

2011

Town of Benton Maine Ordinances

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FLOODPLAIN MANAGEMENT ORDINANCE
FOR THE
TOWN OF BENTON, MAINE

ENACTED: March 26, 2011
Date

EFFECTIVE: March 26, 2011
Date

CERTIFIED BY: Patrick A. Turlo
Signature

CERTIFIED BY: PATRICK A. TURLO
Print Name

DEPUTY CLERK
Title

Attest: A true copy of an ordinance entitled
"Flood Plain Management Ordinance" as
certified to me by the municipal officers of
Benton on the 2nd day of March 2011.

Julie L. Morrison

Julie L. Morrison
Benton Town Clerk

Affix Seal

Town of Benton

FLOODPLAIN MANAGEMENT ORDINANCE

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ARTICLE I - PURPOSE AND ESTABLISHMENT

Certain areas of the Town of Benton, Maine are subject to periodic flooding, causing serious damages to properties within these areas. Relief is available in the form of flood insurance as authorized by the National Flood Insurance Act of 1968.

Therefore, the Town of Benton, Maine has chosen to become a participating community in the National Flood Insurance Program, and agrees to comply with the requirements of the National Flood Insurance Act of 1968 (P.L. 90-488, as amended) as delineated in this Floodplain Management Ordinance.

It is the intent of the Town of Benton, Maine to require the recognition and evaluation of flood hazards in all official actions relating to land use in the floodplain areas having special flood hazards.

The Town of Benton has the legal authority to adopt land use and control measures to reduce future flood losses pursuant to Title 30-A MRSA, Sections 3001-3007, 4352, 4401-4407, and Title 38 MRSA, Section 440.

The National Flood Insurance Program, established in the aforesaid Act, provides that areas of the Town of Benton having a special flood hazard be identified by the Federal Emergency Management Agency and that floodplain management measures be applied in such flood hazard areas. This Ordinance establishes a Flood Hazard Development Permit system and review procedure for development activities in the designated flood hazard areas of the Town of Benton, Maine.

The areas of special flood hazard, Zones A and AE for the Town of Benton, Kennebec County, Maine, identified by the Federal Emergency Management Agency in a report entitled "Flood Insurance Study – Kennebec County" dated June 16, 2011 with accompanying "Flood Insurance Rate Map" dated June 16, 2011 with panels:

39, 44, 177, 178, 179, 181, 182, 183, 184, 195, 201, 202, 203, 204, 210, 215

derived from the county wide digital flood insurance rate map entitled "Digital Flood Insurance Rate Map, Kennebec County," are hereby adopted by reference and declared to be a part of this Ordinance.

ARTICLE II - PERMIT REQUIRED

Before any construction or other development (as defined in Article XIII), including the placement of manufactured homes, begins within any areas of special flood hazard established in Article I, a Flood Hazard Development Permit shall be obtained from the Code Enforcement Officer. This permit shall be in addition to any other permits which may be required pursuant to the codes and ordinances of the Town of Benton, Maine.

ARTICLE III - APPLICATION FOR PERMIT

The application for a Flood Hazard Development Permit shall be submitted to the Code Enforcement Officer and shall include:

- A. The name, address and phone number of the applicant, owner, and contractor;
- B. An address and a map indicating the location of the construction site;

- C. A site plan showing location of existing and/or proposed development, including but not limited to structures, sewage disposal facilities, water supply facilities, areas to be cut and filled, and lot dimensions;
- D. A statement of the intended use of the structure and/or development;
- E. A statement of the cost of the development including all materials and labor;
- F. A statement as to the type of sewage system proposed;
- G. Specification of dimensions of the proposed structure and/or development;

[Items H-K.2 apply only to new construction and substantial improvements.]

H. The elevation in relation to the National Geodetic Vertical Datum (NGVD), North American Vertical Datum (NAVD) or to a locally established datum in Zone A only, of the:

- 1. base flood at the proposed site of all new or substantially improved structures, which is determined:
 - a. in Zones AE, from data contained in the "Flood Insurance Study- Kennebec County," as described in Article I; or,
 - b. in Zone A:
 - (1) from any base flood elevation data from federal, state, or other technical sources (such as FEMA's Quick-2 model, FEMA 265/July 1995), including information obtained pursuant to Article VI.K. and VIII.D.;
 - (2) from the contour elevation extrapolated from a best fit analysis of the floodplain boundary when overlaid onto a USGS Quadrangle Map or other topographic map prepared by a Professional Land Surveyor or registered professional engineer, if the floodplain boundary has a significant correlation to the elevation contour line(s); or, in the absence of all other data,
 - (3) to be the elevation of the ground at the intersection of the floodplain boundary and a line perpendicular to the shoreline which passes along the ground through the site of the proposed building.
- 2. highest and lowest grades at the site adjacent to the walls of the proposed building;
- 3. lowest floor, including basement; and whether or not such structures contain a basement; and,
- 4. level, in the case of non-residential structures only, to which the structure will be floodproofed;

- I. A description of an elevation reference point established on the site of all developments for which elevation standards apply as required in Article VI;
- J. A written certification by a Professional Land Surveyor, registered professional engineer or architect, that the base flood elevation and grade elevations shown on the application are accurate;

- K. The following certifications as required in Article VI by a registered professional engineer or architect:
 1. a Floodproofing Certificate (FEMA Form 81-65, 03/09, as amended), to verify that the floodproofing methods for any non-residential structures will meet the floodproofing criteria of Article III.H.4.; Article VI.G.; and other applicable standards in Article VI;
 2. a Hydraulic Openings Certificate to verify that engineered hydraulic openings in foundation walls will meet the standards of Article VI.L.2.a.;
 3. a certified statement that bridges will meet the standards of Article VI.M.;
 4. a certified statement that containment walls will meet the standards of Article VI.N.;
- L. A description of the extent to which any water course will be altered or relocated as a result of the proposed development; and,
- M. A statement of construction plans describing in detail how each applicable development standard in Article VI will be met.

ARTICLE IV - APPLICATION FEE AND EXPERT'S FEE

A non-refundable application fee of \$25 for all minor development and \$50 for all new construction or substantial improvements shall be paid to the Town Clerk and a copy of a receipt for the same shall accompany the application.

An additional fee may be charged if the Code Enforcement Officer and/or Board of Appeals needs the assistance of a professional engineer or other expert. The expert's fee shall be paid in full by the applicant within 10 days after the town submits a bill to the applicant. Failure to pay the bill shall constitute a violation of the ordinance and be grounds for the issuance of a stop work order. An expert shall not be hired by the municipality at the expense of an applicant until the applicant has either consented to such hiring in writing or been given an opportunity to be heard on the subject. An applicant who is dissatisfied with a decision to hire expert assistance may appeal that decision to the Board of Appeals.

ARTICLE V - REVIEW STANDARDS FOR FLOOD HAZARD DEVELOPMENT PERMIT APPLICATIONS

The Code Enforcement Officer shall:

- A. Review all applications for the Flood Hazard Development Permit to assure that proposed developments are reasonably safe from flooding and to determine that all pertinent requirements of Article VI (Development Standards) have been, or will be met;
- B. Utilize, in the review of all Flood Hazard Development Permit applications:
 1. the base flood and floodway data contained in the "Flood Insurance Study – Kennebec County, Maine," as described in Article I;
 2. in special flood hazard areas where base flood elevation and floodway data are not provided, the Code Enforcement Officer shall obtain, review and reasonably utilize any base flood elevation and floodway data from federal, state, or other technical sources, including information obtained

pursuant to Article III.H.1.b.; Article VI.K.; and Article VIII.D., in order to administer Article VI of this Ordinance; and,

3. when the community establishes a base flood elevation in a Zone A by methods outlined in Article III.H.1.b., the community shall submit that data to the Maine Floodplain Management Program in the State Planning Office.
- C. Make interpretations of the location of boundaries of special flood hazard areas shown on the maps described in Article I of this Ordinance;
 - D. In the review of Flood Hazard Development Permit applications, determine that all necessary permits have been obtained from those federal, state, and local government agencies from which prior approval is required by federal or state law, including but not limited to Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1344;
 - E. Notify adjacent municipalities, the Department of Environmental Protection, and the Maine Floodplain Management Program in the State Planning Office prior to any alteration or relocation of a water course and submit copies of such notifications to the Federal Emergency Management Agency;
 - F. If the application satisfies the requirements of this Ordinance, approve the issuance of one of the following Flood Hazard Development Permits based on the type of development:
 1. A two part Flood Hazard Development Permit for elevated structures. Part I shall authorize the applicant to build a structure to and including the first horizontal floor only above the base flood level. At that time the applicant shall provide the Code Enforcement Officer with an Elevation Certificate completed by a Professional Land Surveyor, registered professional engineer or architect based on the Part I permit construction, "as built", for verifying compliance with the elevation requirements of Article VI, paragraphs F, G, or H. Following review of the Elevation Certificate data, which shall take place within 72 hours of receipt of the application, the Code Enforcement Officer shall issue Part II of the Flood Hazard Development Permit. Part II shall authorize the applicant to complete the construction project; or,
 2. A Flood Hazard Development Permit for Floodproofing of Non-Residential Structures that are new construction or substantially improved non-residential structures that are not being elevated but that meet the floodproofing standards of Article VI.G.1.a.,b., and c. The application for this permit shall include a Floodproofing Certificate signed by a registered professional engineer or architect; or,
 3. A Flood Hazard Development Permit for Minor Development for all development that is not new construction or a substantial improvement, such as repairs, maintenance, renovations, or additions, whose value is less than 50% of the market value of the structure. Minor development also includes, but is not limited to: accessory structures as provided for in Article VI.J., mining, dredging, filling, grading, paving, excavation, drilling operations, storage of equipment or materials, deposition or extraction of materials, public or private sewage disposal systems or water supply facilities that do not involve structures; and non-structural projects such as bridges, dams, towers, fencing, pipelines, wharves and piers.
 - G. Maintain, as a permanent record, copies of all Flood Hazard Development Permit Applications, corresponding Permits issued, and data relevant thereto, including reports of the Board of Appeals on variances granted under the provisions of Article IX of this Ordinance, and copies of Elevation

Certificates, Floodproofing Certificates, Certificates of Compliance and certifications of design standards required under the provisions of Articles III, VI, and VII of this Ordinance.

ARTICLE VI - DEVELOPMENT STANDARDS

All developments in areas of special flood hazard shall meet the following applicable standards:

A. All Development - All development shall:

1. be designed or modified and adequately anchored to prevent flotation (excluding piers and docks), collapse or lateral movement of the development resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;
2. use construction materials that are resistant to flood damage;
3. use construction methods and practices that will minimize flood damage; and,
4. use electrical, heating, ventilation, plumbing, and air conditioning equipment, and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during flooding conditions.

B. Water Supply - All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the systems.

C. Sanitary Sewage Systems - All new and replacement sanitary sewage systems shall be designed and located to minimize or eliminate infiltration of flood waters into the system and discharges from the system into flood waters.

D. On Site Waste Disposal Systems - On site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during floods.

E. Watercourse Carrying Capacity - All development associated with altered or relocated portions of a watercourse shall be constructed and maintained in such a manner that no reduction occurs in the flood carrying capacity of the watercourse.

F. Residential - New construction or substantial improvement of any residential structure located within:

1. Zones AE shall have the lowest floor (including basement) elevated to at least one foot above the base flood elevation.
2. Zone A shall have the lowest floor (including basement) elevated to at least one foot above the base flood elevation utilizing information obtained pursuant to Article III.H.1.b.; Article V.B; or Article VIII.D.

G. Non Residential - New construction or substantial improvement of any non-residential structure located within:

1. Zones AE shall have the lowest floor (including basement) elevated to at least one foot above the base flood elevation, or together with attendant utility and sanitary facilities shall:

- a. be floodproofed to at least one foot above the base flood elevation so that below that elevation the structure is watertight with walls substantially impermeable to the passage of water;
 - b. have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and,
 - c. be certified by a registered professional engineer or architect that the floodproofing design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this section. Such certification shall be provided with the application for a Flood Hazard Development Permit, as required by Article III.K. and shall include a record of the elevation above mean sea level to which the structure is floodproofed.
2. Zone A shall have the lowest floor (including basement) elevated to at least one foot above the base flood elevation utilizing information obtained pursuant to Article III.H.1.b.; Article V.B; or Article VIII.D., or
- a. together with attendant utility and sanitary facilities meet the floodproofing standards of Article VI.G.1.

H. Manufactured Homes - New or substantially improved manufactured homes located within:

1. Zones AE shall:

- a. be elevated such that the lowest floor (including basement) of the manufactured home is at least one foot above the base flood elevation;
- b. be on a permanent foundation, which may be poured masonry slab or foundation walls, with hydraulic openings, or may be reinforced piers or block supports, any of which support the manufactured home so that no weight is supported by its wheels and axles; and,
- c. be securely anchored to an adequately anchored foundation system to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to:
 - (1) over-the-top ties anchored to the ground at the four corners of the manufactured home, plus two additional ties per side at intermediate points (manufactured homes less than 50 feet long require one additional tie per side); or by,
 - (2) frame ties at each corner of the home, plus five additional ties along each side at intermediate points (manufactured homes less than 50 feet long require four additional ties per side).
 - (3) all components of the anchoring system described in Article VI.H.1.c.(1)&(2) shall be capable of carrying a force of 4800 pounds.

2. Zone A shall:

- a. be elevated on a permanent foundation, as described in Article VI.H.1.b., such that the lowest floor (including basement) of the manufactured home is at least one foot above the base flood elevation utilizing information obtained pursuant to Article III.H.1.b.; Article V.B; or Article VIII.D.; and

- b. meet the anchoring requirements of Article VI.H.1.c.

I. **Recreational Vehicles** - Recreational Vehicles located within:

1. Zones A and AE shall either:

- a. be on the site for fewer than 180 consecutive days,
- b. be fully licensed and ready for highway use. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions; or,
- c. be permitted in accordance with the elevation and anchoring requirements for "manufactured homes" in Article VI.H.1.

J. **Accessory Structures** - Accessory Structures, as defined in Article XIII, located within Zones AE and A, shall be exempt from the elevation criteria required in Article VI.F. & G. above, if all other requirements of Article VI and all the following requirements are met. Accessory Structures shall:

1. be 500 square feet or less and have a value less than \$3000;
2. have unfinished interiors and not be used for human habitation;
3. have hydraulic openings, as specified in Article VI.L.2., in at least two different walls of the accessory structure;
4. be located outside the floodway;
5. when possible be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters and be placed further from the source of flooding than is the primary structure; and,
6. have only ground fault interrupt electrical outlets. The electric service disconnect shall be located above the base flood elevation and when possible outside the Special Flood Hazard Area.

K. **Floodways** -

1. In Zones AE riverine areas, encroachments, including fill, new construction, substantial improvement, and other development shall not be permitted within a regulatory floodway which is designated on the community's "Flood Insurance Rate Map" unless a technical evaluation certified by a registered professional engineer is provided demonstrating that such encroachments will not result in any increase in flood levels within the community during the occurrence of the base flood discharge.
2. In Zones AE and A riverine areas for which no regulatory floodway is designated, encroachments, including fill, new construction, substantial improvement, and other development shall not be permitted in the floodway as determined in Article VI.K.3. unless a technical evaluation certified by a registered professional engineer is provided demonstrating that the cumulative effect of the proposed development, when combined with all other existing development and anticipated development:

- a. will not increase the water surface elevation of the base flood more than one foot at any point within the community; and,
 - b. is consistent with the technical criteria contained in Chapter 5 entitled "Hydraulic Analyses," *Flood Insurance Study - Guidelines and Specifications for Study Contractors*, (FEMA 37/ January 1995, as amended).
3. In Zones AE and A riverine areas for which no regulatory floodway is designated, the regulatory floodway is determined to be the channel of the river or other water course and the adjacent land areas to a distance of one-half the width of the floodplain as measured from the normal high water mark to the upland limit of the floodplain.
- L. Enclosed Areas Below the Lowest Floor** - New construction or substantial improvement of any structure in Zones AE and A that meets the development standards of Article VI, including the elevation requirements of Article VI, paragraphs F, G, or H and is elevated on posts, columns, piers, piles, "stilts," or crawlspaces may be enclosed below the base flood elevation requirements provided all the following criteria are met or exceeded:
1. Enclosed areas are not "basements" as defined in Article XIII;
 2. Enclosed areas shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of flood water. Designs for meeting this requirement must either:
 - a. be engineered and certified by a registered professional engineer or architect; or,
 - b. meet or exceed the following minimum criteria:
 - (1) a minimum of two openings having a total net area of not less than one square inch for every square foot of the enclosed area;
 - (2) the bottom of all openings shall be below the base flood elevation and no higher than one foot above the lowest grade; and,
 - (3) openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the entry and exit of flood waters automatically without any external influence or control such as human intervention, including the use of electrical and other non-automatic mechanical means;
 3. The enclosed area shall not be used for human habitation; and,
 4. The enclosed areas are usable solely for building access, parking of vehicles, or storage.
- M. Bridges** - New construction or substantial improvement of any bridge in Zones AE and A shall be designed such that:
1. when possible, the lowest horizontal member (excluding the pilings, or columns) is elevated to at least one foot above the base flood elevation; and

2. a registered professional engineer shall certify that:

- a. the structural design and methods of construction shall meet the elevation requirements of this section and the floodway standards of Article VI.K.; and
- b. the foundation and superstructure attached thereto are designed to resist flotation, collapse and lateral movement due to the effects of wind and water loads acting simultaneously on all structural components. Water loading values used shall be those associated with the base flood.

N. **Containment Walls** - New construction or substantial improvement of any containment wall located within:

1. Zones AE and A shall:

- a. have the containment wall elevated to at least one foot above the base flood elevation;
- b. have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and,
- c. be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this section. Such certification shall be provided with the application for a Flood Hazard Development Permit, as required by Article III.K.

O. **Wharves, Piers and Docks** - New construction or substantial improvement of wharves, piers, and docks are permitted in Zones AE and A, in and over water and seaward of the mean high tide if the following requirements are met:

1. wharves, piers, and docks shall comply with all applicable local, state, and federal regulations; and
2. for commercial wharves, piers, and docks, a registered professional engineer shall develop or review the structural design, specifications, and plans for the construction.

ARTICLE VII - CERTIFICATE OF COMPLIANCE

No land in a special flood hazard area shall be occupied or used and no structure which is constructed or substantially improved shall be occupied until a Certificate of Compliance is issued by the Code Enforcement Officer subject to the following provisions:

- A. For New Construction or Substantial Improvement of any elevated structure the applicant shall submit to the Code Enforcement Officer, an Elevation Certificate completed by a Professional Land Surveyor, registered professional engineer, or architect, for compliance with Article VI, paragraphs F, G, or H.
- B. The applicant shall submit written notification to the Code Enforcement Officer that the development is complete and complies with the provisions of this ordinance.

- C. Within 10 working days, the Code Enforcement Officer shall:
1. review the Elevation Certificate and the applicant's written notification; and,
 2. upon determination that the development conforms with the provisions of this ordinance, shall issue a Certificate of Compliance.

ARTICLE VIII - REVIEW OF SUBDIVISION AND DEVELOPMENT PROPOSALS

The Planning Board shall, when reviewing subdivisions and other proposed developments that require review under other federal law, state law or local ordinances or regulations and all projects on 5 or more disturbed acres, or in the case of manufactured home parks divided into two or more lots, assure that:

- A. All such proposals are consistent with the need to minimize flood damage.
- B. All public utilities and facilities, such as sewer, gas, electrical and water systems are located and constructed to minimize or eliminate flood damages.
- C. Adequate drainage is provided so as to reduce exposure to flood hazards.
- D. All proposals include base flood elevations, flood boundaries, and, in a riverine floodplain, floodway data. These determinations shall be based on engineering practices recognized by the Federal Emergency Management Agency.
- E. Any proposed development plan must include a condition of plan approval requiring that structures on any lot in the development having any portion of its land within a Special Flood Hazard Area, are to be constructed in accordance with Article VI of this ordinance. Such requirement will be included in any deed, lease, purchase and sale agreement, or document transferring or expressing an intent to transfer any interest in real estate or structure, including but not limited to a time-share interest. The condition shall clearly articulate that the municipality may enforce any violation of the construction requirement and that fact shall also be included in the deed or any other document previously described. The construction requirement shall also be clearly stated on any map, plat, or plan to be signed by the Planning Board or local reviewing authority as part of the approval process.

