setback
 250' setback

dFIRM

ZONE_

A
 AE

zoning_wetlands_town

Shoreland Zoning_town

ZONE_

Major Freshwater Wetland
 Resource Protection
 Shoreland
 very_pooly_drained

zoning

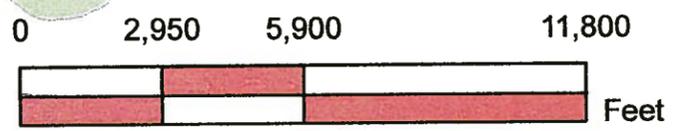
Zone

B1
 B2
 BR
 I1
 I2
 R1
 R1A
 R2
 R2A
 R3
 R4
 R5



Selected Features in Resource Protection

Vaughan Woods in Resource Protection



July 22, 2009
 Based on 2005 parcel map
 2008 Dept. of IF&W IWWH maps
 existing shoreland & wetlands Town maps
 OGIS data,
 and South Berwick Planning Department

Existing Shoreland Zoning and New shorezone Inland Wading Waterfowl Habitat (IWWH) Resource Protection Areas

TO: John B. Schempf and South Berwick Planning Board
FROM: Jim Fisk, RLA, Director of Planning and Economic Development.
DATE: July 22, 2009.
RE: Shoreland Zoning workshop comments from Jean Demetracopoulos.

At the June 16, 2009 joint workshop the Planning Board and Town Council reviewed the “high points” of existing Shoreland Standards in Section 140-48, proposed zoning ordinance, and DEP Chapter 1000 Shoreland Zoning regulations. The proposed changes include:

1. The removal of all references to Shoreland Zoning from Chapter 140, Zoning including sections on Nonconformance, Amendment, Definitions, District descriptions, boundaries and land use requirements, Performance Standards for Specific Uses and Table C as referenced in a “strikeout memo”. The purpose for creating a new Shoreland Zoning Ordinance is to avoid cross references and confusion;
2. Reinstating the one-time expansion rule and special exceptions within the setbacks;
3. Inclusion of regulated Inland Wading Waterfowl Habitats (IWWH) per State requirements with setbacks of 250’;
4. Creating Limited Residential Shoreland Districts (LRS) in developed areas adjacent to IWWH Resource Protection (RP) areas; and
5. Adding two new streams into Shoreland Zoning.

The Planning Board requested notification of property owners who were not previously notified for the April 21 Planning Board Public Hearing. Notification for the July 27 joint Town Council/Planning Board Public Hearing would include parcel owners with increased setbacks within the RP District, parcels newly designated RP and LRS.

The Town Council Chairman has provided comments from the June 16 workshop with additional review of the proposed Shoreland Zoning Map. Workshop questions are addressed below.

Jean Demetracopoulos questioned the need for a new “**stand-alone**” **Shoreland Ordinance** instead of incorporating changes in the existing sections within Chapter 140, Zoning. The Planning Board debated this issue after I discussed concerns with Mike Morse, the DEP Assistant Shoreland Zoning Coordinator. The purpose in creating a stand-alone ordinance was to meet the State compliance goals. The first step to lessen potential confusion was to consolidate all Shoreland references, standards, definitions, non-conformance, administration, and regulations into one ordinance. For example, the Planning Board compared the issue of roads as defined in various sections of the Code including the Charter and chapters specific to Zoning, Subdivision and Appendix I. As roads are discussed throughout the Code, it became confusing to apply correct regulations, and the Board eventually agreed to the creation of a new Chapter for Shoreland Zoning.

Official Zoning Map is the base zoning map. The Official Shoreland Zoning Map is the map depicting the overlay zones. Jean has recommended that it be referred to as an overlay map. However, the DEP requires an actual Shoreland Zoning Map. The existing Shoreland regulations in Zoning have been amended to reflect the creation of a new Shoreland Zoning Ordinance and regulated areas.

Official Shoreland Zoning Map show RP & Shoreland/Slope (SP) Districts as they are listed in the Ordinance. Setbacks vary by activity and zone, and are listed in Table C, Shoreland Dimensional Requirements. The term “buffer” will be replaced with “zone”.

An Overlay Map does not replace the Official Shoreland Zoning Map.