ARTICLE IX - APPEALS AND VARIANCES

The Board of Appeals of the Town of Benton may, upon written application of an aggrieved party, hear and decide appeals where it is alleged that there is an error in any order, requirement, decision, or determination made by, or failure to act by, the Code Enforcement Officer or Planning Board in the administration or enforcement of the provisions of this Ordinance.

The Board of Appeals may grant a variance from the requirements of this Ordinance consistent with state law and the following criteria:

- A. Variances shall not be granted within any designated regulatory floodway if any increase in flood levels during the base flood discharge would result.
- B. Variances shall be granted only upon:
 1. a showing of good and sufficient cause; and,

2. a determination that should a flood comparable to the base flood occur, the granting of a variance will not result in increased flood heights, additional threats to public safety, public expense, or create nuisances, cause fraud or victimization of the public or conflict with existing local laws or ordinances; and,
 3. a showing that the issuance of the variance will not conflict with other state, federal or local laws or ordinances; and,
 4. a determination that failure to grant the variance would result in "undue hardship," which in this sub-section means:
 - a. that the land in question cannot yield a reasonable return unless a variance is granted; and,
 - b. that the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood; and,
 - c. that the granting of a variance will not alter the essential character of the locality; and,
 - d. that the hardship is not the result of action taken by the applicant or a prior owner.
- C. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief, and the Board of Appeals may impose such conditions to a variance as it deems necessary.
- D. Variances may be issued for new construction, substantial improvements, or other development for the conduct of a functionally dependent use provided that:
1. other criteria of Article IX and Article VI.K. are met; and,
 2. the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.
- E. Variances may be issued for the repair, reconstruction, rehabilitation, or restoration of Historic Structures upon the determination that:
1. the development meets the criteria of Article IX, paragraphs A. through D. above; and,
 2. the proposed repair, reconstruction, rehabilitation, or restoration will not preclude the structure's continued designation as a Historic Structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
- F. Any applicant who meets the criteria of Article IX, paragraphs A. through E. shall be notified by the Board of Appeals in writing over the signature of the Chairman of the Board of Appeals that:
1. the issuance of a variance to construct a structure below the base flood level will result in greatly increased premium rates for flood insurance up to amounts as high as \$25 per \$100 of insurance coverage;
 2. such construction below the base flood level increases risks to life and property; and,

3. the applicant agrees in writing that the applicant is fully aware of all the risks inherent in the use of land subject to flooding, assumes those risks and agrees to indemnify and defend the municipality against any claims filed against it that are related to the applicant's decision to use land located in a floodplain and that the applicant individually releases the municipality from any claims the applicant may have against the municipality that are related to the use of land located in a floodplain.

G. Appeal Procedure for Administrative and Variance Appeals

1. An administrative or variance appeal may be taken to the Board of Appeals by an aggrieved party within thirty days after receipt of a written decision of the Code Enforcement Officer or Planning Board.
2. Upon being notified of an appeal, the Code Enforcement Officer or Planning Board, as appropriate, shall transmit to the Board of Appeals all of the papers constituting the record of the decision appealed from.
3. The Board of Appeals shall hold a public hearing on the appeal within thirty-five days of its receipt of an appeal request.
4. The person filing the appeal shall have the burden of proof.
5. The Board of Appeals shall decide all appeals within thirty-five days after the close of the hearing, and shall issue a written decision on all appeals.
6. The Board of Appeals shall submit to the Code Enforcement Officer a report of all variance actions, including justification for the granting of the variance and an authorization for the Code Enforcement Officer to issue a Flood Hazard Development Permit, which includes any conditions to be attached to said permit.
7. Any aggrieved party who participated as a party during the proceedings before the Board of Appeals may take an appeal to Superior Court in accordance with State laws within forty-five days from the date of any decision of the Board of Appeals.

ARTICLE X - ENFORCEMENT AND PENALTIES

- A. It shall be the duty of the Code Enforcement Officer to enforce the provisions of this Ordinance pursuant to Title 30-A MRSA § 4452.
- B. The penalties contained in Title 30-A MRSA § 4452 shall apply to any violation of this Ordinance.
- C. In addition to any other actions, the Code Enforcement Officer, upon determination that a violation exists, may submit a declaration to the Administrator of the Federal Insurance Administration requesting a denial of flood insurance. The valid declaration shall consist of;
 1. the name of the property owner and address or legal description of the property sufficient to confirm its identity or location;
 2. a clear and unequivocal declaration that the property is in violation of a cited State or local law, regulation, or ordinance;

3. a clear statement that the public body making the declaration has authority to do so and a citation to that authority;
4. evidence that the property owner has been provided notice of the violation and the prospective denial of insurance; and,
5. a clear statement that the declaration is being submitted pursuant to Section 1316 of the National Flood Insurance Act of 1968, as amended.

ARTICLE XI - VALIDITY AND SEVERABILITY

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

ARTICLE XII - CONFLICT WITH OTHER ORDINANCES

This Ordinance shall not in any way impair or remove the necessity of compliance with any other applicable rule, ordinance, regulation, bylaw, permit, or provision of law. Where this Ordinance imposes a greater restriction upon the use of land, buildings, or structures, the provisions of this Ordinance shall control.

ARTICLE XIII - DEFINITIONS

Unless specifically defined below, words and phrases used in this Ordinance shall have the same meaning as they have at common law and to give this Ordinance its most reasonable application. Words used in the present tense include the future, the singular number includes the plural, and the plural number includes the singular. The word "may" is permissive; "shall" is mandatory and not discretionary.

Accessory Structure - means a small detached structure that is incidental and subordinate to the principal structure.

Adjacent Grade - means the natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

Area of Special Flood Hazard - means the land in the floodplain having a one percent or greater chance of flooding in any given year, as specifically identified in the Flood Insurance Study cited in Article I of this Ordinance.

Base Flood - means the flood having a one percent chance of being equaled or exceeded in any given year, commonly called the 100-year flood.

Basement - means any area of the building having its floor subgrade (below ground level) on all sides.

Building - see **Structure**.

Certificate of Compliance - A document signed by the Code Enforcement Officer stating that a structure is in compliance with all of the provisions of this Ordinance.

Code Enforcement Officer - A person certified under Title 30-A MRS.A, Section 4451 (including exceptions in subsection 4451, paragraph 1) and employed by a municipality to enforce all applicable comprehensive planning and land use laws and ordinances.

Development - means any man made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation, drilling operations or storage of equipment or materials.

Elevated Building - means a non-basement building

- a. built, in the case of a building in Zones AE or A, to have the top of the elevated floor elevated above the ground level by means of pilings, columns, post, piers, or "stilts;" and
- b. adequately anchored so as not to impair the structural integrity of the building during a flood of up to one foot above the magnitude of the base flood.

In the case of Zones AE or A, **Elevated Building** also includes a building elevated by means of fill or solid foundation perimeter walls with hydraulic openings sufficient to facilitate the unimpeded movement of flood waters, as required in Article VI.L..

Elevation Certificate - An official form (FEMA Form 81-31, 03/09, as amended) that:

- a. is used to verify compliance with the floodplain management regulations of the National Flood Insurance Program; and,
- b. is required for purchasing flood insurance.

Flood or Flooding - means:

- a. A general and temporary condition of partial or complete inundation of normally dry land areas from:
 1. The overflow of inland or tidal waters.
 2. The unusual and rapid accumulation or runoff of surface waters from any source.
- b. The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in paragraph a.1. of this definition.

Flood Elevation Study - means an examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations.

Flood Insurance Rate Map (FIRM) - means an official map of a community, on which the Federal Insurance Administrator has delineated both the special hazard areas and the risk premium zones applicable to the community.

Flood Insurance Study - see **Flood Elevation Study**.

Floodplain or Flood-prone Area - means any land area susceptible to being inundated by water from any source (see flooding).

Floodplain Management - means the operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works, and floodplain management regulations.

Floodplain Management Regulations - means zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as a floodplain ordinance, grading ordinance, and erosion control ordinance) and other applications of police power. The term describes such state or local regulations, in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.

Floodproofing - means any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and contents.

Floodway - see **Regulatory Floodway**.

Floodway Encroachment Lines - mean the lines marking the limits of floodways on federal, state, and local floodplain maps.

Freeboard - means a factor of safety usually expressed in feet above a flood level for purposes of floodplain management. Freeboard tends to compensate for the many unknown factors, such as wave action, bridge openings, and the hydrological effect of urbanization of the watershed, that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions.

Functionally Dependent Use - means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities.

Historic Structure - means any structure that is:

- a. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- b. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary of the Interior to qualify as a registered historic district;
- c. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or
- d. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
 1. By an approved state program as determined by the Secretary of the Interior, or
 2. Directly by the Secretary of the Interior in states without approved programs.

Locally Established Datum - means, for purposes of this ordinance, an elevation established for a specific site to which all other elevations at the site are referenced. This elevation is generally not referenced to the National Geodetic Vertical Datum (NGVD), North American Vertical Datum (NAVD) or any other established datum and is used in areas where Mean Sea Level data is too far from a specific site to be practically used.

Lowest Floor - means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements described in Article VI.L. of this ordinance.

Manufactured Home - means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For floodplain management purposes the term manufactured home also includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than 180 consecutive days.

Manufactured Home Park or Subdivision - means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

Mean Sea Level - means, for purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929, North American Vertical Datum (NAVD) or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.

Minor Development - means all development that is not new construction or a substantial improvement, such as repairs, maintenance, renovations, or additions, whose value is less than 50% of the market value of the structure. It also includes, but is not limited to: accessory structures as provided for in Article VI.J., mining, dredging, filling, grading, paving, excavation, drilling operations, storage of equipment or materials, deposition or extraction of materials, public or private sewage disposal systems or water supply facilities that do not involve structures; and non-structural projects such as bridges, dams, towers, fencing, pipelines, wharves, and piers.

National Geodetic Vertical Datum (NGVD) - means the national vertical datum, whose standard was established in 1929, which is used by the National Flood Insurance Program (NFIP). NGVD was based upon mean sea level in 1929 and also has been called "1929 Mean Sea Level (MSL)".

New Construction - means structures for which the "start of construction" commenced on or after the effective date of the initial floodplain management regulations adopted by a community and includes any subsequent improvements to such structures.

North American Vertical Datum (NAVD)- means the national datum whose standard was established in 1988, which is the new vertical datum used by the National Flood Insurance Program (NFIP) for all new Flood Insurance Rate Maps. NAVD is based upon vertical datum used by other North American countries such as Canada and Mexico and was established to replace NGVD because of constant movement of the earth's crust, glacial rebound, and subsidence and the increasing use of satellite technology.

100-year flood - see **Base Flood**.

Recreational Vehicle - means a vehicle which is:

- a. built on a single chassis;
- b. 400 square feet or less when measured at the largest horizontal projection, not including slideouts;
- c. designed to be self-propelled or permanently towable by a motor vehicle; and
- d. designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

Regulatory Floodway -

- a. means the channel of a river or other water course and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot, and
- b. when not designated on the community's Flood Insurance Rate Map, it is considered to be the channel of a river or other water course and the adjacent land areas to a distance of one-half the width of the floodplain, as measured from the normal high water mark to the upland limit of the floodplain.

Riverine - means relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

Special Flood Hazard Area - see **Area of Special Flood Hazard**.

Start of Construction - means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, substantial improvement or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, or modification of any construction element, whether or not that alteration affects the external dimensions of the building.

Structure - means, for floodplain management purposes, a walled and roofed building. A gas or liquid storage tank that is principally above ground is also a structure.

Substantial Damage - means, damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damage condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

Substantial Improvement - means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the start of construction of the improvement. This term includes structures which have incurred substantial damage, regardless of the actual repair work performed. The term does not, however, include either:

- a. Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or
- b. Any alteration of a Historic Structure, provided that the alteration will not preclude the structure's continued designation as a historic structure, and a variance is obtained from the community's Board of Appeals.

Variance - means a grant of relief by a community from the terms of a floodplain management regulation.

Violation - means the failure of a structure or development to comply with a community's floodplain management regulations.

ARTICLE XIV - ABROGATION

This ordinance repeals and replaces any municipal ordinance previously enacted to comply with the National Flood Insurance Act of 1968 (P.L. 90-488, as amended).

60.3 (d) Rev. 4/09
Prepared by SPO/jpp
12/27/2010



LAND USE ORDINANCE

TOWN OF BENTON

1996

REVISED – March 1999
March 2000
March 2016

**TOWN OF BENTON
LAND USE ORDINANCE**

January, 1996

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APPENDIX: Fee Schedule

THE ENACTMENT OF THIS ORDINANCE DOES HEREBY REPEAL AND REPLACE THE FOLLOWING TOWN OF BENTON ORDINANCES:

- ! Minimum Setback Ordinance
- ! Land Use Permit Ordinance
- ! Signs Ordinance
- ! Board of Appeals
- ! Office of Code Enforcement

TOWN OF BENTON LAND USE ORDINANCE

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Town of Benton

Section I: Preamble

A. Authority

This Ordinance has been prepared in accordance with the provisions of Title 30-A, MRSA, as amended.

B. Title

This Ordinance and the accompanying Official Map shall be known and cited as the “Land Use Ordinance, Town of Benton, Maine.”

C. Purpose

The purpose of this Ordinance is to protect the health, safety, and general welfare of the residents of the Town of Benton through the reasonable exercise of regulatory authority, and to implement goals and objectives of the Benton Comprehensive Plan as adopted by the people on March 9, 1991, including:

1. To maintain Benton’s rural character by directing the majority of new housing growth to existing village centers;
2. To develop ordinance standards for village development which preserves the small town character of these areas;
3. To permit commercial and industrial development that fits Benton’s rural, small town character;
4. To discourage strip development and control curb cuts onto major roads;
5. To provide or ensure the availability of required municipal services in an efficient and cost-effective manner;
6. To provide in-depth, coordinated review of all development proposals to ensure that developments are planned and constructed in an environmentally sound manner; and
7. To encourage a pattern of community growth which ensures that new development is compatible with existing land uses.

D. Applicability

This Ordinance shall not limit or control the pursuit of any land use activity legally existing at the time of its enactment, *except* the expressed limitations specifically provided for in sections VIII, B.2 and IX, C.5.

It is the intent of this Ordinance to regulate only new land development activity and such expansions of existing activity as could pose a threat to the future welfare of the citizens of the Town of Benton.

E. Jurisdiction

The provisions of this Ordinance shall govern land development activities within the boundaries of the Town of Benton.

F. Rules of Construction

Captions and headings within this Ordinance are intended to form a part of the Ordinance and to be utilized in determination the meaning and applicability of the sections they identify.

G. Conflict with other Ordinance

This Ordinance is intended to be used in combination with the other ordinances adopted by the Town of Benton. In circumstances where the provisions of two or more ordinance are similar or conflicting, the town shall enforce the provisions which are more restrictive.

H. Severability

In the event of an authoritative finding that a provision of this Ordinance is invalid, the validity of the remaining provisions shall not be affected.

Section II: Definitions

A. Construction of Language

In the interpretation and enforcement of this Ordinance, all words other than those specifically defined in the Ordinance shall have the meaning implied by their context in the Ordinance or their ordinarily accepted meaning. In the case of any difference of meaning or implication between the text of this Ordinance and any map, illustration, or table, the text shall control.

The word “person” includes firm, association, organization, partnership, trust, company, or corporation, as well as an individual or any other legal entity.

The words “shall” and “will” are mandatory, the word “may” is permissive.

The words “used” or “occupied”, as applied to any land or building, shall be construed to include the meaning of intended, arranged, or designed to be used or occupied.

The words “town” or “municipality” means the Town of Benton, Maine.

B. Definitions

In this Ordinance the following terms shall have the following meanings:

Accessory Use or Structure: A use or structure which is customarily and in fact both incidental and subordinate to the principal use of the structure. The term “incidental” in reference to the principal use or structure shall mean subordinate and minor in significance to the principal use or structure. Accessory uses, when aggregated, shall not subordinate the principal use of the lot.

Agriculture: The production, keeping, or maintenance for sale or lease, of plants and/or animals, including but not limited to: forages and sod crops; grains and seed crops; dairy animals and dairy products; poultry and poultry products; livestock; fruits and vegetables; and ornamental and green house products. Agriculture does not include forest management and timber harvesting activities.

Alteration: Any change, addition, or modification to the structural members of buildings such as bearing walls, columns, beams or girders, at a cost exceeding \$500. Cosmetic or decorative improvements are not alterations.

Alternative Tower Structure: Means clock towers, bell steeples, light poles and water towers and similar alternative-design mounting structures.

Amusement Facility: Any private, commercial premises which are maintained or operated primarily for the amusement, patronage, or recreation of the public, containing four (4) or more table sports, pinball machines, video games, or similar mechanical or electronic games, whether activated by coins, tokens, or discs, or whether activated through remote control by the management.

Antenna: Means the system of any poles, panels, rods, reflecting disc or similar devices used for the transmission or reception of electromagnetic frequency signals.

Antenna Height: Means the vertical distance measured from the base of the antenna support structure at grade to the highest point of the structure, even if said height is the antenna. Measurement of tower height shall include antenna, base pad and appurtenances and shall be measured from the finish grade of the facility site. If the support structure is on a sloped grade, then the average between the highest and lowest grades shall be used in calculating the antenna height.

Area of Special Flood Hazard: The land in the floodplain having a one percent or greater change of flooding in any given year.

Arterial: The following roads are arterials: Route 139, Route 100/11, Route 139/100/11 and Route 100A.

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

Automobile Graveyard: A yard, field, or other area used as a place of storage, other than temporary storage by a business engaged primarily in doing repair work to render a motor vehicle serviceable, for three or more unserviceable, discarded, worn out or junked motor vehicles, bodies, or engines thereof are gathered together including, but not limited to, automobiles, trucks, and/or tractors.

Automobile Repair: A place where any of the following services may be rendered on a commercial basis: general repair, engine rebuilding, rebuilding or reconditioning of motor vehicles, collision service, such as body, frame, or fender straightening and repair; over-all painting and under-coating of automobiles.

Basement: The enclosed area underneath a structure, typically having a masonry floor and walls which comprise the structure's foundation. The clear height up to the joists supporting the floor directly above is three feet or greater.

Bed and Breakfast: A home occupation which involves the provision for compensation of lodging facilities consisting of no more than five (5) rooms and the service of a morning meal.

Boarding/lodging: Any residential structure where lodging or lodging and meals are provided for compensation for a period of at least two (2) weeks, and where a family residing in the building acts as proprietor or owner. There is no provision for cooking in any individual room.

Body of Water: Shall include the following:

Pond or Lake: Any inland impoundment, natural or manmade, which collects and stores surface water.

Stream or River: A free flowing drainage outlet, with a defined channel and flowing water for more than three (3) months during the year.

Buffer Area: A vegetated yard area consisting of arboreal, shrub, and/or grassy vegetation intended for the purpose of reducing impacts of incompatible, neighboring uses.

Building: Any structure having a roof supported by columns or walls for the housing or enclosure of persons, animals, or personal property.

Building Height: The vertical distance measured between the average finished grade of the ground at the front of a building and the highest point of the roof, not including chimneys, spires towers, or similar accessory structures.

Business Sign: An attached or freestanding structure which directs attention to a business or profession conducted on that premises.

Campground: Any area or tract of land to accommodate temporary living quarters, including, but not limited to tents, recreational vehicles, or other shelters for which a fee is charged.

Change of Use: A change from one category in the land use table to another or the addition of a new category of use to an existing use.

Club: Any association of person organized for social, religious, benevolent, or academic purposes; whose facilities are open to members and guests including fraternities, sororities, and social organizations.

Code Enforcement Officer (CEO): A person appointed by the Municipal Officers to administer and enforce this Ordinance. Reference to the Code Enforcement Officer is intended to include references to Building or Plumbing Inspectors.

Co-Location: Means the use of wireless telecommunications facility by more than one wireless telecommunications provider.

Commercial Mobile Services: Any mobile service that is provided for the profit and makes interconnected service available to the public or to such classes of eligible users as to be effectively available to a substantial portion of the public, as specified by FCC regulations.

Commercial Recreation: Any commercial enterprise which receives a fee in return for the provision of some recreational activity including but not limited to: racquet clubs, health facility and amusement parks, but not including amusement centers.

Commercial Use: The utilization of property or facilities for the purpose of receiving compensation for goods or services rendered.