I asked the DEP about which data to illustrate as well as selecting data. In response, Mike Morse stated that if an area is regulated then it needs to be represented on the Official Shoreland Zoning Map. I researched mapping standards used by other Towns. An Official Shoreland Zoning Map is required. An Overlay Map is not an acceptable alternative to DEP. The Planning Board discussed the data and the data sources, and came to the conclusion that the best available data, documented sources should be applied and referred back to the Ordinance. As better surveys on the face of the earth or from better sources become available they can be applied incrementally. The term buffers will be removed for zones. Jean recommended that only setbacks be shown which does represent the zone boundary in most cases, and could be very misleading to those undertaking other activities than building structures. A disclaimer could be added to the map, such as:

“Shoreland Data Disclaimer

The data contained on this map, or any accompanying document is a resource of general information provided on the World Wide Web for public convenience, State and public agencies, or graphic representation of surveys and reports. The Town of South Berwick makes no warranty, representation or guaranty as to the content, sequence, accuracy, timeliness or completeness of any of the database information provided herein. The Town of South Berwick expressly disclaims any representations and warranties, including, without limitation, the implied warranties of merchantability and fitness for a particular purpose. The Town of South Berwick shall assume no liability for:

- 1. Any errors, omissions, or inaccuracies in the information provided regardless of how caused; or*
- 2. Any decision made or action taken or not taken by reader in reliance upon any information or data furnished hereon.*

Official copies of these documents can be viewed in person at the Town of South Berwick Clerk’s Office.”

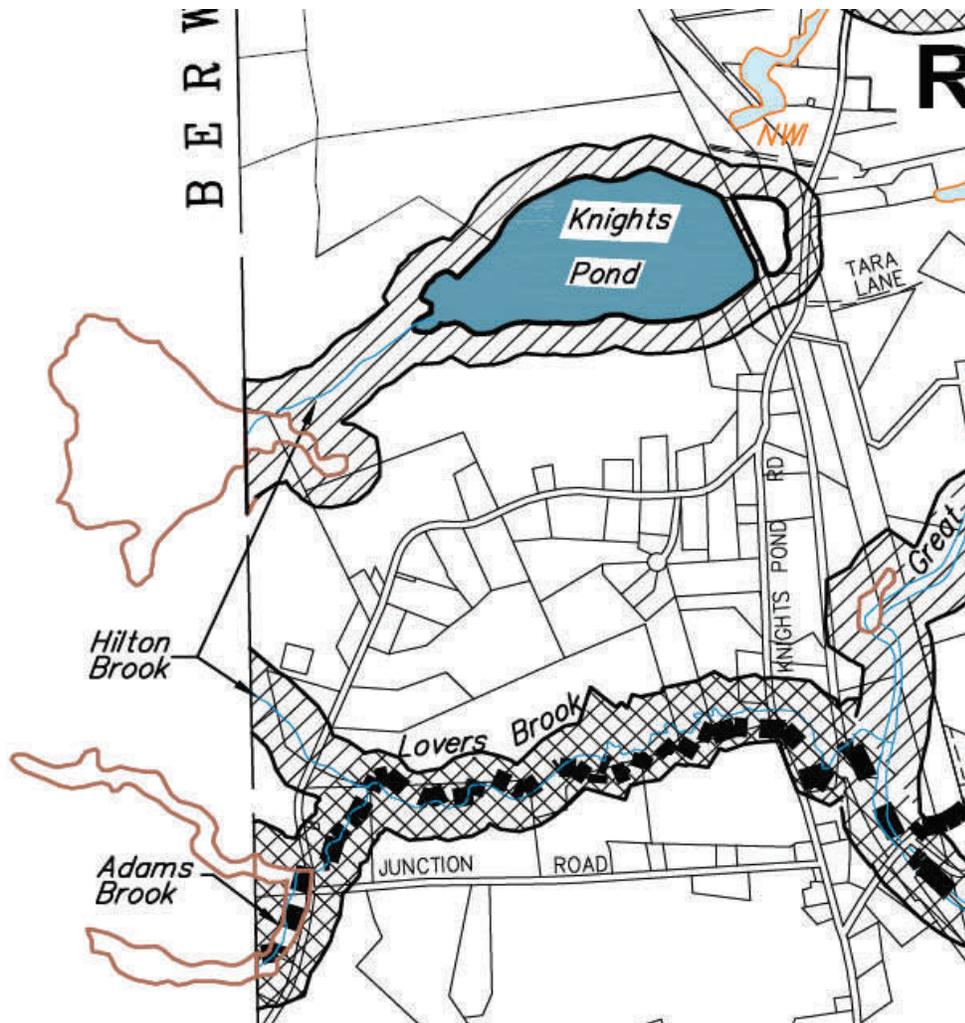
Recommended Great Ponds.

At the time of enactment of this ordinance, the upstream beaver pond of **Orris’ Falls** will not have been mapped. The boundary of pond will need to be determined in order to notify property owners to their property being placed in the Resource Protection District. I spoke with the Code Enforcement Officer about conducting a site walk with a GPS to further study this area as well other features, and possibly add them to the map at some future point for that purpose.

Hooper’s Swamp is currently defined as a Major Freshwater Wetland and IWWH. I asked Sue Bickford, the Wells Reserve GIS Specialist for additional documentation for both areas, and she said that the calculated areas were mapping projects not to be used for regulatory purposes.

Knight’s Pond is currently mapped on the unsigned Shoreland Zoning Map, see following map excerpt.

White’s Marsh and Cox’s Pond: Recommendations for further delineation. The Planning Board agreed for further map delineation with on the face of the earth surveys. I am pursuing grants to assist the Town procure better data and more accurate maps. I believe this is an activity that is worthy of grant funding, and walking these areas with a GPS and the CEO may be the first step.



Hooper's Swamp and Hooper's Brook

At the joint workshop the Council Chairman stated that Hooper's Swamp extended to Belle Marsh Road, and "had always been that way". In the following email the question of updated/regulated data has once again been addressed.

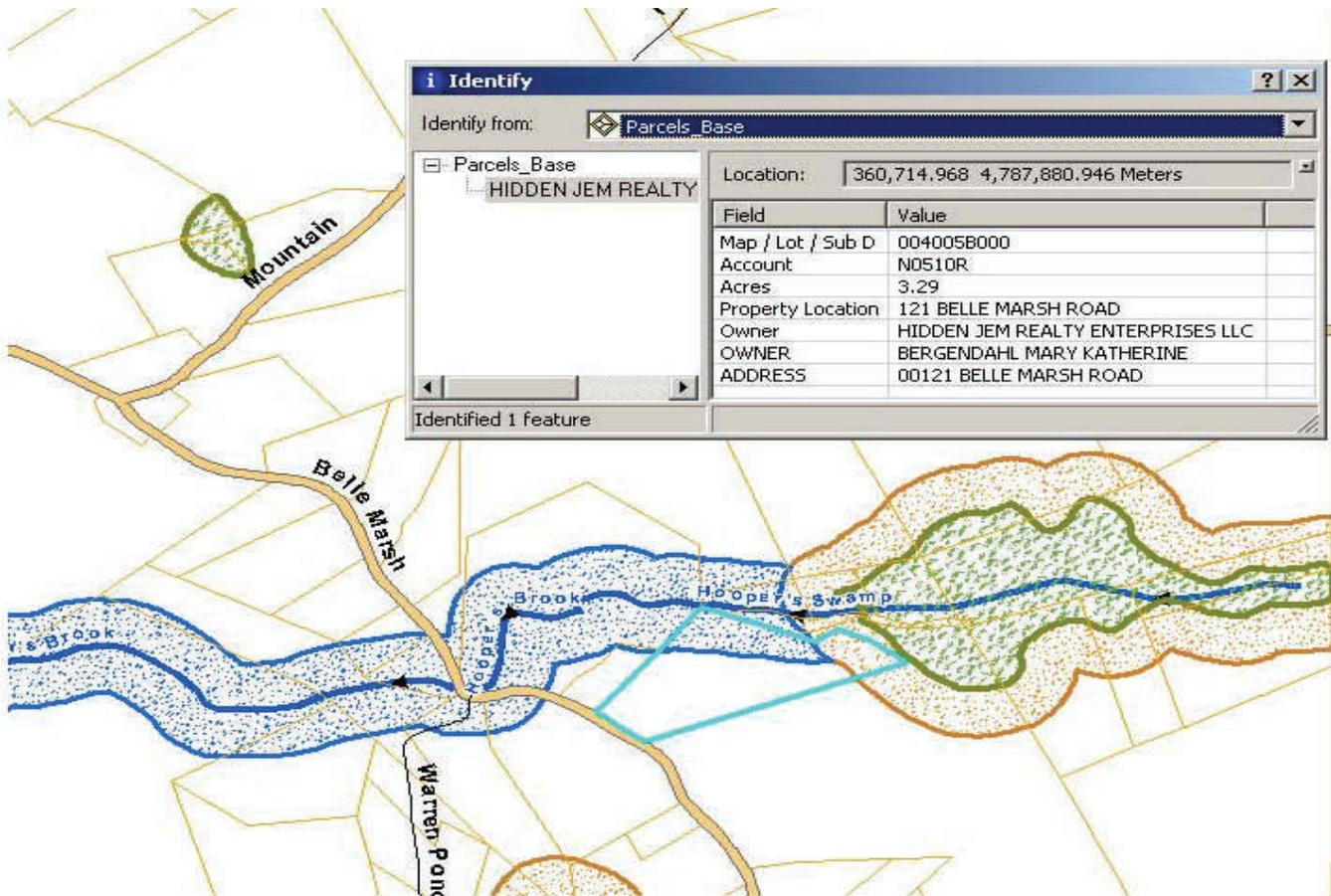
"IWWH" shows wetlands that are Significant Wildlife Habitat under NRPA. A subset of those IWWH's were designated as RPs for Shoreland Zoning, but that set of polygons was "fixed" in Nov 2008. A separate layer, "Shorezone_Iwwh" was published to show just those IWWH's that qualify under Shoreland Zoning and that layer cannot be changed.