Conditional Use: A development activity which, if conducted without restriction, would have the capacity to adversely affect neighboring property and the public at large, and which therefore must be allowed only with review and approval of the planning board. More specifically, a conditional use is one which is listed within the district requirements in Section VII of this Ordinance.

Conditional Use Permit: A permit authorized by the Planning Board for a Conditional Use. A Conditional Use Permit may be issued only after the applicant has followed the procedures of this Ordinance.

Congregate Housing: A multi-family development with central dining facilities serving functionally impaired persons.

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

Contiguous: Lots which share a common lot line or any portion thereof, including a single point.

Cosmetic or Decorative Improvements: Repainting or re-siding; removing or replacing trim, railings, or other non-structural architectural details; or the addition, removal or change of location of windows and doors.

Creative Development: A development pattern authorized by Section IX, B. of this ordinance, which is designed to promote the creation of open space by a reduction in dimensional and area requirements.

Day Care Center: An establishment, including a private residence, where three or more children under the age of six (6) are cared for in return for compensation.

Deck: An uncovered structure with a floor, elevated above ground level.

Development: Engineering or construction activity (excluding design) which is intended to render the land more valuable or more suited to a proposed use.

Dimensional Requirements: Numerical standards relating to spatial relationships including but not limited to setbacks, lot area, frontage, and height.

District: A specified portion of the municipality, delineated on the Official Land Use Map, within which certain regulations and requirements or various combinations thereof apply under the provisions of this Ordinance.

Driveway: A vehicular access-way less than five hundred (500) feet in length serving two (2) lots or less, or serving a commercial enterprise.

Dwelling: A room or group of rooms designed and equipped exclusively for use as permanent, seasonal, or temporary living quarters. The term shall include mobile homes, but not recreational vehicles or travel trailers.

Single-Family Dwelling: A building containing only one (1) dwelling unit for occupation by not more than one (1) family.

Two-Family Dwelling: A building containing only two (2) dwelling units, for occupation by not more than two (2) families.

Multi-Family Dwelling: A building containing three (3) or more dwelling units, such building being designed for residential use and occupancy by three (3) or more families living independently of one another; with the number of families not exceeding the number of dwelling units.

Dwelling Units: A room or suite of rooms located within a dwelling and designed and equipped exclusively for use by one family as a habitation and which contains independent living, cooking, sleeping, bathing and sanitary facilities. The term includes manufactured housing, but not recreational vehicles or hotel/motel units.

Expansion: In relation to a building, expansion shall mean: enlargement of floor area, or enlargement of building enclosure. In relation to use: the addition of weeks or months to a business operation season; the addition of hours to a business day; the use of more floor area or ground area; or the provision of additional seating capacity. In relations to wireless telecommunication facilities: expansion shall mean the addition of antennas, towers or other devices to an existing structure.

FAA: Means the Federal Aviation Administration, or its lawful successor.

FCC: Means the Federal Communication Commission, or its lawful successor.

Family: One or more persons occupying a premises and living as a single housekeeping unit.

Floodplain: The lands adjacent to a body of water which have been or may be covered by the base flood.

Foundation: The supporting substructure of a building or other structure including but not limited to basements, slabs, sills, posts or frostwalls.

Front Lot Line: The boundary line of the property which abuts a public right-of-way or qualifying private access. In the event that two (2) lot lines abut a public right-of-way, the longer line shall be considered the front lot line.

Frontage: The horizontal distance, measured in a straight line, between the intersections of the side lot lines with the front lot line.

Gasoline Service Station: A place where gasoline, or any other automobile engine fuel, kerosene, or motor oil and lubricants or grease are retailed directly to the public on the premises.

Height, Wireless Telecommunication Facility: The distance measured from the ground to the highest point on the tower or other structure even if the highest point is an antenna.

Home Occupation: An occupation or profession which is customarily conducted on or in a residential structure or property and which is 1) clearly incidental to and compatible with the residential use of the property and surrounding residential use; and 2) which employs no more than two (2) persons other than family members residing in the home.

Hospital: An institution providing, but not limited to, overnight health services, primarily for in-patients, and medical or surgical care for the sick or injured, including as an integral part of the institution such related facilities as laboratories, out-patient departments, training facilities, central services facilities, and staff offices.

Hotel/motel: A building in which lodging or meals and lodging are offered to the general public for compensation on a short-term basis. The use may include such accessory services and facilities as newsstands, personal grooming facilities and restaurants.

Interconnected Services: Means the service that is interconnected with the public switched network (as such terms are defined by regulation by the FCC) or service for which a request for interconnections is pending.

Junkyard: A yard, field, or other area used as place of storage for: 1) Discarded, worn-out, junked plumbing, heating supplies, household appliances, and furniture; 2) Discarded, scrap, and junked lumber; 3) Old or scrap cooper, brass, rope, rags, batteries, paper trash, rubber debris, plastic debris, waste, and all scrap iron, steel, and other scrap ferrous or non-ferrous materials, or 4) Garbage dumps, waste dumps, and sanitary landfills.

Kennel: Any place, building, tract of land, abode, enclosure, or vehicle where three (3) or more dogs or three (3) or more cats, owned singly or jointly are kept for any purpose, including but not limited to breeding, hunting, show, field trials or exhibition, or where one (1) or more dogs or other pets are kept for their owners in return for a fee. This inclusion shall not apply to dogs or cats under the age of six (6) months.

Lot: A parcel of land occupied or capable of being occupied by one (1) building and the accessory buildings or uses customarily incidental to it, including such open spaces as are required by this Ordinance, and having frontage upon a public street, right-of-way or private way.

Lot Area: The area of land enclosed within the boundary lines of a lot, minus land below the normal high-water line of a water body or upland edge of a wetland and areas beneath public or private right-of-way.

Lot Coverage: The percentage of the lot covered by all buildings.

Lot of Record: A parcel of land, a legal description of which or the dimensions of which are recorded on a document or map in the Kennebec County Registry of Deeds.

Lot Width: The closest distance between the side lot lines of a lot.

Manufacturing Housing: Structures, transportable in one or two sections, which constructed

in a manufacturing facility and transported to a building site and designed to be used as dwellings when connected to the required utilities, including the plumbing, heating, air conditioning and electrical systems contained therein.

Manufacturing: The making of goods and articles by hand or machinery, which shall include assembling, fabricating, finishing, packaging or processing operations.

Minimum Lot Area (lot size): The land area required for any lot created within the jurisdiction of this ordinance, excepting boundary adjustments. Lot area calculated for the minimum shall include the deductions cited in the definition of Lot Area, above.

Mobile Home Park: A plot of land designed and/or used to accommodate *three* (3) or more manufactured housing units, which is under the ownership of a single person.

Mobile Service: Radio communication service conducted between mobile stations or receivers and land stations, and by mobile stations communicating among themselves, and includes both one-way radio communication services; a mobile service which provides a regular interacting group of base, mobile, portable and associated control and relay stations (whether licensed on an individual, cooperative, or multiple basis) for private one-way or two-way land mobile communications by eligible users over designated areas of operation; and any service for which a license is required in a personal; communications service.

Neighborhood Convenience Store: A store of less than 1,500 square feet of floor space intended to service the convenience of a residential neighborhood with such items as, but not limited to, basic foods, newspapers, emergency home repair articles, and other household items.

Non-Conforming Use: Use of buildings, structures, premises, land or parts thereof which is not permitted in the District in which it is situated or which does not meet the performance standards prescribed for it by this Ordinance, but which is allowed to remain solely because it was in lawful existence at the time this Ordinance or subsequent amendments took effect.

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

Non-Conforming Lot of Record: A lot shown on a plan or deed recorded prior to the effective date of this Ordinance or amendment which, does not meet the area, frontage, width or depth requirements of the District in which it is located.

Nursing Home: Any facility which provides meals, lodging and nursing care for compensation.

Official Business Directional Sign (OBDS): A sign erected and maintained in accordance with the Maine Traveler Information Services Act, 23 MRSA Section 1901, et seq. Which points the way to public accommodations and facilities or other commercial facilities.

Official Land Use Map: Also referred to as “Official Map.” A map adopted as part of this ordinance which shows the location of district boundaries. The Official Map shall have the same force and effect as this ordinance, except that in case of conflict or uncertainty, the boundary description in the text shall rule.

Open Space: Land left substantially in its natural state.

Open Space Use: A use not involving a structure, earth-moving activity, or the removal or destruction of vegetative cover, spawning grounds, or fish, aquatic life, bird and other wildlife habitat.

Parabolic Antenna: An antenna which is bowl shaped, designed for the reception and/or transmission of an electromagnetic radiation signals in a specific directional pattern. It is also commonly referred to as a satellite dish.

Parking Space: An area, exclusive or drives or aisles, used for the parking of vehicles.

Parks and Recreation: Non-commercially operated recreation facilities open to the general public including, but not limited to playgrounds, parks, monuments, green strips, open space, mini-parks, athletic fields, boat launching ramps, piers and docks, picnic grounds, swimming pools, and wildlife and nature preserves, along with any necessary accessory facilities, rest rooms, bath houses, and the maintenance of such land and facilities, but not including campgrounds, commercial recreation and amusement centers as designed elsewhere in the Ordinance.

Passive Recreation: Outdoor recreational activities which involve no structural or mechanical components or facilities, such as hiking, fishing, hunting, etc.

Personal Wireless Service Facilities: Facilities for the provision of personal wireless services.

Personal Wireless Services: Commercial mobile services, for the provision of personal wireless services.

Principal Structure: The building other than one which is used for purposes wholly incidental or accessory to the use of another building or use on the same premises.

Principal Use: The primary use other than one which is wholly incidental or accessory to another use on the same premises. A lot may have more than one principal use.

Private Road: A private way meeting the Town’s road construction requirements for preparation, sub-base, and base as specified herein.

Professional Offices: The place of business for doctors, lawyers, accountants, architects, surveyors, psychiatrists, psychologists, counselors, but not including financial institutions or personal services.

Recreational Facility: A place designed and equipped for the conduct of sports, leisure time activities, and other customary and usual recreational activities, excluding boat launching facilities.

Recreational Vehicle: A vehicle or an attachment to a vehicle designed to be towed, and designed for temporary sleeping or living quarters for one or more persons, and which may include a pick-up camper, travel trailer, tent trailer, camp trailer, and motor home.

Residential Use: Any land use which includes a dwelling unit.

Restaurant: An establishment where meals are prepared and served to the public for consumption for compensation.

Standard Restaurants: A business involving the preparation and serving of meals for consumption on the premises, requiring moderate amounts of time between the period of ordering and serving of the meal.

Fast Food Restaurant: A business involving the preparation and serving of meals for consumption on the premises or off the premises, normally requiring short amounts of time between the period of ordering and serving of the meal which is served in edible or disposable containers.

Drive-In Restaurant: A business involving the preparation and serving of meals for consumption on the premises in a motor vehicle or off the premises, normally requiring short amounts of time between the period of ordering and serving.

Retail Business: A commercial use in which the principal source of income is the sale of goods to the general public.

River: The Kennebec and Sebasticook Rivers and related impoundments and wetlands.

Schools: Public and Private - including Parochial School: An institution for education or instruction where any branch or branches of knowledge is imparted and which satisfied either of the following requirements:

- a) The school is not operated for a profit or a gainful business; or
- b) The school teaches courses of study which are sufficient to qualify attendance thereby in compliance with State compulsory education requirements.

Commercial School: An institution which is commercial or profit-oriented. Examples thereof are dancing, music, riding, correspondence, aquatic schools, driving or business.

Service Business: A commercial use in which the principal source of income is the provision of labor for compensation. The term shall include professional as well as contracted services and shall refer to the location of the principal office of the service provider, in the case of services performed off the premises.

Setback: The horizontal distance from a lot line to the nearest part of a structure, road, parking space, or other regulated object or area.

Setback Road: The horizontal distance from the road right of way to the nearest part of a structure.

Shopping Center: A grouping of three (3) or more retail or service businesses on a single lot or within a single building. For the purpose of this definition, a business is considered a separate business if it has an entrance door distinct from the other businesses.

Signs: A display surface, fabric or device containing organized and related elements (letter, pictures, products, or sculptures) composed to form a single unit, designed to convey information visually and which is exposed to the public view. In cases where matter is displayed in a random or unconnected manner without an organized relationship, each such component shall constitute a sign.

Sign Area: The area enclosed by the smallest geometric figure which encompasses the organized and related elements of a sign. A sign which has elements on both sides shall be considered to have two (2) sign areas.

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 waterbody or wetland within a shoreland zone.

Structure: Anything built for the support, shelter or enclosure of persons, animals, goods or property of any kind, together with anything constructed or erected with a fixed location on or in the ground, exclusive of fences. The term includes structures temporarily or permanently located, such as decks and satellite dishes, but not including signs, sidewalks, fences, patios, driveways, and parking lots.

Substantial Expansion: Floorspace increase of 25% or new materials or processes not normally associated with the existing use.

Substantial Improvement: Any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50% of the market value of the structure either before the improvement or repair is started or, if the structure has been damaged and is being restored before the damage occurred. For purposes of this definition “substantial improvement” is considered to occur when the first alteration of any wall, ceiling, floor, or structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term does not, however, include any project for improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions or for any alteration of a structure listed on the National Register of Historical Places or a State Inventory of Historical Places.

Subdivision: The division of a tract or parcel of land as defined in Title 30-A, MRSA, Section 4401, and in the Benton Subdivision Ordinance.

Subsurface Wastewater Disposal System: A collection of treatment tank(s), disposal area(s), holding tank(s), alternative toilet(s), or other devices, and associated piping designed to function as a unit for the purpose of disposing of wastewater in the soil. The term shall not include any wastewater discharge system licensed under Title 38 MRSA Section 414, any surface wastewater disposal system licensed under Title 38 MRSA Section 412 Subsection 1-A, or any public sewer. The term shall not include a wastewater disposal system designed to treat wastewater which is in whole or in part hazardous waste as defined in Title 38 MRSA Chapter 13, subchapter 1.

Timber Harvesting: The cutting and removal of trees from their growing site, and the attendant operation of cutting and skidding machinery but not the construction or creation of roads. Timber harvesting does not include the clearing of land for approved construction.

Tower: Any structure, whether freestanding or in association with a building or other permanent structure, that is designed and constructed primarily for the purposes of supporting one or more antennas, including self-supporting lattice towers, guy towers, or monopole towers. The term includes radio and television towers, microwave towers, common-carrier towers, cellular telephone towers, alternative tower structures, and similar structures.

Trailers: A vehicle without motive power, designed to be towed by a motor vehicle, but not designed for human occupancy, and which may include a utility trailer, boat trailer, horse trailer, or snowmobile trailer.

25-year Storm: A storm in which the 24-hour accumulation of rainfall is the greatest which can be expect in a single event within a 25 year period. The chances of a 25-year storm occurring in any given year are 1 in 25 (4 percent).

Undue Hardship: A condition necessary for the granting of a variance by the Board of Appeals. A finding of “undue hardship” must be based on an affirmative finding on all of the criteria listed at Title 30-A, MRSA section 4353.4.

Unlicensed Services: The offering of telecommunication services using duly authorized devices which do not require individual licenses, but does not mean the provision of direct-to-home satellite services.

Variance: A variance is a relaxation of the terms of this Ordinance. Variances permissible under this Ordinance are limited to dimensional and area requirements. No variance shall be granted for the establishment of any use otherwise prohibited, nor shall a variance be granted because of the presence of non-conformities in the immediate or adjacent areas.

Vehicle Sales: Any business which involves a parking or display area for the sale of new or used cars, trucks, motorcycles, campers, farm equipment, recreational vehicles, mobile homes, or similar products.

Veterinary Hospital or Clinic: A building used for the diagnosis, care and treatment of ailing or injured animals which may include overnight accommodations. The overnight boarding of healthy animals shall be considered a kennel.

Wireless Telecommunication Facility: Any structure, antenna, tower or other device which provides radio/television transmission, commercial mobile wireless services, unlicensed wireless services, cellular phone services, specialized mobile radio communications (SMR) common carrier wireless exchange phone service, specialized mobile radio communications (SMR) common carrier wireless exchange access services, and personal communications service (PCS) or pager services. Wireless telecommunications facility shall not include any of the following:

- a) Amateur ham radio stations licensed by the FCC.
- b) Parabolic antennas less than seven (7) feet in diameter, that are an accessory use of the property.
- c) Temporary wireless telecommunication facility, in operation for a maximum period of 180 days.
- d) An antenna that is an accessory to a residential dwelling unit and is less than 20 feet above the roof peak or less than 45 feet above grade.

Yard: The area between a structure and the property boundary.

Section III: Administration, Enforcement and Fees

A. Administrative Body

The provisions of this ordinance shall be administered by the Benton Planning Board, as established by Ordinance 10-1 (1985 Revision).

B. Land Use Requirements

Except as hereinafter specified, no land shall hereafter be developed, and no building or structure or part thereof shall hereafter be erected, constructed, moved, or altered in use or design, and no new lot shall be created, unless in conformity with all of the applicable regulations herein.

C. Permit Requirements

A Land Use Permit shall be obtained prior to the commencement of construction or placement of any structure within the Town of Benton, *except for* repairs and/or normal maintenance not requiring structural elements, decorative changes in existing structures or buildings, or structures/additions that exceed the dollar value as stated in the fee schedule, and which would otherwise conform to the provisions of this Ordinance.

D. Permit Application

1. Every applicant for a permit shall submit a written application. The application will include the following information, except when the Code Enforcement Officer determines that it is not necessary:
 - a. The name and address of the property owner.
 - b. The name, address, and telephone number of the person, firm, or firms involved in the construction on the property.
 - c. The value of the proposed construction.
 - d. A statement of the proposed use for any new or moved structure or altered portion of an existing structure.
 - e. Any other information deemed necessary by the Code Enforcement Officer to determine whether the proposed construction will conform to this Ordinance, other local ordinances and state law.
 - f. If the property is not served by a public sewer a valid plumbing permit, including the site evaluation approved by the plumbing inspector, shall be submitted.
 - g. For structures to be erected, structures to be moved, and exterior additions to existing structures:

- i. The shape, size, and location of the lot for which application is made.
 - ii. The shape, size, and location on the lot of the proposed structure or additions, precisely located and noted as to distances and dimensions.
 - iii. The shape, size, and location of any other existing structures on the lot.
 - iv. The approximate location of adjacent structures on adjacent lots, with reference to the distance from the lot line.
 - h. A certification that the information in the application is complete and correct to the best of the applicant's knowledge and belief.
2. Applications must include a non-refundable fee paid in accordance with a fee schedule established by this ordinance, and may not be altered or waived except by vote of a town meeting.
3. All applications shall be signed by the property owner or the owner's authorized agent.
4. All applications shall be dated, and the Code Enforcement Officer shall note upon each application the date received at his/her office.
5. Upon receipt of a permit application the Code Enforcement Officer (CEO) shall:
 - a. Decide whether the information in the application is sufficient to determine whether, under this Ordinance, the permit should be issued, or if the application is other wise inadequate. If the application is insufficient or inadequate, the CEO shall at once notify the applicant in written, including what necessary information is required to correct the application. If the application is not so corrected, it shall be denied.
 - b. Determine whether an application is satisfactory. An application is satisfactory if it is a permitted use within the district in which it is located, if it conforms to the provisions of this Ordinance and other codes and ordinances of the town, and if it is accompanied by the required fee. If the application is satisfactory, the CEO shall within ten (10) days of its receipt issue the permit, notify the Tax Assessor, and file a copy of the application/permit in a permanent file in the town office.
 - c. If the application is unsatisfactory, within ten (10) days deny the permit in writing, stating therein the reasons for such denial.
 - d. If the application requires a review by other authorities or boards, refer the application to the appropriate authority or board for review, approval, or denial. Upon the receipt of the decision of the reviewing authority or board, in writing, and if such decision is an approval, the Code Enforcement Officer shall issue the permit with any conditions prescribed by the reviewing authority or board.
 - e. No construction shall commence until the applicant demonstrates that he has obtained all necessary permits, e.g. plumbing permits, road opening permits.

6. The Code Enforcement Officer shall deny any Land Use Permit if he has knowledge that a particular structure would be located in an unapproved subdivision, and/or if the structure would be in apparent violation of a particular State law for which the municipality has enforcement responsibilities, or local ordinance.
7. Following the issuance of a permit, if no substantial start is made on the construction within two (2) years of the date of the permit, it shall lapse and become void. Thereafter no further work on such construction can be made until a new application has been made and approved as aforesaid. A complete submission may be waived for renewing lapsed permits.
8. Any permit issued which is not in conformity with the provisions of this Ordinance confers no rights and is void.