In contrast, the NRPA polygons in "IWWH" are sometimes modified based on new field information from IFW regional biologists (which is why the layer was just updated), but those changes are not carried into the "Shorezone_Iwwh" layer and they do not affect RPs for Shoreland Zoning.

Donald Katnik, Habitat Group Leader
 Maine Dept. Inland Fisheries & Wildlife
 650 State St., Bangor, ME 04401
 (207) 941-4455

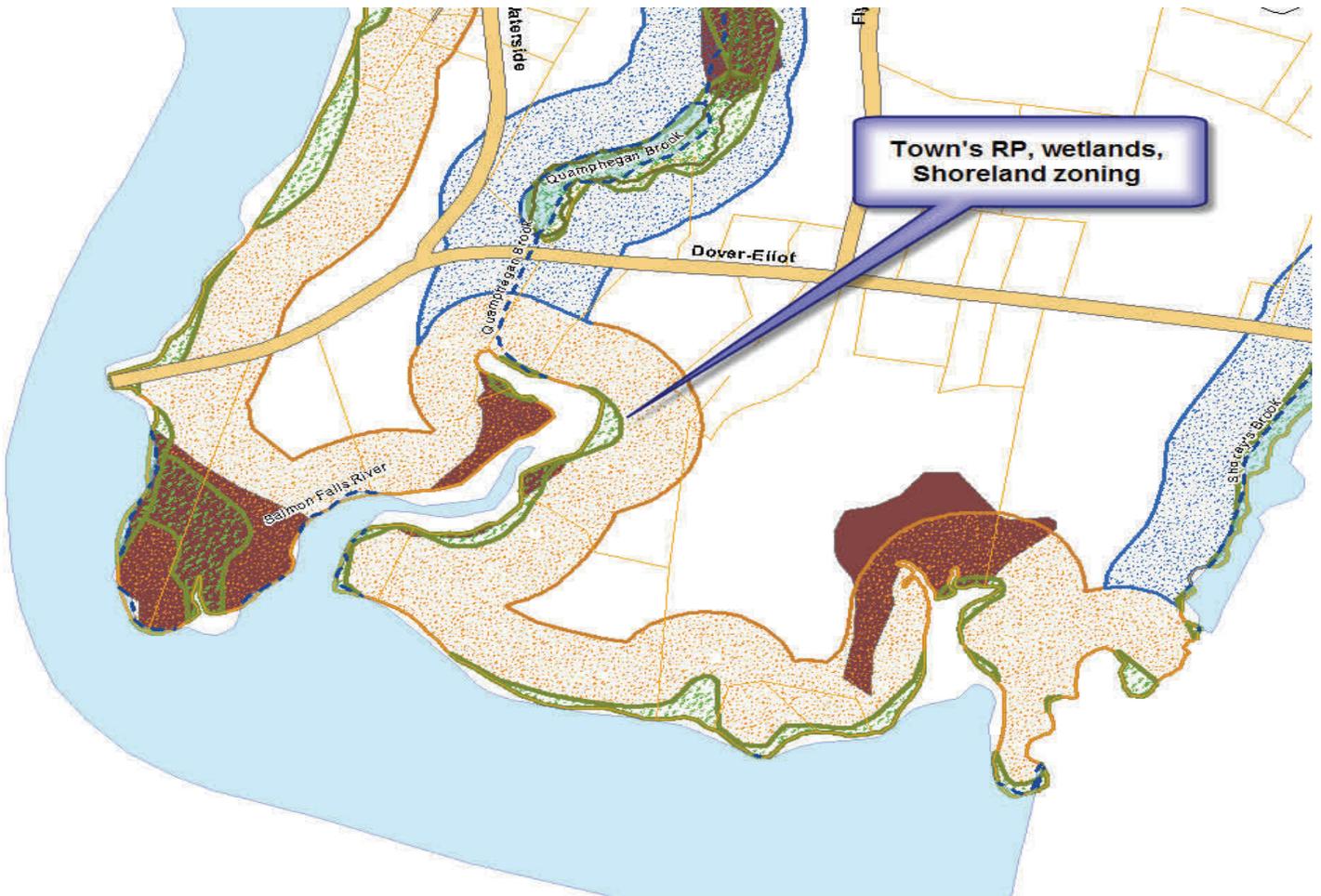
DEP does not list Hooper's Brook or Hooper's Swamp as Resource Protection, and the Town does not need to apply the Limited Residential Shoreland District because the brook is in Stream Protection. The DEP setback is 75', and the Town applies a 100' setback.

The beginning of Hooper's Brook and the ending of Hooper's Swamp determines the increased setback from 100' to 250', respectively. The Albert Frick, August 2005 Wetland Report concludes that "Damming activity by beavers may have impounded water to a higher elevation, but tree growth and surrounding landscape topography indicates that no marsh or emergent vegetation ever existed at the margin of the Bergendahl site." Therefore, the published data that shows the swamp boundary at the rear of their property, and the beginning of Hooper's Brook flowing through the swamp is verified with an onsite survey, and a survey by William Pierce, P.L.S. 12/3/2004. The creation of building lots by the Bergendahl's was opposed by the Chairman of the Conservation Commission, Jean Demetracopoulos in her 3/8/2005 email. The Planning Board accepted the onsite survey and published data as shown below which illustrated a stream and not a swamp, therefore, granting the Bergendahl's the Site Plan Permit (SP 05-02). This allowed for a building site in this area at that time, until which time vernal pools became regulated, which has subsequently been resolved.



Therefore, the Official Shoreland Zoning Map should reflect site verified published documentation of Hooper's Brook.

Quampegan Brook and Shorey's Brook



Great Works River and associated wetlands are RP. This addresses the setback questions of the stream that is within the wetlands associated with the River.

Wellhead locations have been provided by the South Berwick Water District and are shown on the map.

Frost Brook has been removed.

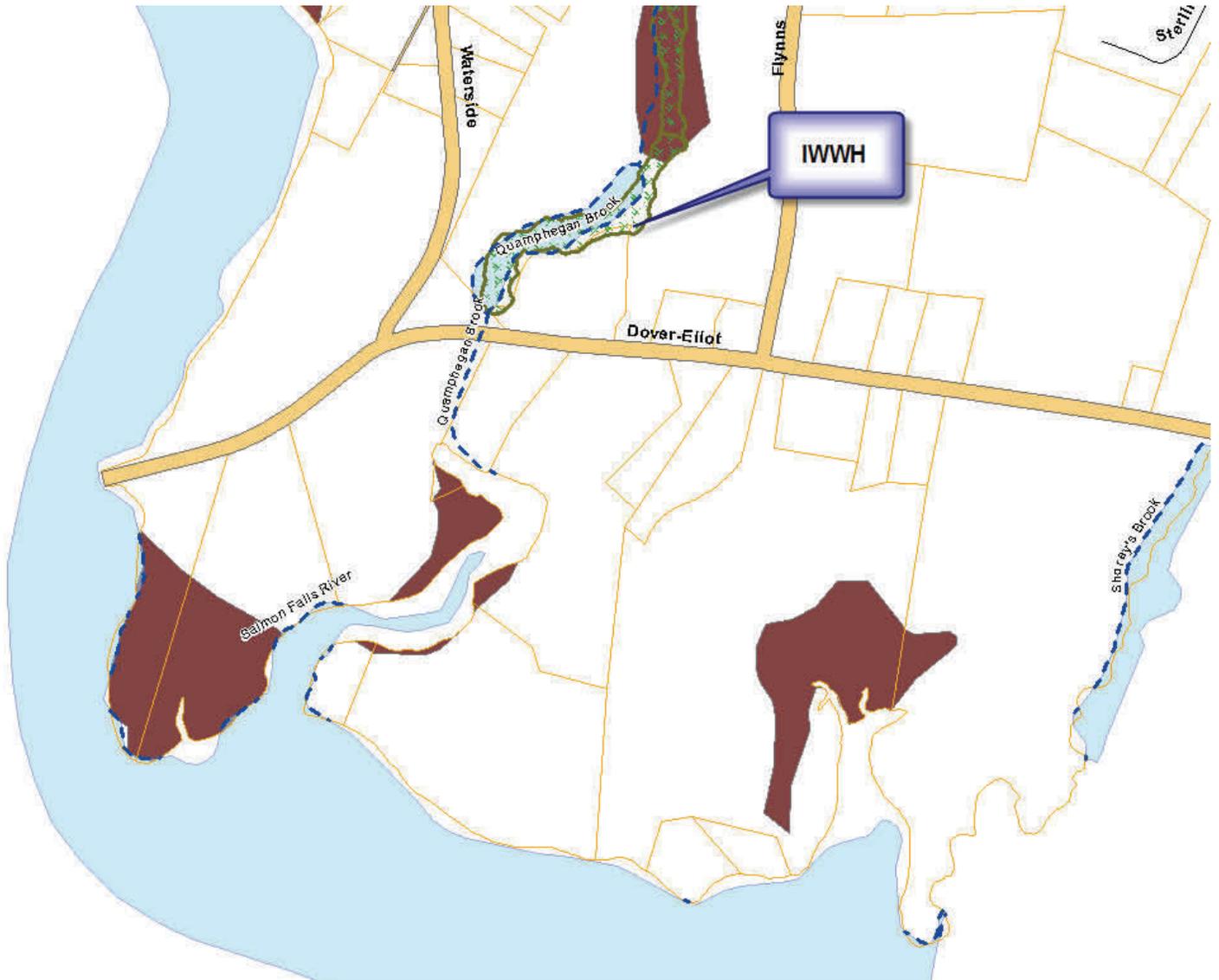
Hilton's Brook is labeled at both areas.