E. Code Enforcement Officer

1. There is hereby created the officer of Code Enforcement Officer, who shall be appointed by the Municipal Officers for a definite term.
2. No Municipal Officer, Planning Board member, or member of the Board of Appeals may serve as Code Enforcement Officer, except on an interim basis.
3. It shall be the duty of the Code Enforcement Officer to:
 - a. Enforce all provisions of this Ordinance, Shoreland Zoning Ordinance and Floodplain Management Ordinance.
 - b. Assist in the enforcement of all State statutes and regulations relating to the erection, placement or alteration of structures, and the alteration of land or water bodies, including without limitation: 12 M.R.S.A. 4807, Minimum Lot Size, 30-A M.R.S.A., Junk Yards, 38 M.R.S.A., 481 et seq., Site Location Law, 38 M.R.S.A., Chapter 13, Solid Waste Management Act.
 - c. Enforce or assist in the enforcement of other ordinances of the Town of Benton.
 - d. Conduct inspections as frequently as may be necessary to insure compliance with Town Ordinances and State laws.
 - e. Advise applicants as to whether additional approval is required by other municipal officials or by State agencies and the procedures necessary to obtain such approval.
 - f. Keep a complete record of transactions relating to his/her office.
4. The Code Enforcement Officer shall transfer all fees collected by him/her to the Town Treasurer within fifteen (15) days of receipt.
5. The compensation of the Code Enforcement Officer shall be as determined by the Annual Town Meeting.

6. The Code Enforcement Officer shall obtain and maintain the necessary state certifications, and shall act as Plumbing Inspector, with all the powers and duties connected with that office.
7. The Code Enforcement Officer shall have the power to order all work stopped on construction or alteration or repair of buildings in the Town when such work is being done in violation of any Ordinance relating thereto.
8. Any final decision of the Code Enforcement Officer in the enforcement of this ordinance may be appealed to the Board of Appeals. The appeal must be filed within thirty (30) days of the date of the action.

F. Legal Action and Violations

When any violation of any provision of this Ordinance shall be found to exist, the Municipal Officers, upon notification from the Code Enforcement Officer, are hereby authorized and directed to institute any and all actions and proceedings, either legal or equitable, which may be appropriate or necessary to enforce the provisions of this Ordinance in the name of the town.

H. Fines

Any person, firm or corporation being the owner, contractor or having control or use of any structure or premises who violates any of the provisions of this Ordinance shall upon conviction be fined in accordance with provisions of 30-A, MRSA, 4452. Each day such violation is permitted to exist after notification shall constitute a separate offense. Fines shall be payable to the town General Fund.

Section IV: Non-conformance (Grandfathering)

A. Defined

1. **Non-Conformance** is the status or condition of land or structures which exists and is legal prior to the enactment of this Ordinance, but which would not be legal if commenced after the effective date of this Ordinance.
2. **Non-Conforming Use:** Use of buildings, structures, premises, land or parts thereof which is not permitted in the District in which it is situated or which does not meet the performance standards prescribed for it by this Ordinance, but which is allowed to remain solely because it was in lawful existence at the time this Ordinance or subsequent amendments took effect.
3. **Non-Conforming Structure:** A structure which does not meet any one or more of the following dimensional requirements; setback, height, or lot coverage, but which is allowed solely because it was in lawful existence at the time this Ordinance or subsequent amendments took effect.
4. **Non-Conforming Lot of Record:** A lot shown on a plan or deed recorded prior to the effective date of this Ordinance or amendment which, does not meet the area, frontage, width or depth requirements of the District in which it is located.

B. General

1. Continuation:

Any non-conforming use or non-conforming structure may continue to exist but may not be extended, reconstructed, enlarged, or structurally altered except as specified in this section.
2. Transfer of Ownership:

Non-conforming structures, non-conforming lots of records, and non-conforming uses may be transferred, and the new owner may continue the non-conforming use or continue to use the non-conforming structure or lot, subject to the provisions of this section.
3. Routine Maintenance:

This Ordinance allows the normal upkeep and maintenance of non-conforming uses and structures; repair, renovation. Or modernization which does not involve expansion of the non-conforming use or structure and which cost less than 25 percent of the market value of the structure before such work is started; and such other changes in a non-conforming use or structure as Federal, State, or local building and safety codes may require.

4. Restoration:

Any non-conforming use or structure which is hereafter damaged or destroyed by fire or any cause other than the willful or reckless act of the owner or their agent, may be restored or reconstructed within two (2) years of the date of said damage or destruction, provided that:

- a) The non-conforming dimensions of any restored or reconstructed structure shall not exceed the non-conforming dimensions of the structure it replaces;
- b) Any non-conforming structure shall not be enlarged except in conformity with this Ordinance and the Maine State Subsurface Wastewater Disposal Rules: and
- c) Any non-conforming use shall not be expanded in area.

Nothing in this section shall prevent the demolition of the remains of any building so damaged or destroyed.

5. Expansion of Non-conforming Commercial or Industrial Uses or Structures:

- a) A non-conforming, existing commercial or industrial use or structure may be expanded if it does not produce an unreasonable adverse impact on surrounding properties.
- b) An application for expansion shall be considered using the same criteria and procedures as a conditional use permit, Section V.

C. Non-Conforming Use

1. Resumption Prohibited:

A lot, building, or structure in or on which non-conforming use is discontinued for a period exceeding two (2) years or which is superseded by a conforming use, may not again be devoted to a non-conforming use, even if the owner has not intended to abandon the use.

2. A Structure Non-Conforming As To Use:

Except single-family dwellings, a structure which is devoted to a non-conforming use shall not be enlarged unless the non-conforming use is terminated.

- a) Single family dwellings in the Industrial District may be enlarged as long as the dimensional requirements of the district are met.
- b) A non-conforming use or part of a building or structure shall not be extended throughout other parts of the building or structure unless those parts of the building or structure were manifestly arranged or designed for such use prior to the adoption of this Ordinance, or of any amendment making such use non-conforming.

- c) Lack of Required Parking or Loading Space: A building or structure which is non-conforming as to the requirements for off-street parking and/or loading space shall not be enlarged, added to, or altered unless off-street parking and/or loading space is provided to bring it into conformance with these requirements, for both the addition or alteration and for the original building or structure.

3. Change of Use:

An existing non-conforming use may be changed to another non-conforming use provided that the proposed use is equally or more appropriate to the district than the existing non-conforming use, and the impact on adjacent properties is less adverse than the impact of the former use.

- a) The board of appeals is responsible for approving changes under this section. The case shall be heard as an administrative appeal.
- b) The determination of less impact shall require written findings on the probable changes in traffic (volume and type), parking, noise, potential for litter, wastes or by-products, fumes, odors, or other nuisances likely to result from such change of use.
- c) The performance standards of this Ordinance shall apply to such requests to establish new non-conforming uses.

4. Land Use Activity:

A non-conforming use of land may not be extended into any part of the remainder of a lot of land. A non-conforming use of land which is accessory to a non-conforming use of a building shall be discontinued at the same time the non-conforming use of the building is discontinued.

In the case of earth removal operations, the removal of earth may not be extended as a non-conforming use beyond the set-back lines of the parcel upon which such operations were in progress, as required by the performance standards established in section IX, C.4. Contiguous parcels that were under the same ownership prior to the enactment of this Ordinance may be utilized under the same restriction.

The provision of required off-street parking for an existing non-conforming use shall not be considered expansion of the use.

D. Non-Conforming Structures

1. Expansions Limited:

A non-conforming structure shall not be added to or enlarged unless: such addition or enlargement conforms to all the regulations of the district in which it is located; the addition does not increase the non-conformity of the structure; or a variance is obtained.

2. Special Cases:

- a) The addition of an open patio with no structures elevated above ground level shall not constitute the expansion of a non-conforming structure.
- b) The addition of steps or the enclosure of an existing deck shall not constitute the expansion of a non-conforming structure.
- c) The addition of a deck shall constitute the expansion of a non-conforming structure and shall meet all the dimensional requirements of this Ordinance.
- d) The placing of a foundation below a non-conforming structure shall not constitute the expansion of the structure as long as the first floor space of the structure is not increased.
- e) Notwithstanding (d), above, construction or expansion of a foundation under an existing dwelling which expands habitable space shall be considered an expansion subject to the State plumbing statutes and code requiring documentation of wastewater disposal capabilities.

E. Non-Conforming Lots of Record

1. Development:

- a) A vacant non-conforming lot may have built upon provided that such lot is not contiguous with another vacant non-conforming lot in the same ownership, and that all provisions of this Ordinance except lot size and frontage can be met. Variance of setback or other requirements not involving area or frontage shall be obtained only by action of the Board of Appeals.
- b) A non-conforming lot built upon prior to the enactment or subsequent amendment of this Ordinance is subject to the following restrictions:
 - i The structure(s) may be repaired, maintained, or improved.
 - ii The structure(s) may be enlarged in conformity with all dimensional requirements of this Ordinance except lot area or frontage.
 - iii Enlargement of structure(s) which cannot meet the requirements of this Ordinance shall be permitted only through a variance granted by the Board of Appeals.

2. Transfer:

- a) **Contiguous Built Lots:** If two or more contiguous and non-conforming lots or parcels have the same ownership of record on the effective date of this Ordinance, and if a principal structure exists on each lot, the lots may be conveyed separately or together, providing the State Minimum Lot Size Law and Subsurface Wastewater Disposal Rules are complied with.
- b) **Multiple Use:** If two or more principal structures existed on a single lot of record on the effective date of this Ordinance, rights to each structure may be conveyed separately.
- c) **Contiguous Lots - Vacant or Partially Built:** If two or more contiguous and non-conforming lots or parcels have the same ownership of record on the effective date of this Ordinance, and if the lots are vacant or contain only an accessory structure, the lots shall be combined to the extent necessary to meet the dimensional standards, except where rights have vested, or the lots have frontage on parallel streets.

F. Vested Rights

Grandfathered rights cannot arise by the mere filing of a notice of intent to build, an application for building permits, or an application for required state permits and approvals. Substantial construction of structures or improvements must have begun prior to the effective date of this Ordinance, or in the case of pending applications, when the review process on an application commences. Such construction must be legal at the time it is commenced and the owner must be in possession of an in compliance with all validly issued permits, both state and local.

Section V: Conditional Use Permits

A. Requirement

1. A conditional Use is defined as a development activity which, if conducted without restriction, would have the capacity to adversely affect neighboring property and the public at large, and which therefore must be allowed only with review and approval of the planning board. More specifically, a conditional use is one which is listed within the district requirements in Section VII of this Ordinance.
2. No person shall commence any development activity, or construct structures pertinent to a development activity, which is listed in Section VII, *Establishment of Districts* as a Conditional Use without first obtaining a Conditional Use Permit from the Benton Planning Board.
3. In the event of a question as to whether a particular activity constitutes a Conditional Use, the Code Enforcement Officer is authorized to make a formal determination.

B. Authorization

The Planning Board shall approve with modifications or conditions, or disapprove an application for a Conditional Use Permit.

C. Existing Conditional Use or Structure

1. A Conditional Use which existed prior to the effective date of this Ordinance may not be changed to another Conditional Use nor substantially expanded or altered except in conformity with all requirements of this Ordinance pertaining to the use. Substantial expansion is considered to be a floorspace increase of at least twenty-five (25) percent or the utilization of materials or processes not previously associated with the existing use.
2. No significant changes shall be made in any approved Conditional Use without approval of the change by the Planning Board.

D. Application

1. A person who requires a Conditional Use Permit shall file an application for the permit with the Planning Board on forms provided for the purpose, together with a non-refundable application fee as specified in the Appendix. In addition to the application fee, the applicant shall be responsible for the following costs, to be paid prior to issuance of the Permit:
 - a) All costs associated with a public hearing, should the Board decide that one is warranted, and
 - b) Reasonable costs incurred by the town in employing mutually agreed-upon professional expertise to review and verify details of the application.

2. All applications for Conditional Use Permits shall contain the following information:
 - a) A plan showing development of the parcel, including the location of all structures and improvements, and any changes in finished grade. The plan shall be drawn to a scale of not smaller than one inch equals fifty (50) feet.
 - b) The name and address of the applicant (or authorized agent) plus the name of the proposed development, and a proof of the applicant's legal interest in the property, the assessor's map and lot number.
 - c) Interior plans showing total floor area and amount of area devoted to individual uses for each building, structure, or addition.
 - d) Perimeter survey of the parcel made and certified by a registered land surveyor licensed in Maine, relating to reference points, showing true north point, graphic scale, corners of parcel, date of survey, and total acreage.
 - e) Any other information necessary for the applicant to demonstrate how he/she intends to meet the performance standards of this Ordinance.
3. The Planning Board may, in writing, waive the requirements for submission of any information which it determines is not needed for consideration of the permit.

E. Review Procedure

1. The Board shall determine whether the application is complete enough to begin consideration for approval. Upon making a determination of completeness, the Board shall have thirty-five (35) days to either take final action (approve, deny, or approve with conditions) or hold a public hearing.
2. The Board may decide to hold a public hearing. If a public hearing is held, the following procedure shall apply:
 - a) The Board shall notify the Code Enforcement Officer and Municipal Officers, and shall publish notice of the time, place, and subject matter or hearing at least ten (10) days in advance in a newspaper of general circulation in the area.
 - b) The Board shall notify by regular first class mail, the applicant and the owners of all property within 200 feet of the property involved at least ten (10) days in advance of the hearing, the nature of the application, and the time and place of the public hearing.
 - i. The owners of property shall be considered to be those against whom taxes are assessed.
 - ii. Failure of any property owner to receive a notice of public hearing shall not necessitate another hearing or invalidate any action by the Planning Board.

- c) The Code Enforcement Officer will attend hearings as required and may present to the Planning Board all plans, photographs, or other material he/she deems appropriate for an understanding of the application.
 - d) The applicant's case shall be heard first. To maintain orderly procedure, all persons shall proceed without interruption. Questions may be asked through the Chair. All persons at the hearing shall abide by the order of the Chair.
 - e) Within thirty-five (35) days of the close of the hearing, the board shall take final action of the application.
3. When an applicant would need a variance from an Ordinance requirement before the Planning Board could approve the Permit, the Board of Appeals shall approve the variance prior to final action by the Planning Board. The Planning Board shall table final action on the application pending the Board of Appeal's decision and shall notify the Board of Appeals of that action.
4. The Planning Board shall provide the Code Enforcement Officer and Municipal Officers of its decision and shall prepare a finding of facts and conclusions. Upon notification of the decision of the Planning Board, the Code Enforcement Officer, as instructed, shall immediately issue, issue with conditions prescribed by the Board, or deny the Permit.

F. Expiration

A Conditional Use Permit secured under the provisions of this ordinance by vote of the Planning Board shall expire if the work or change involved is not commenced within two (2) years of the date on which the Conditional Use is authorized.

G. Appeal

An appeal may be taken within thirty (30) days after a decision is rendered to the Board of Appeals as an administrative Appeal. Any party to the Planning Board proceedings is authorized to file an appeal.

H. Standards for Conditional Uses

1. The applicant shall demonstrate that the proposed use meets all applicable criteria listed below. The Board shall approve the application unless it makes written findings that one or more of these criteria have not been met:
- a) The use will not have an adverse impact on spawning ground, fish, aquatic life, bird or other wildlife habitat.
 - b) The use is consistent with the Benton Comprehensive Plan.

- c) Traffic access to the site meets the standards contained in this ordinance; and traffic congestion has been addressed in accordance with performance standards in this ordinance.
- d) The site design is in conformance with all municipal flood hazard protection regulations.
- e) Adequate provision for the disposal of all wastewater and solid waste has been made.
- f) Adequate provision for the transportation, storage and disposal of any hazardous materials has been made.
- g) A storm water drainage system capable of handling 25-year storm without adverse impact on adjacent properties has been designed.
- h) Adequate control of soil erosion and sedimentation has been shown.
- i) There is adequate water supply and quality to meet the demands of the proposed use.
- j) Buffer strips and on-site landscaping provide adequate protection to neighboring properties from detrimental features of the development, such as noise, glare, dust, odor and the like.
- k) All performance standards in this ordinance, applicable to the proposed use will be met.

I. Application of Standards

1. If, in its findings, the Planning Board determines that the application may not meet the above standards and that additional actions by the applicant will be sufficient to meet them, it may require such actions, as conditions of approval. The conditions may set requirements in addition to those set forth in this ordinance only when the board finds it necessary to further the purposes of this ordinance.
2. Conditions may include, but not limited to, specifications for: type of vegetation; increased setbacks and yards; specified sewage disposal and water supply facilities; drainage, landscaping and planting screens; period of operation; operational controls; professional inspection and maintenance; sureties; deed restrictions or restrictive covenants; location of parking and signs; type of construction.
3. Violation of any of these conditions shall be a violation of this ordinance.

J. Performance Guarantees,

1. At the time of approval of the application for Conditional Use, the Planning Board may require the applicant to tender either a certified check payable to the Town, an irrevocable letter of credit from a lending institution, or a performance bond payable to the town issued by a surety company in an amount adequate to cover not less than twenty (20) percent nor more than one hundred (100) percent of the costs of all improvements required by the town. The cost estimate shall take into account the time-span of the development and the effects of inflation. The conditions and amount of the guarantee shall be determined by the Board.

2. Prior to the release of any part of or the entire performance guarantee, the Board shall determine to its satisfaction that the proposed improvements meet or exceed the design and construction requirements for that portion of the improvements for which the release is requested.
 - a) The Board shall request of the Code Enforcement Officer and whatever agencies and departments may be involved, a report on the status of the improvements. If the Code Enforcement Officer is unable or unqualified to inspect the required improvements, the town shall retain the services of an appropriately qualified individual or firm to inspect and report on the facility in question. The costs of such inspection shall be borne by the developer.
 - b) If the Code Enforcement Officer or inspector finds, upon inspection of the improvements performed before release of the guarantee, that any of the required improvements have not been constructed in accordance with plans and specifications filed by the applicant, he shall so report to the Board and Planning Board. The Board shall then notify the applicant, and, if necessary, the bonding company or lending institution, and take all necessary steps to preserve the town's rights under the guarantee.
 - c) Any interest accumulated on an escrow account shall be returned with any money owed by the town to the developer after it has been determined that the proposed improvements meet all design and construction requirements.
3. Performance guarantees, when required, shall be tendered for all improvements required under this ordinance, including but not limited to, sidewalks, drainage facilities, parking areas, lighting, signs, landscaping and buffer areas.

Section VI: Board of Appeals

A. Authorization

There is hereby created the Board of Appeals of the Town of Benton pursuant to Title 30-A, MRSA, Section 2691 et seq. It is intended that the Board of Appeals authorize and existing in the Town of Benton shall continue this authorization.

B. Appointment and Dismissal

1. The municipal officers shall appoint five (5) regular members and two (2) associate members to serve staggered three (3) year terms.
2. Neither a municipal officer nor their spouse may be a member or associate member of the Board.
3. A member of the Board may be dismissed for cause by the municipal officers before the expiration of his/her term.

C. Organization and Rules

1. The Chairman shall call meetings of the Board as requested. The Chairman shall also call meetings of the Board when requested to do so by a majority of the members or by the municipal officers. A quorum of the Board necessary to conduct an official Board Meeting shall consist of at least four (4) regular and associate members. The Chairman shall preside at all meetings of the Board and be the official spokesman of the Board. If the elected Chairman cannot attend a meeting, the members attending shall appoint an acting Chairman from among the regular members for the duration of the meeting.
2. The Secretary shall maintain a permanent record of all Board meetings and all correspondence of the Board. The Secretary shall be responsible for maintaining those records which are required as part of the various proceedings which may be brought before the Board. All records to be maintained or prepared by the Secretary are deemed public, shall be filed in the municipal clerk's office, and may be inspected at reasonable times.
3. The Board may provide by rule, which shall be recorded by the Secretary, for any matter relating to the conduct of any hearings, provided that any rule may be waived by the Chairman upon good cause shown.
4. The Board shall elect annually a Chairman from its membership.
5. Any question of whether a particular issue involves a conflict of interest sufficient to disqualify a member from voting thereon shall be decided by a majority vote of the remainder of the members.

6. The municipal officers shall set compensation on a per-meeting basis.
7. The Board may receive any oral or documentary evidence but shall provide as a matter of policy for the exclusion of irrelevant, immaterial or unduly repetitious evidence. Every party shall have the right to present his/her case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts.
8. Board decisions related to substantive issues shall be by vote of a simple majority of those present and voting. When making final disposition of an appeal, all members voting shall have been present at the public hearing for said appeal.
9. The transcripts of testimony, if any, and exhibits, together with all papers and requests filed in the proceeding, shall constitute the record. All decisions shall become a part of the record and shall include a statement of findings and conclusions, as well as the reasons or basis therefore, upon all the material issues of fact, law or description presented and the appropriate order, relief or denial thereof. Notice of any decision shall be mailed or hand delivered to the petitioner, his representative or agent, the Planning Board, agency or officer, and the municipal officers within seven (7) days of their decision.
10. In the event of the absence of a regular member, an associate member shall be appointed by the Chairman to vote in his place, *provided that* a majority of those present and voting shall be regular members.
11. Fees for an appeal filed under this ordinance shall be as specified in the Appendix.

D. Jurisdiction

1. The Board of Appeals shall have the power to hear appeals of decisions by the Code Enforcement Officer and Planning Board in the administration of this Ordinance. These appeals shall take either of two forms:
 - a) Administrative Appeal. An Administrative Appeal may be taken when it is alleged that there has been an error in the decision of the Code Enforcement Officer or Planning Board in the administration or application of this Ordinance. The Board of Appeals shall rule in favor of the party appealing when it finds that there is substantial evidence to conclude that the ordinance has been applied in error.
 - b) Variance. A Variance may be requested by a party seeking relief from a dimensional requirement or performance standard contained in this ordinance. A variance shall be granted only under the conditions of hardship, as stated in Title 30-A, MRSA, section 4353.

2. Additional authority may be given to the Board of Appeals specific terms of a municipal Ordinance including, but not limited to, municipal Shoreland Zoning.

E. Appeals

An appeal may be taken, within thirty (30) days after the decision is rendered, by any party to District Court and/or Superior Court from any order, relief or denial in accordance with Rule 80B. The hearing before the Superior Court shall be a trial de nova without a jury.

Section VII: Establishment of Districts

A. Land Use Districts

The following districts are hereby established and defined for the purpose of applying the standards in this ordinance:

1. **Benton Station Village District**

Purposes: To provide for a variety of high density land uses in a village setting, where residential, public, service, commercial and retail activities are commonly mixed, and where pedestrian ways and open space contribute to an inviting residential and shopping environment.

To preserve the existing village character of Benton Station and to ensure that future development is compatible both in character and use.

2. **Benton Proper Growth District**

Purposes: To provide a variety of land uses in a village setting where residential, public, service, commercial and retail activities are commonly mixed; where pedestrian ways and open space are encouraged and an inviting residential and shopping environment is created.

To allow a higher density of land uses, supportable by on-site waste disposal.

To maintain and enhance the Town Office and adjacent park as the center for this District.

3. **Benton Falls Growth District**

Purposes: To provide for variety of uses in keeping with a Village - residential setting; where commercial, educational, institutional, public uses and outdoor resource based uses complement the existing residential character.

To allow a higher density of land uses, supportable by on-site waste disposal and posing no threat to ground water supplies or quality.

4. **Rural District**

Purposes: To maintain the rural character of those areas of Benton not designated for high density growth; to provide for low density residential development, agricultural and forestry uses and limited commercial uses; to ensure that the type and intensity of development in this District is compatible with the goals of protecting wildlife habitat and significant natural resources; and to ensure that development is supportable by on-site waste disposal and maintains a high quality ground water supply to serve the needs of rural residents and businesses.

At the same time, the purpose of this District is to discourage higher density development in those areas of the Town that are not well suited for such development and where the provision of essential services and utilities would be inefficient and costly; and to preserve the capacity of major through roads in the rural areas to serve as efficient links to regional arterial roads and other communities by discouraging strip development.

The Rural District consists of all lands within the Town of Benton not encompassed within the bounds of the Benton Station District, Benton Proper District, Benton Falls District, or Industrial District.

5. **Industrial Growth District**

Purpose: To provide for a mixture of commercial and industrial uses in a location adjacent to suitable infrastructure and facilities. This district also allows a wide mixture of uses.

6. **Overlay District for Mobile Home Parks**

- a) Designation: Mobile home parks are hereby identified as a special land use activity within the Town of Benton. The town hereby designates five (5) geographic areas within the town suitable for the location of mobile home parks.
- b) Application: Within the mobile home park Overlay District, mobile home parks shall be a permitted use in addition to all other permitted uses within the underlying district. Outside the Overlay Districts, mobile home parks shall be prohibited, notwithstanding other allowed, permitted, or conditional uses listed for the underlying district.

B. Rules Governing District Boundaries

Where uncertainty exists as to the boundaries of districts as shown on the Official Map, the following rules shall apply:

- 1. Boundaries indicated as approximately following the center lines of street, highways, Power Transmission Corridors, railroad right-of-ways, rivers, or streams shall be construed to follow such center lines, Boundaries described as parallel to streets or right-of-ways shall be measured from the centerline of the right-of-way, unless otherwise indicated.
- 2. Map and Lot numbers indicated on the Official Map and within the descriptions contained in subsection A, above, shall be in reference to the official Tax Maps of the Town of Benton, revision 1991. Boundaries described as following platted lot lines shall be construed as following such lot lines.

3. Boundaries indicated as following or controlled by shorelines shall be construed to follow such shorelines, and in the event of change in the shoreline shall be construed as moving with the actual shoreline.
4. Sources for the exact delineation of Flood Hazard areas shall be the Flood Insurance Rate Map published by FEMA for the Town of Benton (Community Panel #230233) except where qualified testimony provides greater accuracy.
5. Boundaries indicated as parallel to or extensions of features indicated above shall be so construed. Distances not specifically indicated on the Official Map shall be determined by the scale of the map.
6. Where physical or cultural features existing on the ground are at variance with those shown on the Official Map, or other circumstances not covered by subsections 1 through 5 above, the Board of Appeals shall interpret the district boundaries.
7. When a lot is divided by a use district boundary, the following rules shall apply:
 - a) Where a lot extends for less than fifty (50) feet into an adjoining district, the lot shall be used as if the entire lot were in the district which comprises the larger portion.
 - b) Where a lot extends for more than fifty (50) feet into two adjoining districts, the regulations of each district shall apply to the respective land areas, except that the provisions of one district may be applied to a land use activity within the bounds of the lot and extending no more than fifty (50) feet into the adjoining district.

C. Dimensional Requirements

The following are minimum requirements for new development, additions, and expansions within the Town of Benton. All distances shall be horizontal measure. The building height limits specified for each district shall not apply to wireless telecommunication facilities.

The requirements of this section may be waived only by the Board of Appeals through the application of a variance under section V of this ordinance.

Village and Growth Districts

<u>Minimum Lot Size:</u>	<u>Sewered</u>	<u>Unsewered</u>
Single family detached	10,000	20,000 sq. ft.
Duplex residential, per building	10,000	25,000 sq. ft.
Multi-family, per building	18,000	28,000 sq. ft.
Minimum lot area per dwelling unit	2,000	3,000 sq. ft.
Commercial/Industrial	10,000	20,000 sq. ft.
Institutional/Public	10,000	20,000 sq. ft.
All other	10,000	20,000 sq. ft.

Minimum Street Frontage:

Single family detached	125 ft.
Duplex residential	125 ft.
Multi-family	125 ft.
Commercial/Industrial	125 ft.
Institutional/Public	125 ft.
Other	125 ft.

Minimum Front Setback:

All uses	15 ft.
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Minimum Side Setback:

Residential	10 ft.
Commercial, Industrial, Other	20 ft.

Minimum Rear Setback:

Residential	10 ft.
Commercial, Industrial, Other	20 ft.

Maximum Lot Coverage:

Commercial/Industrial	50 percent
All other	30 percent

<u>Building Height Limits:</u>	40 ft.
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Rural District

Minimum Lot Size:

Single family detached	30,000 sq. ft.
Duplex and multi-family residential, per building	35,000 sq. ft.
Minimum lot area per dwelling unit	5,000 sq. ft.
Commercial/Industrial	35,000 sq. ft.
Institutional/Public	35,000 sq. ft.
All other	35,000 sq. ft.

Minimum Street Frontage:

Single family detached	150 ft.
Duplex residential	150 ft.
Commercial/Industrial	150 ft.
Institutional/Public	150 ft.
Other	150 ft.

Minimum Front Setback:

All uses	25 ft.
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Minimum Side and Rear Setback:

Residential	10 ft.
Commercial, Industrial, Other	20 ft.

Maximum Lot Coverage:

Commercial/ Industrial	50 percent
All other	30 percent

Building Height Limits:

40 ft.

Industrial District

Minimum Lot Size:

	<u>Sewered</u>	<u>Unsewered</u>
Single family detached	10,000	20,000 sq. ft.
Duplex residential, per building	10,000	25,000 sq. ft.
Multi-family, per building	18,000	28,000 sq. ft.
Minimum lot area per dwelling unit	2,000	3,000 sq. ft.
Commercial/Industrial	10,000	20,000 sq. ft.
Institutional/Public	10,000	20,000 sq. ft.
All other	10,000	20,000 sq. ft.

Minimum Street Frontage:

Single family detached	150 ft.
Duplex residential	150 ft.
Commercial/Industrial	150 ft.
Institutional/Public	150 ft.
Other	150 ft.

Minimum Front Setback:

All uses	25 ft.
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Minimum Side Setback:

Residential	10 ft.
Commercial, Industrial, Other	20 ft.

Minimum Rear Setback:

Residential	10 ft.
Commercial, Industrial, Other	20 ft.

Maximum Lot Coverage:

Commercial/ Industrial	60 percent
All other	40 percent

Building Height Limits:

40 ft.

E. Table Of Land Uses

KEY: A - Allowed if in compliance with applicable performance standards.
P - Permitted; land use permit required.
N - Not permitted.
C - Conditional; conditional use permit required in accordance with Section IV.
* - Activity is subject to applicable standards in Section IX of this ordinance.

Use/Structure	Benton Station Village District	Growth Districts		Rural District	Industrial District
		Benton Falls	Benton Proper		
<u>RESIDENTIAL</u>	P	P	P	P	P
Accessory Use	P	P	P	P	P
Congregate Housing	C	C	C	C	N
Home Occupation*	P	P	P	P	P
Manufactured Housing	P	P	P	P	P
Mobile Home Park*	Overlay	Overlay		Overlay	N
Multi-family Dwelling	P	P	P	P*	P
Two-family Dwelling	P	P	P	P	P
Single-family Dwelling	P	P	P	P	P
<u>COMMERCIAL</u>	P	P	P	P	P
Accessory Use	P	P	P	P	P
Amusement Facility, Commercial Recreation (indoor)	P	P	P	C	P
Amusement Facility, Commercial Recreation (outdoor)	C	C	C	C	P
Automobile Graveyard, Junkyard*	N	N	N	C	N
Automobile Repair, Sales, Service	C	C	C	C	C
Bed and Breakfast	P	P	P	P	P
Boarding, Lodging	P	P	P	P	P
Building Materials, Retail Sales	C	C	C	C	C
Commercial School	C	C	C	C	C
Gasoline Service Station	C	C	C	C	C
Hotel/Motel	P	C*	C	C	P

Use/Structure	Benton Station Village District	Growth Districts		Rural District	Industrial District
		Benton Falls	Benton Proper		
Indoor Theater	P	P	P	C	P
Kennel, Stable, etc.	C	C	C	P	P
Veterinary Hospital	P	P	P	P	P
Neighborhood Convenience Store	P	C	C	C	P
Offices; Business, Professional, Medical	C	C	C	C	P
Publishing, Printing	P	C	C	C	P
Wireless Telecommunications Facility	N	N	N	C	C
Restaurant	P	C*	C	C	P
Retail Business	C	C	C	C	P
Service Business	C	C	C	C	P
Shopping Center	C	C	C	C	C
Wholesale Business	C	C	C	C	C
<u>INDUSTRIAL</u> Accessory Use	C	C	C	C	P
Airport, Air Transport Department Use	N	N	N	C	C
Bulk Oil, Gas Terminal	N	N	N	N	N
Demolition, Waste Disposal	N	N	N	N	N
Manufacturing	C	C	C	C	C
Recycling Operations	C	C	C	C	C
Sawmill	N	N	N	P	C
Trucking, Distribution Terminal	N	N	N	C	C
Warehousing and Storage	C	C	C	C	C
Church, Synagogue, Parish House	P	P	P	P	P
Community Centers, Clubs	P	P	P	P	P
Day Care	P	P	P	P	P
Essential Services	A	A	A	A	A
Fire, Police Station	P	P	P	P	P
Government Office	P	P	P	P	P

Use/Structure	Benton Station Village District	Growth Districts		Rural District	Industrial District
		Benton Falls	Benton Proper		
Group Homes, Hospice, Nursing Home	C	C	C	C	C
Museum, Library	P	P	P	P	P
Public, Private School	P	P	P	P	P
Public Utility Facility	C	C	C	C	C
<u>OUTDOOR, RESOURCE BASED USE</u> Accessory Structure	P	P	P	P	P
Agriculture	A	A	A	A	A
Agriculture Products Processing	C	C	C	C	C
Campground	C	C	C	C	N
Cemetery	P	P	P	P	N
Extractive Industry*	N	N	N	C	C
Farm Stands	A	A	A	A	A
Forestry	A	A	A	A	A
Golf Course Excluding Miniature Golf	C	N	C	C	N
Parks and Recreation	A	A	A	A	C
Primitive Commercial Outdoor Recreation	P	P	P	P	P

Section VIII: General Performance Standards

The purpose of this section shall be to establish a set of development practices which shall be applied to development activity within the Town of Benton and which shall protect neighboring properties, the citizens of the Town of Benton and the general public from undue adverse effects of development. Standard agricultural practices (non-structural) are not considered to be either development or land use activity subject to this section.

A. Access to Property

1. All lots created under the jurisdiction of this ordinance shall provide for suitable vehicular access. No land use permit shall be issued to erect any structure on a lot without required frontage on a public way, except as provided for in subsection 1.a.
 - a) An access road meeting the criteria described below may be provided in place of frontage on a public road. All access roads shall be constructed within right-of-way deeded in favor of the lot(s) to be developed.
 - i. If two (2) or fewer dwelling units are to be constructed on the parcel, the right-of-way shall be a minimum of 20 feet in width. The access road shall be constructed and maintained in such a way as to not cause soil erosion or drainage problems or hazard to the traveling public.
 - ii. If no fewer than three (3) nor more than seven (7) dwelling units are to be constructed, right-of-way shall be a minimum of 50 feet. The access road shall be constructed on a suitable base with a surface no less than 15 feet in width. No road built to this standard shall be dedicated for public use.
 - iii. If eight (8) or more dwelling units are to be constructed, or if the access road is to be dedicated to public use, the road and right-of-way shall meet the standards of the Town of Benton New Streets Ordinance.
 - b) An existing lot with less than the minimum road frontage required in the district may be built on, but may not be divided unless the provisions of this section are met for both resulting lots.

B. Buffer Areas

1. All commercial and industrial land uses and activities shall be buffered from potentially conflicting uses, as provided below.
 - a) Within all districts identified as “Growth” or “Village” under this ordinance, all commercial and industrial activities shall provide a buffer area along all property lines adjoining existing residential uses.
 - b) Within the Rural District, all commercial and industrial activities shall provide a buffer area along all property lines which do not front a public road.

2. Buffer areas shall generally consist of strips of natural or landscaped vegetation shown to be sufficient to minimize the effects of the activity.
 - a) Vegetation shall be of adequate density and height to provide an effective barrier within three (3) years of development. Vegetation shall be a minimum height of four (4) feet at the time of planting.
 - b) Where vegetation cannot be maintained due to site conditions, the buffer area may consist of fences, walls, berms, or other special measures.
 - c) The buffer areas shall be maintained and vegetation replaced to ensure continuous and year-round screening.
3. Where, in the permitting process the planning board identifies a potential safety hazard to children to be on the site, it shall require the area of hazard to be enclosed in a physical barrier capable of preventing casual entry.

C. External Lighting

1. All outdoor lighting shall be of an intensity and location that will not produce adverse effects upon neighboring properties nor cause glare or distraction to vehicle operators on public roads.
 - a) Lighting fixtures shall be shielded or hooded so that the lighting elements are not exposed to normal view of motorists or adjacent dwellings.
 - b) Direct or indirect illumination shall not exceed 1.0 footcandles at the property line of abutting residential properties.
 - c) The provisions of this subsection shall not apply to properly installed street lights or to yard lighting used for residential or agricultural purposes.

D. Groundwater Protection

The following provisions shall apply to all development located over aquifers as identified on Map A. (Refer to Map Index.) And to all commercial and industrial uses that require a Conditional Use Permit.

1. No new or expanded development shall create groundwater pollution on property adjoining the development.
 - a) Contaminant concentrations at the property line shall not exceed one-half of the difference between the pre-existing concentrations and the level established by the Primary Drinking Water Standards of the State of Maine.

- b) If existing groundwater quality already does not meet the level set by the Standards, and if the development is to be served by on-site groundwater supply, the developer will demonstrate how drinking water quality will be treated or improved.
2. During the conditional use permitting process, the planning board shall require a hydrogeologic assessment for commercial and industrial developments using a waste disposal system other than the public sewer. For residential subdivisions using subsurface waste disposal systems, the planning board may require a hydrogeologic assessment in instances where preliminary information on pre-existing uses, density of development or other factors indicates a potential problem.
- a) The hydrogeologic assessment shall be performed by a qualified hydrogeologist or firm using currently accepted methodology and reporting format.
 - b) The developer shall certify that the actual placement of facilities shall be as depicted in the hydrogeologist’s report.

E. Noise

1. No land use activity shall produce noise at an uncomfortable level, as measured at the property line of the neighboring property. The following levels are not to be exceeded on a continuous, regular, or frequent basis:

	Sound Pressure Level Limits (measured on dB(a) scale)	
	<u>7 Am to 8 PM</u>	<u>8 PM to 7 AM</u>
Industrial District	70	60
Other Districts	55	45

Sound pressure levels shall be measured at four (4) feet above ground at the property line, using the A-weighted, slow response scale on a meter which meets the “American Standard Specification for General Purpose Sound Level Meter” (ANSI S1.4-1961).

2. No person shall engage in construction activities which exceed the noise limits indicated in Section H.1 on a site abutting a residential use after 8 PM or before 7 AM. Otherwise, the following activities are exempted from the limits:
- a) Construction activities conducted between 7 Am and 8 PM,
 - b) Sounds emanating from emergency or warning devices.

F. Off-Street Parking and Loading – General Requirements

1. A use in any district shall not be extended, and no structure shall be constructed or enlarged, unless off-street automobile parking space is provided in accordance with the requirements of this ordinance.
2. Parking areas with more than two (2) parking spaces shall be arranged so that it is not necessary for vehicle to back into the street.
3. Required off-street parking for all land uses shall be located on the same lot as the principal use, or on accessible lots owned or controlled by the developer.
4. The joint use of a parking area by two (2) or more uses may be approved where it is clearly demonstrated that no conflict in demand would occur by reason of variation in the probable time of maximum use by patrons or employees involved.
5. All parking spaces necessary shall be made available for use prior to the occupancy or use of the property.

G. Off-Street Parking and Loading – Design Requirements

1. The provisions of this subsection shall apply only to commercial and industrial uses, and residential buildings of more than two (2) dwelling units.
2. Access points onto a public road shall be so located as to minimize traffic congestion and to avoid generating traffic on local access streets of a primarily residential character.
3. All driveway access points shall be kept free from visual obstructions higher than three (3) feet above street level within a 40 foot radius of the intersection in order to provide visibility for entering and leaving vehicles.
4. All parking lots located within 25 feet of a public road right-of-way shall be landscaped with vegetation along the boundary between the parking area and the road. Landscaping shall be designed not to interfere with sight distance at access points.
5. Loading and delivery facilities shall be provided on commercial and industrial uses.
 - a) Facilities, including the truck standing area, shall not occupy travel ways, parking stalls or other areas designated for other uses, and shall not interfere with normal traffic flow.
 - b) Loading facilities shall be located entirely on the same lot as the building or use to be served. Trucks, trailers, and containers for loading or storage shall not stand or park upon any town way.
 - c) In permit approval processes, the developer shall demonstrate that he/she has provided sufficient loading facilities to accommodate normal peak usage.