Adam's Brook was added to the GIS map.

New streams are classified by the DEP as Stream Protection with a 75' setback. The Planning Board decided to be consistent with existing Shoreland Zoning and classify them as SP and apply a 100' setback.

The unnamed brook running through Orris Falls is proposed to be named Dahcom Brook instead of Tatnic Stream because of an appeal made by local resident, Beverly Hasty, and family history of the brook's name. Cox's Pond stream is within the IWWH, and the unnamed stream along Salmon Falls River has been added to the map.

The Planning Board reviewed **forested wetlands associated with RP** and decided to include them within the RP.



Concerns raised by the public and notified property owners were addressed after the Planning Board's public hearing. I expect there will be little opposition to the inclusion of the IWWH areas. The principle map change was the inclusion of LRS Districts adjacent to IWWH RP. The main text change is the one-time expansion within setbacks.

TO: John B. Schempf and South Berwick Planning Board
FROM: Jim Fisk, RLA, Director of Planning and Economic Development.
DATE: July 23, 2009.
RE: Shoreland Zoning Map comments from Jean Demetracopoulos.

The Council Chairman has comments from review of the proposed Shoreland Zoning Map. The map questions are addressed below. Keep in mind that this has been a working document to evaluate the existing Shoreland standard, recommendations from the DEP, and requirements from the DEP. The compilation of data is still in draft form for review at the Public Hearing for input. The Planning Board recommends that this set of data be on the final Official Shoreland Zoning Map. If I can be of any further assistance please let me know.

Map Key

Simplified to reflect the Districts and Overlay Zones. Town wetlands are the 2AC NWI wetlands. The Limited Residential setbacks have been modified.

General

The mapping program automatically selects labels and may need a manual override to assure all are labeled in final version.

Map

- Shoreland Zone is applied above Rte. 4 on the Salmon Falls. Verified with DEP that it is not Resource Protection.
- RP for the Great Works River.
- “Resource Protection District - RP.
 - The Great Works River in the R3 and R4 Districts (as measured from the edge of the river channel).”
- RP for Chick’s Brook is shown as RP.
- RP and SP are both shown around the confluence of Warren Brook and White’s Marsh Brook. RP shown on the northeasterly side of wetlands or is within the floodplain, which would be further delineated.
- RP does not begin at Belle Marsh Road for Hooper’s Swamp because it is Hooper’s Brook.
- Forested wetlands associated with streams are now added to the zone which adds a 100’ setback within the 250’ SP zone to the upland edge of those wetlands.
- The Brook names are still being proposed.