6. Parking Lots shall be designed and installed according to the following criteria.
 - a) Entrances and exits shall be clearly identified by the use of signs, curb cuts, or landscaping and shall be designed to allow adequate stacking of vehicles without blocking interior vehicle circulation lanes.
 - b) Major interior travel lanes should be designed to allow continuous and uninterrupted traffic movement.
 - c) Access to parking stalls should not be from major interior travel lanes, and shall not be immediately accessible from any public way.
 - d) All parking stalls shall be directly accessible to a travel lane without requiring the moving of any other motor vehicles.
 - e) Parking aisles should be oriented perpendicular to stores or businesses for safety and visibility of pedestrian access.
 - f) All parking spaces shall be a minimum of ten (10) feet from any side or rear lot line.
 - g) Parking stall and aisle dimensions shall be as illustrated below.
 - h) In paved parking areas, painted stripes shall be used to delineate parking stalls. Stripes should be a minimum of 4" in width. Where double lines are used, they should be separated a minimum of 1'0" on center.
 - i) In aisles utilizing diagonal parking, arrows should be painted on the pavement to indicate traffic flow.
 - j) Bumpers and/or wheel stops shall be provided where parked cars might restrict traffic flow on adjacent through roads, restrict pedestrian movement on adjacent walkways, or damage landscape materials.
7. The developer shall provide sufficient off-street parking spaces to accommodate expected patron/employee usage. In the absence of evidence to the contrary, the following schedule shall be the standard for quantity of parking spaces:

<u>Use</u>	<u>Minimum Required Spaces</u>
Apartments	2 spaces per dwelling unit
Elderly Housing	1 ½ spaces per dwelling unit
Overnight lodging facilities	1 space per room/unit rental and for each employee on the largest shift
Church	1 space for every 5 persons, max. seating capacity in sanctuary
Schools	Parking in accordance with State guidelines
Child Care Facility	1 space for every 4 children facility is licensed to care for
Private Clubs or Lodges	1 space per every seventy-five sq. ft. of floor area
Theater, Auditorium, public Assembly Areas	1 space for every 3 persons, max. seating capacity
Funeral Homes	1 space for every 100 sq. ft. floor area
Medical Care Facilities	1 space for every 3 beds and every 2 employees on the maximum working shift
Medical Offices (MD's, OD's, DDS)	1 space per employee plus 5 spaces for each practitioner
Office space, Banks	1 space for every 150 sq. ft. floor area
Veterinarian clinic	5 spaces/veterinarian
Barber/Beauty Shop	2 spaces/Chair
Permanent flea market	3 spaces/Chair
Automobile Repair/Body Shop	5 spaces for each bay or area used for work
Retail and Service Business not listed	1 space for every 250 sq. ft. of floor area
Restaurant, Drive-in	1 space for every table, with a minimum of 5 spaces
Industrial, Manufacturing	1 space/employee on the primary shift, based on maximum production
Warehouse	1 ½ spaces per employee on primary shift
Wholesale	2 spaces per employee on primary shift
Library, Museum, Art Gallery	1 space for each 150 sq. ft. of floor area
Commercial Recreation Facility	1 space for each 100 sq. ft. of floor area
Outdoor-display Vehicle Sales	1 customer space per thirty vehicles displayed on the lot

Notes to schedule:

1. Where the calculations of the aforementioned parking spaces results in a fractional parking space, a complete space shall be provided in place of the fraction.
2. The above are minimum standards. The planning board may require additional parking spaces if evidence indicates the requirement to be inadequate.
3. Where the requirement is based on floor area, gross floor area shall be used unless otherwise noted.
4. Activities which constitute a mixture of principal uses on a lot shall be required to provide the calculated number of spaces for each use without duplication, except as noted in section I.4. Space devoted to warehouse or office, where incidental to a principal operation, shall not be calculated separately.

H. Solid Waste

1. All commercial land use activities shall dispose of solid and liquid wastes on a timely basis and in an environmentally safe manner. This provision shall not apply to animal-generated wastes associated with agricultural operations.
2. In issuance of land use or subdivision permits, Planning Board shall review the impact of industrial or chemical wastes or by-products upon the town's facilities (in terms of volume, flammability, or toxicity) and shall require the applicant to dispose of such wastes in conformance with all applicable State and Federal regulations.

The Board may require the applicant to specify the amount and exact nature of all industrial or chemical wastes to be generated by the proposed operation.

I. Signs

1. Signs must relate to goods and services produced or sold on the premises. Signs are limited in dimension and quantity, as provided herein:
 - a) One free-standing (ground-mounted) sign shall be allowed. The sign shall not exceed sixty (60) square feet on each face.
 - b) Building-mounted signs are allowed without restriction as to quantity. The sum of the areas of building-mounted signs shall not exceed sixty (60) square feet in area. Directional and exempt signs are not counted.
2. Signs relating to goods and services not rendered on the premises are allowed only under the state law relating to "Official Business Directional Signs" (OBDS) and as permitted by the Department of Transportation. Such signs shall not exceed three (3) square feet in area.
3. Residential property may display a single sign not over eight (8) square feet in area relating to the sale, rental, or lease of the premises.
4. The following types of signs are exempt from the above provisions:
 - a) Signs relating to trespassing and hunting shall be permitted without restrictions as to number, provided that no such sign shall exceed three (3) square feet.
 - b) Signs provided for the purpose of directing traffic or people, which do not contain advertising matter or logos.
 - c) Signs mounted on the interior of windows.
 - d) Political, religious, governmental or fraternal signs, insignias, or flags.
 - e) Signs which are brought inside after business hours.
 - f) Signs mounted or painted on registered and inspected motor vehicles.
5. No sign shall extend higher than twenty (20) feet above ground level. This applies to both free-standing and building-mounted signs.

6. Signs may be illuminated only by shielded, non-flashing lights.
7. Signs shall not resemble, imitate, or approximate the shape, size, form, or color of railroad or traffic signs, signals, or devices.
8. No sign shall be placed closer than thirty-three (33) feet from the center of the road unless authorized by the state MDOT. No sign shall be placed so as to obstruct or interfere with traffic visibility or visibility from access points.
9. No sign shall be placed so as to impair ingress to or egress from any door, window, or fire escape.

Changeable Signs

- a.) Where not otherwise controlled by the Maine Department of Transportation, the messages displayed on on-premises changeable signs in commercial and industrial zones may change as frequently as every five (5) seconds and no faster.
- b.) Signs may not flash but may display continuous streaming of information or video animation. Changes may occur in any manner (fade, scroll, sweep, or dissolve to name a few) as long as they do not flash in or out (blink on and off).
- c.) The display may comprise no more than 50% of the surface area of a changeable sign.
- d.) No more than one changeable sign with 2 sides is allowed per lot of record.
- e.) Changeable signs may not be located such that the message is readable from a controlled access highway or ramp.
- f.) The highest point of the display of a changeable sign may not exceed a height of 25 feet above either the centerline of the nearest public way or actual ground level adjacent to the sign, whichever is lower.
- g.) Electronic changeable signs are not allowed in residential zones unless approved by the Planning Board.

J. Soil Erosion Control

1. Erosion of soil and sedimentation of water sources and water bodies shall be minimized through the use of the following erosion control management practices.
 - a) Striping of vegetation, removal of soil, regrading, or other such activities shall be scheduled to limit the duration of exposure and area of the site to be disturbed. Dust control methods shall be employed during dry conditions.
 - b) Temporary vegetation, mulching, and/or siltation fabrics shall be used to protect critical areas during development. Sediment from run-off waters shall be trapped by debris basins, silt traps, sediment basins, or other methods determined acceptable by the town.
 - c) Permanent vegetation and/or other erosion control measures should be installed prior to completion of the construction, and in no case later than six (6) months after completion of the construction.
 - d) The top of cut or toe of fill shall not be located within ten (10) feet to a property line except upon approval by both the Benton Planning Board and the affected landowner. In no instance shall said cut or fill exceed a 3:1 slope.

K. Storm Water Management

1. All new construction and development, whether or not served by a storm water collection and transportation system, shall be designed to reflect or resemble, as nearly as possible, natural runoff conditions in terms of volume, velocity, and location of runoff. If runoff after development would exceed by more than ten (10) percent pre-development runoff conditions, a developer shall prepare an evaluation of the off-site impacts regarding potential soil erosion and sedimentation, drainage capacity, and land use/land cover characteristics, and shall demonstrate the use of appropriate methods of mitigating off-site impacts. Storm water management evaluations and designs shall be based on a 24-hour, 25 year storm.

The requirements of this subsection shall only be applicable for single-family site development where the Code Enforcement Officer determines that post-development runoff may be a threat to neighboring properties.

2. When methods of reducing storm water impact are necessary or desirable, storm water runoff control plans shall include:
 - a) Indication of maintenance requirements and responsibilities for maintenance of the storm water control system.
 - b) Control methods effective both during and after construction;
 - c) Control methods compatible with upstream and downstream characteristics;

- d) Documentation by the designer that the volume and rate of runoff from the proposed development will not cause deterioration of conditions downstream or upstream;
- e) Provision for on-site storage and gradual discharge of excessive flows, or contribution toward increasing downstream capacity (e.g. by enlarging existing culverts), when the channel downstream is not able to accommodate the increased volume or rate of runoff created by the proposed development;
- f) Consideration of the following factors:
 - i) impact: on-site. Downstream, upstream, and basin-wide;
 - ii) costs: initial, amortized, operation, and maintenance;
 - iii) intensity and timing of rainfall: (e.g., falling of snow or during the spring snowmelt);
 - iv) hydrologic soil groups throughout the basin (i.e., the soil's rate of water infiltration and transmission);
 - v) hydrologic conditions throughout the basin (soil's moisture content, humus/organic content, temperature, and whether or not it is frozen);
 - vi) vegetation cover throughout the basin;
 - vii) area of land covered by impervious surfaces throughout the basin (roads, sidewalks, roofs, driveways, patios, etc.)
 - viii) topography throughout the basin;
 - ix) size and shape of watershed (peak discharge rates are slower in long, narrow watersheds).

3. The following design techniques shall be utilized as appropriate:

- a) Storm water runoff systems should be designed to facilitate aquifer recharge when it is advantageous to compensate for groundwater withdrawals or reductions in infiltration. Conversely, designs should avoid recharge where groundwater effects might be harmful.
- b) Design of permanent storage facilities should consider safety, appearance, recreational use, and cost and effectiveness of maintenance operations, in addition to the primary storage function.
- c) Natural overland flows, and open drainage channel and swale locations should be the preferred alignments for major components of a residential drainage system. The use of enclosed components (such as underground piping) should be minimized where the existing natural systems are able to accommodate storm runoff. Energy dissipaters (to reduce high flow velocities) and other forms of outfall protection shall be employed where enclosed drains discharge onto erodible soils.

L. Traffic Impacts and Street Access Control

1. Provisions shall be made for vehicular access to the development and circulation upon the lot in such a manner as to safeguard against hazards to traffic and pedestrians in the street and within the development, to avoid traffic congestion on any street and to provide safe and convenient circulation on public streets and within the development. More specifically, access and circulation shall also conform to the following standards and design criteria:
 - a) Vehicular access to the development shall be arranged to minimize commercial use of local residential streets.
 - b) Where a lot has frontage on two (2) or more streets, access to the lot shall be provided onto the street where there is lesser potential for traffic congestion and for hazards to traffic and pedestrians.
 - c) All streets which will be noticeable affected by development traffic shall have traffic carrying capacity and be suitably improved to accommodate the amount and types of traffic generated by the proposed use.
 - d) Where necessary to safeguard against hazards to traffic and pedestrians and/or to avoid congestion, provision shall be made for suitable traffic management features, including improvements to public streets.
 - e) Access ways shall be of a design and have sufficient capacity to avoid queuing of entering vehicles on any street.
 - f) Where topographic and other conditions allow, provision shall be made for driveway connections to adjoining lots of similar existing or potential use when such driveway connection will facilitate fire protection services or when such driveway will enable the public to travel between adjoining businesses, without need to exit and enter the street.
2. Access points (Driveways) shall be designed in profile and grading and located to provide the required sight distance in each direction. Sight distances are the line-of-sight from a vehicle standing in the driveway towards oncoming vehicles in either direction. It is determined with the front of the vehicle a minimum of ten (10) feet behind the curblineline or edge of shoulder, with the height of the driver's eye 3-1/2 feet, to the top of an object 4-1/2 feet above the pavement. The required sight distance is ten (10) feet for each mile per hour of posted speed limit.
3. Driveway design standards shall be based on the estimated traffic volume from the development. A development generating fewer than twenty-five (25) vehicle trips per day shall meet the design standards of a low volume driveway. All other developments shall meet the design standards of medium volume driveways.

4. Low Volume Driveways

- a) Skew Angle. Low Volume driveways shall be two-way operation and shall intersect the road at an angle as nearly 90 degrees as site conditions permit, but in no case less than 60 degrees.
- b) Curb Radius. The curb radius shall be between 5 feet and 15 feet, with a preferred radius of 10 feet.
- d) Driveway Width. The width of the driveway shall be a minimum of 12 feet and no wider than 30 feet.
- d) Curb-Cut Width. Curb-cut width shall be a minimum of 22 feet and no wider than 46 feet.
- e) Vertical Grade: Driveways shall slope upward or downward from the street line on a straight slope of 2 percent or less for at least 25 feet followed by a slope of no greater than 10 percent for the next 50 feet. The maximum grade over the entire length shall not exceed 15 percent.

5. Medium Volume Driveways

- a) Skew Angle. Medium Volume driveways shall intersect the road at an angle as nearly 90 degrees as site conditions permit, but in no case less than 60 degrees.
- b) Curb Radius. Medium volume driveways may be one-way or two-way operation. On a two-way driveway the curb radius shall be between 25 feet and 40 feet, with a preferred radius of 30 feet. On one-way driveways, the curb radius shall be 30 feet for right turns into and out of the site, with a 5 foot radius on the opposite curb.
- c) Width. On a two-way driveway the width shall be a minimum of 24 feet, with a preferred width of 26 feet, however where truck traffic is anticipated, the width may be up to 36 feet. On a one-way driveway the width shall be a minimum of 16 feet, a preferred width of 18 feet, and a maximum of 20 feet.
- d) Curb-cut Width. On a two-way driveway the curb-cut width shall be between 74 feet and 100 feet. On a one-way driveway the curb-cut width shall be between 46 feet and 70 feet.
- e) Vertical Grade. Medium volume driveways should slope upward or downward from the street line on a straight slope of 2 percent or less for at least 25 feet. Following this approach area, the steepest grade on the driveway shall not exceed 8 percent.
- f) Signage. Appropriate traffic control devices shall be placed at points on the driveway and the public street.

- g) Median. On divided driveways, the channelization island (median) shall be raised and curbed. Corner radius shall be 2 feet.
- 6. Corner clearance is defined as the distance from the edge of the development driveway to the edge of another driveway or street intersection. In order to minimize the hazard of vehicle turning, the maximum corner clearance should be provided as practical based on site constraints. Minimum corner clearance in all cases shall be no less than 50 feet.
- 7. No medium volume traffic generator shall have more than three (3) driveways in total onto a single roadway.
- 8. Construction Materials/Paving
 - a) All driveways entering a curbed street should be curbed with materials matching the street curbing. Curbing is required around all raised channelization islands or medians.
 - b) These requirements apply to uses classified as commercial and industrial as listed in the Table of Land Uses and shall further apply to activities classified as residential and outdoor resource based whenever those activities would generate more than 100 vehicle trips per day.

The following land use activities are exempt from these requirements:

- single and two family dwellings
- agriculture
- home occupations with less than 100 vehicle trips per day

Driveways shall be paved with concrete or bituminous concrete pavement for a distance extending from the edge of the road pavement to the right-of-way and the property front boundary line.

The Planning Board may further require the driveway to be paved for a distance not to exceed 70 feet as measured from the edge of the road pavement if it finds that the proposed activity would generate a high volume of traffic or serve truck traffic and if it will further improve safe access of vehicles entering and exiting the driveway.

M. Water Quality

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

Section IX: Performance Standards for Specified Uses

The purpose of this section is to provide development guidelines for certain activities whose special circumstances merit separate standards. These standards are to be applied only to the specific activity referenced in the subsection heading.

A. Rural Subdivision and Multi-Unit Development Design

1. The purpose of this section is to promote new concepts of housing development which will contribute to the rural character of the neighborhoods within the Town of Benton, provide more convenient and affordable housing, and reduce the demand for services and facilities provided by the Town of Benton. The Planning Board, in reviewing proposals under this section, may modify provisions related to dimensional requirements to permit innovative approaches to housing and facility design in accordance with the standards herein.
2. **Applicability:** This section shall apply to all residential subdivisions, including apartments and multi-family buildings, of five (5) or more lots or units within the Rural District of the Town of Benton. This section shall not apply to Mobile Home Parks, as defined herein, but shall apply to mobile home subdivisions.
3. **Application Procedure:** The Planning Board may allow subdivided development on reduced lot sizes in return for open space and efficiencies of scale. For each proposed development in the Rural District, the developer shall provide two (2) sketch plans in accordance with Section 4.A of the Subdivision Ordinance of the Town of Benton, Maine. The two (2) sketch plans shall be identified and designed as follows:
 - a) **PLAN A: Standard Design:** Each lot in the standard subdivision shall meet the minimum lot size and lot width requirements of the Rural District, and have an area suitable for subsurface wastewater disposal according to the Maine Subsurface Wastewater Disposal Rules.
 - b) **PLAN B: Creative Design:** The creative design plan shall show lots (units) in the following manner:
 - i. Lots shall be no smaller than 20,000 square feet in area, and no less than 100 feet of road frontage.
 - ii. There shall be no more than 20 percent more lots shown than in Plan A. (Example: Plan A shows 10 lots, Plan B shows no more than 12 lots.)
 - iii. There shall be an area of no less than one-quarter (25 percent) of the total parcel which shall be identified as not-for-development.

4. Planning Board Review:

- a) Upon submission to two (2) sketch plans by the developer, the planning board shall review and authorize the development of either Plan A or Plan B, according to the following criteria:
 - i. Which plan shows a more efficient use of public facilities, including roads?
 - ii. Which plan provides more protection of land, water, and wildlife resources?
 - iii. Which plan provides a better chance of attractive and affordable housing, in keeping with the nature of the neighborhood?
 - iv. Would the open space identified in Plan B further the goals identified in Benton's Comprehensive Plan?
- b) Within thirty-five (35) days of receiving the sketch plans, the Board shall determine which design shall be accepted. The Board shall inform the developer in writing, and may also include further suggestions on design or development.
- c) Subsequent to the Board's determination, only the design authorized to be accepted (or a variant thereof) shall be submitted for Board consideration.

5. Creative Design Requirements. Developments authorized for creative design shall meet all requirements of the subdivision and other applicable town ordinances, and in addition conform to the following standards:

- a) Each building shall be an element of an overall plan for site development. The plan shall indicate either the general layout of structures on each lot or an envelope within the lot upon which the structures would be sited. The location shall be environmentally suitable. Buildings shall be oriented to minimize interference with scenic vista, natural landscape features, topography, solar energy access, and natural drainage areas. All wells and septic systems shall be designed to eliminate mutual contamination.
- b) The overall density of development on the parcel, including the area designated as not-for-development, shall not exceed 30,000 square feet per dwelling unit.
- c) Access points onto an existing public road shall be limited to no more than one-quarter the number of proposed lots.

- d) The design shall demonstrate the availability of water adequate for domestic purposes as well as for fire safety. The Planning Board, upon recommendation of the Fire Department, may require the construction of storage ponds and dry hydrants. The location of all wells shall be shown on the plan.
- e) Open space shall be dedicated upon approval of the project. There shall be no further subdivision of this land, which shall be used only for non-commercial recreation, agriculture, forestry, or conservation. However, easements for public utilities, or structures accessory to non-commercial recreation, agriculture, or conservation, may be permitted. The open space(s) shall be identified on the development plan as “Not-for-development”.
- f) If any or all of the open space is to be reserved for use by the residents, a homeowner’s association shall be formed, in accordance with the terms of subsection (g) below. All or a portion of the open space may be proposed for dedication to the town, but shall not be accepted except by vote of the Benton Town Meeting.
- g) The by-laws of the proposed homeowner’s association shall specify maintenance responsibilities and shall be submitted to the Planning Board prior to approval of the subdivision.
 - i. This homeowner’s association shall have the responsibility to maintain the open space(s), any private roads, and other common facilities until accepted by the town.
 - ii. The association shall levy annual charges against all property owners to defray the expenses connected with the maintenance of open space, other common and recreational facilities and town assessments.
 - iii. The developer shall maintain control of such open space(s) and be responsible for their maintenance until development sufficient to support the association has taken place. Such determination shall be made by the Planning Board upon request of the homeowner’s association or the developer.
 - iv. Covenants for mandatory membership in the association, setting forth the owner’s rights and interest and privileges in the association and the common land, and requiring that unpaid assessments become a lien on the lot, shall be included in the deed for each lot.

B. Resource Extraction (Extractive Industry)

1. Permit Required. Topsoil, rock, sand, gravel, and similar materials may be extracted or processed where permitted under the terms of this Ordinance, only after a Conditional Use Permit for such operations has been issued by the Planning Board, except the following activities.
 - a) The removal, or transfer, of less than two hundred (200) cubic yards of material from any lot in any twelve (12) month period.
 - b) The removal, or transfer, of material incidental to construction, alteration, or repair of a building or in the grading and landscaping incidental thereto; or
 - c) The removal or transfer of material incidental to construction, alteration, or repair of a public or private way or essential service.
2. Submission Requirements
 - a) Applications to the Planning Board for a Conditional Use Permit, for the excavation, screening, or storage of soil (including topsoil), peat, loam, sand, gravel, rock, or other mineral deposits shall be accompanied by a plan prepared according to the standards of this Ordinance and applicable State Laws, and by copies of all required State Permits or Licenses.
 - b) The applicant shall submit plans of the proposed extraction site showing the property lines and names of abutting owners, indicating not greater than five (5) foot contour intervals, related to US Geodetic Survey data; the location and slope of the grades, existing and as proposed upon completion of the extraction operation; and detailing proposed fencing, buffer strips, signs, lighting, parking and loading areas, entrances and exits, together with a written statement of the proposed method, regularity, working hours and total proposed rehabilitation and restoration of the site upon completion of the operation.
3. The Board may require the additional submission of a hydrogeologic study to determine the effects of the proposed activity on groundwater movement and quality within the general area.
4. Performance Standards
 - a) No part of any extraction operation shall be permitted within 10 feet of any property or street line, except where the adjoining parcel contains a similar extraction operation under the control of the applicant. Natural vegetation shall be left and maintained on the undisturbed land.

- b) The owner or operator shall take reasonable precautions to avoid unauthorized access. A fence at least five (5) feet in height and sufficient in length shall be erected to limit access where slopes in excess of three (3) feet horizontal to one (1) foot vertical (3:1) are maintained.
- c) The owner or operator of the extraction site shall present evidence to the Planning Board of adequate insurance against non-employee liability arising from the proposed extraction site, and such insurance shall be maintained throughout the period of operation.
- d) The hours of operation at any extraction site shall not commence before 7 A.M., nor extend beyond 7 P.M. at any pit where there are residences within 1,000 feet.
- e) The Planning Board may require that roads linking the extraction site to public ways will be treated with suitable materials to reduce dust and mud for a distance of at least 100 feet from such public ways. The operator shall be responsible for materials and debris left to accumulate on public ways, as well as damage to public ways directly attributable to traffic from the operation.
- f) No equipment debris, junk, or other material shall be permitted on an extraction site. Any temporary shelters or buildings erected for such operation and equipment used in connection therewith shall be removed within 30 days following completion of active operations.
- g) All extraction operations are required to establish a restoration plan prior to commencement of operations. The plan shall provide for restoration to be completed within one (1) year of the cessation of active operations. Active operations are those which extract more than 200 cubic yards over a twelve (12) month period. The restoration plan shall establish ground levels and grades and in addition shall provide the following:
 - i. All debris, stumps, boulders, and similar materials shall be removed or disposed of in an approved location or, in the case of inorganic materials, buried and covered with a minimum of two (2) feet of soil.
 - ii. Storm drainage and water courses shall leave the location at the original natural drainage points and in a manner such that the amount of drainage at any point is not significantly increased.
 - iii. Any topsoil and subsoil suitable for purposes of revegetation shall, to the extent required for restoration, be stripped and stockpiled for use in restoring the location. At least four (4) inches of topsoil or loam shall be retained or obtained to cover all disturbed areas, which shall be reseeded and properly restored to a condition adequate to meet the provisions of the "Environmental Quality Handbook, Erosion and Sediment Control", as amended or revised, published by the Maine Soil and Water Conservation Commission.

iv. No permanent slope greater than three (3) feet horizontal to one (1) foot vertical (3:1) shall be permitted.

5. Existing Operations

- a) Any operation involving the excavation, processing, or storage of soil, earth, loam, sand, gravel, rock, or other mineral deposits in lawful operation at the time this Section becomes effective, may operate for a period of five (5) years from the date of enactment of this ordinance without Planning Board approval.
- b) Existing operations must abide by the performance standards as set out in Section B.4, above.
- c) An operation which ceases active operation for a twelve (12) month period shall thereafter abide by all provisions of this ordinance.
- d) Within six (6) months of the date of enactment of this ordinance, the Code Enforcement Officer shall notify, by certified mail, return receipt requested, the owners of all property which, to the best of their knowledge, contain existing operations, informing them of the requirements of this section.

C. Home Occupations

A home occupation, as defined by this ordinance, shall be a permitted use in all locations in town, provided it complies with all of the requirements of this section.

1. The use of a swimming unit or property for a home occupation shall be clearly incidental to and compatible with the residential use of the property and surrounding residential uses.
2. A home occupation shall be operated by residents of the associated dwelling and employ no more than two (2) persons not residing in the home.
3. A home occupation may not alter the residential character of the structure or neighborhood, or change the character of the lot from its principal residential use.
4. The home occupation shall be carried on wholly within the principal or accessory structures. The outside storage or display of materials or products shall be screened from view from the abutting properties.
5. The Performance Standards of this ordinance regarding off-street parking shall apply. If additional parking spaces are provided, they shall be located to the rear or side yard of the principal structure, but not within the required setbacks.
6. A home occupation shall not involve the use of heavy commercial vehicles for delivery from or to the premises.

7. A home occupation shall not create greater traffic than normal for the area in which it is located or generate more than 40 vehicle trips/day.

D. Mobile Home Parks

1. Mobile Home Parks shall be reviewed as subdivisions. They shall only be permitted in the areas identified as Mobile Home Parks Overlay Districts.
2. Mobile Home Parks are exempt from the Dimensional Standards of Section VI of this ordinance, but must conform to the following standards:
 - a) For parks served by Municipal sewer systems, minimum lot shall be 6,500 square feet. Minimum frontage shall be 50 feet.
 - b) For parks served by a central subsurface wastewater disposal system approved by the Maine Department of Human Services, minimum lot size shall be 12,000 square feet. Minimum frontage shall be 75 feet. The overall density of housing shall not exceed one (1) unit per 20,000 square feet.
 - c) For parks served by individual subsurface wastewater disposal systems, minimum lot size shall be 20,000 square feet. Minimum frontage shall be 100 feet.
 - d) Any lots located within any district established by the Benton Shoreland Zoning Ordinance shall meet the dimensional requirements for that district.
 - e) All park lots 12,000 square feet or greater shall observe a building setback of at least 25 feet from the edge of the right-of-way, and 15 feet from all other lot lines. All lots of less than 12,000 square feet shall observe a building setback of at least 15 feet from the right-of-way, and 10 feet from all other lot lines.
3. Buffering. In the event that a mobile home park is to be developed on a parcel abutting a previously-developed subdivision with an average lot size at least twice that of the park, the Planning Board may require vegetation buffer area of no more than 25 feet in width along the extent of the adjoining parcels and roadways. The buffer shall contain vegetation or structural components sufficient to provide an effective visual and noise barrier.
4. Open Space. In parks with lots of less than 10,000 square feet per lot, the Planning Board shall require the developer to provide an area equivalent to no more than ten (10) percent of the combined area of such lots for recreation and open space. The reserved area shall be accessible and usable by all park residents.

5. No individual lot within a mobile home park shall access directly onto an existing public street. Streets and roadways within the park shall be designed by a professional engineer registered by the State of Maine, and shall conform to the following standards:
 - a) Streets proposed to be dedicated as public ways shall conform to the Road Standards for the Town of Benton (New Streets Ordinance).
 - b) Streets proposed to remain as private ways within the park shall be laid out with rights-of-way no less than twenty-three (23) feet in width and a graveled or paved travel surface of no less than twenty (20) feet in width.
 - c) Any mobile home park containing thirty (30) or more lots shall have at least two (2) entrances onto public streets.
 - d) All access points from mobile home parks of five (5) or fewer lots shall meet the design standards for Low Volume Driveways of this ordinance. All other access points shall meet the design standards for Medium Volume Driveways.
6. Applicants for mobile home parks may be required to submit a hydrogeological assessment, in accordance with the “General Performance Standards” Section G.2 of this ordinance.
7. No development or subdivision approved under this ordinance as a mobile home park may be converted to another use or ownership pattern without further approval of the Planning Board (if subject to ordinance), and without meeting the dimensional standards of this ordinance.
 - a) The land within the park shall remain in unified ownership, and title to individual lots shall not be served in any way from ownership of the park.
 - b) No dwelling unit other than a manufactured housing unit as defined herein shall be located within the park.

E. Mixed Uses

1. Mixed uses are defined as the establishment of more than one principal use on a lot. Mixed uses shall be permitted in all areas of the Town of Benton. Each individual use shall be a permitted or conditional use in the district, with all necessary permits, and shall meet all applicable performance standards.
2. The dimensional standards for the mixed use shall be those applicable to the individual use with the most stringent requirements.
3. All mixed uses shall be under the same ownership or management as the underlying land.

F. Wireless Telecommunication Facilities

1. Applicability

This section shall apply to all construction and expansion of wireless telecommunication facilities. All new or expanded wireless telecommunication facilities shall obtain a conditional use permit as per the requirements of this Ordinance and shall further meet all the provisions set forth in this section.

2. Application Procedure

The applicant for a wireless telecommunication facility shall, upon submission of a conditional use application to the Planning Board, notify all property abutters within 200 feet of the site that an application has been filed with the Planning Board. The notice shall be by certified return receipt mail and provide a description of the proposed project and the date, time and place of the meeting when the application will be initially presented to the Planning Board. The notice shall be mailed at least 10 days prior to the scheduled Planning Board meeting.

At this meeting the Planning Board shall follow the procedure for a conditional application and shall begin a review of the application for completeness. The Planning Board may decide to hold a public hearing on the application.

3. Application Submission

In addition to the materials required for a conditional use application the following materials shall be provided:

- a. Name of the owner of operator of the wireless telecommunication facility and the owner of the property.
- b. Date the wireless telecommunication facility was initially constructed or is proposed to be constructed.
- c. A description and construction detail of the wireless telecommunication facility including: plot plan identifying location of the tower and other structures on the property, dimensions of the tower and any structural supports if any. The description shall also identify any accessory structures that are essential to operation of the telecommunication facility.
- d. Certification that construction of the structure meets industry standards and complies with all Federal, State and Local building codes and other applicable regulations.
- e. Provide documentation of FCC approval and license.
- f. Written evidence showing a need for a new structure or expansion and show that

co-location on an existing facility was not available.

- g. Any other information as necessary to show that all of the requirements of this section are met.

4. Standards

All wireless telecommunication facilities shall comply with the following standards.

- a. All wireless telecommunications facilities shall be setback from any residential lot, public building or property lines by a distance of not less than 200% of tower height, including any attached transmitting or receiving antennas and devices. Towers, guys and accessory facilities shall meet the minimum setback for the district in which they are located.
- b. To ensure the structural integrity of telecommunication facilities, the owner shall provide evidence that the facility is designed, constructed and maintained in conformance with industry standards and applicable Federal, State and local building, electrical and safety codes. Unless it can be demonstrated that the tower is secure from trespass and is not a safety hazard; a security fence or wall not less than 8 feet in height from the finished grade shall be provided around the tower. Access to the tower shall be through a locked gate.
- c. Towers shall not be artificially lighted unless it is required by the FAA or other Federal or State authority. If lighting is required the Planning Board shall review the available lighting alternatives and approve a design that conform to applicable FAA requirements and cause the least disturbance to the surrounding properties. Write lights shall be given a preference for tower lighting as long as it complies with FAA requirements.
- d. A new wireless telecommunication facility and related equipment must be screened with plants/trees from view by abutting properties to the maximum extent possible. Existing trees, shrubs and natural land forms on the site shall also be preserved to the maximum extent possible.
- e. A new wireless telecommunication facility must be constructed with materials and colors that match or blend with the surrounding natural or built environment, to the maximum extent practicable. Unless otherwise required by law, muted colors, earth tones, and subdued hues shall be used.
- f. A new wireless telecommunication facility and related equipment must be designed and constructed to accommodate expansion for future co-location of at least three (3) additional wireless telecommunication facilities or providers.

TOWN OF BENTON

SHORELAND ZONING ORDINANCE

(Effective Date)

September 16, 1992

SHORELAND ZONING ORDINANCE

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SHORELAND ZONING ORDINANCE
FOR THE MUNICIPALITY OF BENTON, MAINE

Section 1. Purposes

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

Section 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.).

Section 3. Applicability

This Ordinance applies to all land areas within 250 feet, horizontal distance, of the normal high-water line of any river; within 250 feet, horizontal distance, of the upland edge of a freshwater wetland; and within seventy-five (75') feet, horizontal distance, of the normal high-water line of a stream. This Ordinance also applies to any structure built on, over or abutting a dock, wharf or pier, or other structure extending beyond the normal high-water line of a water body or within a wetland.

Section 4. Effective Date and Repeal of Formerly Adopted Ordinance

This Ordinance, was adopted and made effective by the municipal legislative body on September 16, 1992. A certified copy of the Ordinance, attested and signed by the Municipal Clerk, shall be forwarded to the Department of Environmental Protection for approval.

Section 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.

Section 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.

Section 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, the more restrictive provision shall control.

Section 8. Amendments

This Ordinance may be amended by majority vote of the legislative body. Copies of amendments, attested and signed by the Municipal Clerk, shall be maintained on file at the Municipal Office.

Section 9. Districts and Zoning Map

A. Official Shoreland Zoning Map

The areas to which this Ordinance is applicable are hereby divided into the following districts as shown on the Official Shoreland Zoning Map(s) which is (are) made a part of this Ordinance:

1. Resource Protection
2. Limited Residential
3. Stream Protection
4. General Development

B. Scale of Map

The Official Shoreland Zoning Map shall be drawn at a scale of not less than: 1 inch = 2,000 feet. District boundaries shall be clearly delineated and a legend indicating the symbols for each district shall be placed on the map.

C. Certification of Official Shoreland Zoning Map

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

D. Changes to the Official Shoreland Zoning Map

If amendments, in accordance with Section 8, are made in the district boundaries or other matter portrayed on the Official Shoreland Zoning Map, such changes shall be made on the Official Shoreland Zoning Map within thirty (30) days after the amendment has been approved by the Department of Environmental Protection.

Section 10. Interpretation of District Boundaries

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

Section 11. Land Use Requirements

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

Section 12. Non-conformance

A. Purpose

It is the intent of this Ordinance to promote land use conformities, except that non-conforming conditions that existed before the effective

date of this Ordinance shall be allowed to continue, subject to the requirements set forth in this section.

B. General

1. Transfer of Ownership: Non-conforming structures, lots, and uses may be transferred, and the new owner may continue the non-conforming use or continue to use the non-conforming structure or lot, subject to the provisions of this Ordinance.
2. Repair and Maintenance: This Ordinance allows, without a permit, the normal upkeep and maintenance of non-conforming uses and structures including repairs or renovations which do not involve expansion of the non-conforming use or structure, and such other changes in a non-conforming use or structure as federal, state, or local building and safety codes may require.

NOTE: See Section 17 for the definitions of non-conforming structures, non-conforming uses and non-conforming lots.

C. Non-conforming Structures

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

Further Limitations:

- a. After January 1, 1989 if any portion of a structure is less than the required setback from the normal high-water line of a water body or upland edge of a wetland, that portion of the structure shall not be expanded in floor area or volume, by thirty (30%) percent or more, during the lifetime of the structure.
 - b. Construction or enlargement of a foundation beneath the existing structure shall not be considered an expansion of the structure provided; that the structure and new foundation are placed such that the setback requirement is met to the greatest practical extent as determined by the Planning Board, basing its decision on the criteria specified in subsection 2. Relocation, below; that the completed foundation does not extend beyond the exterior dimensions of the structure; and that the foundation does not cause the structure to be elevated by more than three (3') additional feet.
 - c. No structure which is less than the required setback from the normal high-water line of a water body, tributary stream, or upland edge of a wetland shall be expanded toward the water body, tributary stream, or wetland.
2. 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, and provided that the applicant demonstrates that the present sub-surface 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 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 adja-

cent 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.

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, tributary stream, or upland edge of a wetland and which is removed, or damaged or destroyed by more than fifty (50%) percent 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 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 fifty (50%) percent 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 written application determines that the new use will have no greater adverse impact on the water body or wetland, or on the subject or adjacent properties and resources than the existing use.

In determining that no greater adverse impact will occur, the Planning Board may require written documentation from the applicant, regarding the probable effects on public health and safety, erosion and sedimentation, water quality, fish and wildlife habitat, vegetative cover, visual and actual points of public access to waters, natural beauty, flood plain management, archaeological and historic resources, and functionally water-dependent uses. The Planning Board may also require that an independent professional consultant be hired at the applicant's expense in order to provide the information deemed necessary for its review.

D. Non-conforming Uses

1. Expansions: Expansions of non-conforming uses are prohibited, except that non-conforming residential uses may, after obtaining a permit from the Planning Board, be expanded within existing residential structures or within expansions of such structures as permitted in Section 12(C) (1) (a) above.
2. Resumption Prohibited: A lot, building or structure in or on which a non-conforming use is discontinued for a period exceeding one year, or which is superseded by a conforming use, may not again be devoted to a non-conforming use except that the Planning Board may, for good cause shown by the applicant, grant up to a one year extension to that time period. This provision shall not apply to the resumption of a use of a residential structure provided that the structure has been used or maintained for residential purposes during the preceding five (5) year period.
3. Change of Use: An existing non-conforming use may be changed to

another non-conforming use provided that the proposed use has no greater adverse impact on the subject and adjacent properties and resources than the former use, as determined by the Planning Board. The determination of no greater adverse impact shall be made according to criteria listed in Section 12 (C) (4) above.

E. Non-conforming Lots

1. Non-conforming Lots: A non-conforming lot of record as of the effective date of this Ordinance or amendment thereto may be built upon, without the need for a variance, provided that such lot is in separate ownership and not contiguous with any other lot in the same ownership, and that all provisions of this Ordinance except lot size and frontage can be met. Variances relating to setback or other requirements not involving lot size or frontage shall be obtained by action of the Board of Appeals.
2. Contiguous Built Lots: If two or more contiguous lots or parcels are in a single or joint ownership of record at the time of adoption of this Ordinance, if all or part of the lots do not meet the dimensional requirements of this Ordinance, and if a principal use or structure exists on each lot, the non-conforming lots may be conveyed separately or together, provided that the State Minimum Lot Size Law and Subsurface Wastewater Disposal Rules are complied with.

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

3. Contiguous Lots - Vacant or Partially Built: If two or more contiguous lots or parcels are in single or joint ownership of record at the time of or since adoption or amendment of this Ordinance, if any of these lots do not individually meet the dimensional requirements of this Ordinance or subsequent amendments, and if one or more of the lots are vacant or contain no principal structure the lots shall be combined to the extent necessary to meet the dimensional requirements. Approved and recorded subdivisions since 1983 are exempt from this subsection, however, these existing lots must be at least partially built upon no later than ten (10) years from the adoption of this Ordinance dated September 16, 1992, or else the lots shall be subject to the applicable provisions of this subsection.

Section 13. Establishment of Districts

A. Resource Protection District

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

1. All wetland areas as well as all areas within 250 feet, horizontal distance, of the upland edge of freshwater wetlands, and wetlands associated with rivers, which are identified by the Maine Department of Inland Fisheries and Wildlife (MDIF&W) as of January 1, 1973, as shown on the official Shoreland Zoning map.

NOTE: The Natural Resources Protection Act, Title 38 Sections 480-A through 480-S, requires the Department of Environmental Protec-

tion to designate areas of "significant wildlife habitat".
Significant wildlife habitat includes:

Habitat for species appearing on the official State or federal lists of endangered or threatened species; high and moderate value deer wintering areas and travel corridors as defined by the Department of Inland Fisheries and Wildlife; high and moderate value waterfowl and wading bird habitats, including nesting and feeding areas as defined by the Department of Inland Fisheries and Wildlife; critical spawning and nursery areas for Atlantic sea run salmon as defined by the Atlantic Sea Run Salmon Commission; and shorebird nesting, and feeding and staging areas as defined by the Department of Inland Fisheries and Wildlife.

As these areas are mapped and development standards are established by the Department of Inland Fisheries and Wildlife, municipalities should incorporate such areas and standards into their locally adopted ordinances.

2. Flood plains along rivers defined by the 100-year flood plain as designated on the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps or Flood Hazard Boundary Maps, or the flood of record, or in the absence of these, by soil types identified as recent flood plain soils.
3. Areas of two or more contiguous acres with sustained slopes of twenty (20%) percent or greater.
4. Areas of two (2) or more contiguous acres supporting wetland vegetation and hydric soils, which are not part of a freshwater wetland as defined, and which are not connected by surface water to a water body during normal spring high water.
5. Land areas along rivers subject to severe bank erosion, undercutting, or river bed movement.

Also included are the following other areas which have been recommended for protection:

- a. Other important wildlife habitat;
- b. Natural sites of significant scenic or esthetic value;
- c. Areas designated by federal, state or municipal governments as natural areas of significance to be protected from development; and
- d. Other significant areas which should be included in this district to fulfill the purposes of this Ordinance, such as, but not limited to, existing public access areas and certain significant archaeological and historic sites deserving of long-term protection as determined by the municipality after consultation with the Maine Historic Preservation Commission.

B. Limited Residential-Recreational District

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

C. General Development District

The General Development District includes the following types of areas:

1. Areas of two or more contiguous acres devoted to commercial, industrial or intensive recreational activities, or a mix of such activities, including but not limited to the following:
 - a. Areas devoted to manufacturing, fabricating or other industrial activities;
 - b. Areas devoted to wholesaling, warehousing, retail trade and service activities, or other commercial activities; and
 - c. Areas devoted to intensive recreational development and activities, such as, but not limited to amusement parks, race tracks and fairgrounds.
2. Areas otherwise discernable as having patterns of intensive commercial, industrial or recreational uses.

Portions of the General Development District may also include residential development. However, no area shall be designated as a General Development District based solely on residential use.

D. Stream Protection District

The Stream Protection District includes all land areas within seventy-five (75') feet, horizontal distance, of the normal high-water line of a stream, exclusive of those areas within two-hundred and fifty (250') feet, horizontal distance, of the normal high-water line of a river, a wetland and the corresponding area within two hundred and fifty (250') feet, horizontal distance, of the upland edge of a freshwater wetland. Where a stream and its associated shoreland area is located within two-hundred and fifty (250') feet, horizontal distance, of the above water bodies or wetlands, that land area shall be regulated under the terms of the shoreland district associated with that water body or wetland.

Section 14. Table of Land Uses

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

Key to Table 1:

- Yes - Allowed (no permit required but the use must comply with all applicable land use standards.)
- No - Prohibited
- PB - Requires permit issued by the Planning Board
- CEO - Requires permit issued by the Code Enforcement Officer
- LPI - Requires permit issued by the Local Plumbing Inspector
- * - Subject to specific Land Use Standards, Section 11

Abbreviations:

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

Land Uses	DISTRICT			
	Resource Protection	Limited Residential-Recreational	Stream Protection	General Development
1. Non-intensive uses not requiring structures, such as hunting, fishing & hiking.	Yes	Yes	Yes	Yes
2. Motorized vehicular traffic on roads and trails and snowmobiling.	Yes	Yes	Yes	Yes
3. Forest management activities except for timber harvesting. (Exclusive of herbicidal and pesticidal application.)	Yes	Yes	Yes	Yes
4. Timber harvesting.*	CEO ¹	CEO	CEO	CEO
5. Clearing of vegetation for approved construction and other allowed uses.	CEO	CEO	CEO	CEO
6. Fire prevention activities.	Yes	Yes	Yes	Yes
7. Wildlife management practices.	Yes	Yes	Yes	Yes
8. Soil and water conservation practices.	Yes	Yes	Yes	Yes
9. Mineral exploration.*	No	PB	PB	No
10. Mineral extraction including sand/gravel extraction.	No	PB	PB	No
11. Surveying & resource analysis.	Yes	Yes	Yes	Yes
12. Emergency operations as defined.	Yes	Yes	Yes	Yes
13. Private non-mechanical harvesting of wild crops.	Yes	Yes	Yes	Yes
14. Agriculture. (Excluding the use of herbicides and pesticides.)	PB	CEO	Yes	Yes
15. Aquaculture.	PB	Yes	PB	Yes
16. Principal structures:* a. 1-2 Family b. Multi-family c. Commercial structures d. Industrial structures e. Govern. & Institution f. Small non-residential facilities for educational, scientific, or nature interpretation purposes.	No No No No No PB ²	PB PB No No No CEO	PB PB No PB No PB	PB PB PB No PB CEO
17. Structures accessory to permitted uses.	PB ²	PB	CEO	PB
18. Piers, docks, wharves, breakwaters, causeways, marinas, bridges over 20 ft. in length, and uses projecting into water bodies: * Temporary Permanent	CEO No	CEO PB	CEO No	CEO PB

Land Uses	DISTRICT			
	Resource Protection	Limited Residential-Recreational	Stream Protection	General Development
19. Conversions of seasonal residences to year-round residences.	No	PB	No	PB
20. Home occupations.	No	PB	No	PB
21. Private sewage disposal systems.	No	LPI	LPI	No
22. Essential services.	No ⁴	PB	No ⁴	PB
23. Service drops, as defined, to allowed uses.	Yes	Yes	Yes	Yes
24. Public and private recreational areas involving minimal structural development.	PB	PB	PB	PB
25. Individual, private campsites.	No	PB	No	PB
26. Campgrounds.	No	PB	No	PB
27. Road & driveway construction.	No ⁴	PB	No	PB
28. Parking facilities.	No ⁴	PB	No	PB
29. Marinas.	No	PB	No	PB
30. Filling and earthmoving of <10 cubic yards.	No	Yes	CEO	Yes
31. Filling and earthmoving of >10 cubic yards.	No	PB	PB	PB
32. Signs.	CEO	CEO	CEO	CEO
33. Uses similar to allowed uses.	CEO	CEO	CEO	CEO
34. Uses similar to uses requiring CEO permit.	CEO	CEO	CEO	CEO
35. Uses similar to uses requiring a PB permit.	PB	PB	PB	PB

- ¹ In RP not permitted within one seventy-five (75') feet of the normal high-water line of those protected water bodies appropriately zoned, except to remove safety hazards.
- ² Provided that a variance from the setback requirement is obtained from the Board of Appeals.
- ³ See further restrictions in Section 16(L)(2) on page__.
- ⁴ Except to provide access to permitted uses within the district, or where no reasonable alternative route or location is available outside the RP area, in which case a permit is required from the PB.

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

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

Section 15. Land Use Standards

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

A. Minimum Lot Standards

1.	<u>Minimum Lot Area</u> <u>(sq.ft.)</u>	<u>Minimum Shore</u> <u>Frontage (ft.)</u>
Residential per dwelling unit	40,000	200
Governmental, Institutional, Commercial, or Industrial per principal structure	60,000	300
Public and Private Recreational Facilities	40,000	200

2. Land below the normal high-water line of a water body or upland edge of a wetland and land beneath roads serving more than two (2) lots shall not be included toward calculating minimum lot area.

3. Lots located on opposite sides of a public or private road shall be considered each a separate tract or parcel of land unless such road was established by the owner of land on both sides thereof after September 22, 1971.

4. The minimum width of any portion of any lot within seventy-five (75') feet, horizontal distance, of the normal high-water line of a water body, including any wetland and its corresponding upland edge, shall be equal to or greater than the shore frontage requirement for a lot with the proposed use.

5. If more than one residential dwelling unit or more than one principal commercial or industrial structure is constructed on a single parcel, all dimensional requirements shall be met for each additional dwelling unit or principal structure.

B. Principal and Accessory Structures

1. All new principal and accessory structures shall be set back at least seventy-five (75') feet from the normal high-water line of the Kennebec and Sebasticook Rivers and other water bodies which are identified by the Official Shoreland Zoning Map, including tributary streams, wetlands and their corresponding upland edge, except that in the General Development District the setback from the normal high-water line shall be at least twenty-five (25') feet.

In addition:

- a. The water body or wetland setback provision shall neither apply to structures which require direct access to the water as an operational necessity, such as piers, docks and retaining walls, nor to other functionally water-dependent uses.
- b. The Planning Board may increase the required setback of a proposed structure, as a condition to permit approval, if necessary to accomplish the purposes of this Ordinance. Instances where a greater set-back may be appropriate include, but are not limited to, areas of steep slope; shallow or erodible soils; or where an adequate vegetative buffer does not exist.
2. Principal or accessory structures and expansions of existing structures which are permitted in the Resource Protection, Limited Residential, General Development, and Stream Protection Districts,

shall not exceed thirty-five (35') feet in height. This provision shall not apply to structures such as transmission towers, windmills, antennas, and similar structures having no floor area.

3. The first 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.
4. The total 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 General Development District adjacent to rivers where lot coverage shall not exceed fifty (50%) percent.
5. 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, wetland and its corresponding upland edge (unless permitted by the Department of Environmental Protection pursuant to the Natural Resources Protection Act, Title 38, Section 480-C); and that the applicant demonstrates that no reasonable alternative access exists on the property.

C. Piers, Docks, Wharfs, Bridges and Other Structures and Uses Extending Over or Beyond the Normal High-Water Line of a Water Body or Within a Wetland.

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 located so as to minimize adverse effects on fisheries.
4. 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.
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 General Development District, structures built on, over or abutting a pier, wharf, dock or other structure extending beyond the normal high-water line of a water body or within a wetland shall not exceed twenty (20') feet in height above the pier, wharf, dock or other structure.
8. Permanent structures projecting into or over water bodies shall require a permit from the Department of Environmental Protection pursuant to the Natural Resources Protection Act, Title 38 M.R.S.A., Section 480-C.

D. Campgrounds

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

1. Campgrounds shall contain a minimum of five thousand (5,000) square feet of land, not including roads and driveways, for each site. Land supporting wetland vegetation, and land below the normal high-water line of a water body shall not be included in calculating land area per site.
2. The areas intended for placement of a recreational vehicle, tent or shelter, and utility and service buildings shall be set back a minimum of seventy-five (75') feet from the normal high-water line of the Kennebec and Sebasticook Rivers and from the normal high-water line of other water bodies, tributary streams, wetlands and their corresponding upland edge.

E. Individual Private Campsites

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

1. 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.
2. Campsite placement on any lot, including the area intended for a recreational vehicle or tent platform, shall be set back seventy-five (75') feet from the normal high-water line of the Kennebec and Sebasticook Rivers and other water bodies and tributary streams.
3. Recreational vehicles shall not be located on any type of permanent foundation except for a gravel pad, and no structure(s) except canopies shall be attached to the recreational vehicle.
4. 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.
5. 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.

F. Commercial and Industrial Uses

The following new commercial and industrial uses are prohibited within the shoreland zone adjacent to the Kennebec and Sebasticook Rivers and other water bodies, tributary streams, wetlands and their corresponding upland edge:

1. Auto washing facilities
2. Auto or other vehicle services, including body shops
3. Repair operations
4. Chemical and bacteriological laboratories
5. Storage of chemicals, including herbicides, pesticides or fertilizers other than amounts normally associated with individual households or farms
6. Commercial painting, wood preserving, and furniture stripping
7. Dry cleaning establishments
8. Electronic circuit assembly

9. Laundromats, unless connected to a sanitary sewer
10. Metal plating, finishing, or polishing
11. Petroleum or petroleum product storage and/or sale except storage on same property as use occurs and except for storage and sales associated with marinas
12. Photographic processing
13. Printing

G. Parking Areas

1. Parking areas shall meet the shoreline setback requirements for structures for the district in which such areas are located, except that the setback requirement for parking areas serving public boat launching facilities, in districts other than the General Development District may be reduced to no less than fifty (50') feet from the normal high-water line, or upland edge of a wetland 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.
3. In determining the appropriate size of proposed parking facilities, the following shall apply:
 - a. Typical parking space: Approximately ten (10') feet wide and twenty (20') feet long, except that parking spaces for a vehicle and boat trailer shall be forty (40') feet long.
 - b. Internal travel aisles: Approximately twenty (20') feet wide.

H. Roads and Driveways

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

1. Roads and driveways shall be set back at least seventy-five (75') feet from the normal high-water line of the Kennebec and Sebasticook Rivers and other water bodies, tributary streams, wetlands and their corresponding upland edge (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 fifty (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. The Planning Board may require the applicant to have an independent professional consultant assess the proposal and provide technical information for the Board's review. The applicant shall bear the cost of the consultant's preparation of such technical information.

On slopes of greater than twenty (20%) percent the road and/or driveway setback shall be increased by ten (10') feet for each five (5%) percent increase in slope above twenty (20%) percent.

This paragraph 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 may 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 practicable from the normal high-water line of a water body, tributary stream, wetland and its corresponding upland edge.
4. Road 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 subsection Q.
5. Road grades shall be no greater than ten (10%) percent except for short segments of less than two hundred (200') feet.
6. 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 fifty (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. 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. The Planning Board may require that a professionally-engineered roadway plan be designed which eliminates straight runs of roadway toward water bodies. The plan shall represent non-erosion and non-sedimentation efforts to add stability to the roadway.
7. Ditch relief (cross drainage) culverts, drainage dips and water turn-outs 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 turn-outs shall be spaced along the road at intervals no greater than indicated in the following table:

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

- b. Drainage dips may be used in place of ditch relief culverts only where the road grade is ten (10%) percent or less.
- c. On road sections having slopes greater than ten (10%) percent, ditch relief culverts shall be placed across the road at approximately a thirty (30°) degree angle downslope from a line perpendicular to the centerline 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.

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

I. Signs

The following provisions shall govern the use of signs in the Resource Protection, Stream Protection, Limited Residential and General Development Districts:

1. Signs and billboards relating to goods and services sold on the premises shall be permitted, provided that such signs shall not exceed six (6) square feet in area and shall not exceed two (2) signs per premises. Billboards and signs relating to goods or services not sold or rendered on the premises shall be prohibited.
2. Name signs shall be permitted, provided such signs shall not exceed two (2) signs per premises.
3. Residential users may display a single sign not over three (3) square feet in area relating to the sale, rental, or lease of the premises.
4. Signs relating to trespassing and hunting shall be permitted without restriction as to number provided that no such sign shall exceed two (2) square feet in area.
5. Signs relating to public safety shall be permitted without restriction.
6. No sign shall extend higher than twenty (20') feet above the ground.
7. Signs may be illuminated only by shielded, non-flashing lights.
8. Signs shall not resemble, imitate, or approximate the shape, size, form, or color of railroad or traffic signs, signal, or devices. (Amended March 9, 1985)
9. No sign shall be placed so as to obstruct or interfere with traffic visibility. (Amended March 9, 1985)
10. No sign shall be placed so as to prevent free ingress to or egress from any door, window, or fire escape. (Amended March 9, 1985)

J. Storm Water Runoff

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

K. Septic Waste Disposal

1. All subsurface sewage disposal systems shall be installed in conformance with the State of Maine Subsurface Wastewater Disposal Rules (Rules).
2. The Rules, among other requirements, include:
 - a. The minimum setback for new subsurface sewage disposal systems, shall be no less than seventy-five (75') horizontal feet from

the normal high-water line of a perennial water body. The minimum setback distances from water bodies for new subsurface sewage disposal systems shall not be reduced by variance.

- b. Replacement systems shall meet the standards for replacement systems as contained in the Rules.

L. Essential Services

1. Where feasible, the installation of essential services shall be limited to existing public ways and existing service corridors.
2. The installation of essential services is not permitted in a Resource Protection or Stream Protection District, except to provide services to a permitted use within said district, or except where the applicant demonstrates that no reasonable alternative exists. These exceptions shall require review and permitting by the local Planning Board. Where permitted, such structures and facilities shall be located so as to minimize any adverse impacts on surrounding uses and resources, including visual impacts.

M. Mineral Exploration and Extraction

Mineral exploration to determine the nature or extent of mineral resources shall be accomplished by hand sampling, test boring, or other methods which create minimal disturbance of less than one hundred (100) square feet of ground surface. A permit from the Planning Board 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, so as to restore disturbed areas and to protect the public health and safety.

Mineral extraction may be permitted under the following conditions:

1. A reclamation plan shall be filed with, and approved by the Planning Board before a permit is granted. Such plan shall describe in detail procedures to be undertaken to fulfill the requirements of paragraph 4 below.
2. Unless authorized pursuant to the Natural Resources Protection Act, Title 38, M.R.S.A, Section 480-C no part of any extraction operation, including drainage and runoff control features shall be permitted within seventy-five (75') feet of the normal high-water line of the Kennebec and Sebasticook Rivers and other water bodies, tributary stream, wetlands and their corresponding upland edge. Extraction operations shall not be permitted within seventy-five (75') feet of any property line, without written permission of the owner of such adjacent property.
3. The State of Maine Solid Waste Laws, Title 38, Maine Revised Statutes Annotated, Section 1310 and Chapter 404 of the Department of Environmental Protection's regulations may contain other applicable provisions regarding disposal of such materials.
4. Within twelve (12) months following the completion of extraction operations at any extraction site, which operations shall be deemed complete when less than one hundred (100) cubic yards of materials are removed in any consecutive twelve (12) month period, ground levels and grades shall be established in accordance with the following:
 - a. All debris, stumps, and similar material shall be removed for disposal in an approved location, or shall be buried on-site. Only materials generated on-site may be buried or covered on-site.

- b. The final graded slope shall be two to one (2:1) slope or flatter.
 - c. Top soil or loam shall be retained to cover all disturbed land areas, which shall be reseeded and stabilized with vegetation native to the area. Additional topsoil or loam shall be obtained from off-site sources if necessary to complete the stabilization project.
5. In keeping with the purposes of this Ordinance, the Planning Board may impose such conditions as are necessary to minimize the adverse impacts associated with mineral extraction operations on surrounding uses and resources.

N. 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 Soil and Water Conservation Commission in July, 1972.
2. Manure shall not be stored or stockpiled within seventy-five (75') feet, horizontal distance, of the Sebasticook River and other water bodies, tributary streams, or wetlands. 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 five (5) years of the enactment of this Ordinance.
3. Agricultural activities involving tillage of soil greater than forty thousand (40,000) square feet in surface area, or the spreading, disposal or storage of manure within the shoreland zone shall require a Soil and Water Conservation Plan to be filed with the Planning Board. Non-conformance with the provisions of said plan shall be considered to be a violation of this Ordinance. Assistance in preparing a soil and water conservation plan may be available through the local Soil and Water Conservation District Office.
4. There shall be no new tilling of soil within seventy-five (75') feet, horizontal distance, of the normal high-water line of the Kennebec and Sebasticook Rivers and other water bodies; nor within twenty-five (25') feet, horizontal distance, of tributary streams, and wetlands. Operations in existence on the effective date of this Ordinance and not in conformance with this provision may be maintained.
5. After the effective date of this Ordinance, newly established live-stock grazing areas shall not be permitted within seventy-five (75') feet, horizontal distance, of the normal high-water line the Kennebec and Sebasticook Rivers and other water bodies; nor within twenty-five (25') feet, horizontal distance, of tributary streams, and wetlands. Livestock grazing associated with ongoing farm activities, and which are not in conformance with the above set back provisions may continue, provided that such grazing is conducted in accordance with a Soil and Water Conservation Plan. Assistance in preparing a Soil and Water Conservation Plan may be available through the local Soil and Water Conservation District Office.

O. Timber Harvesting

1. Within the strip of land extending seventy-five (75') feet inland from the normal high-water line in a shoreland area zoned for resource protection, there shall be no timber harvesting, except to remove safety hazards.

2. Except in areas as described in Paragraph 1 above, timber harvesting shall conform with the following provisions:
 - a. Selective cutting of no more than forty (40%) percent of the total volume of trees four (4") inches or more in diameter measured at 4½ feet above ground level on any lot in any ten (10) year period is permitted. In addition:
 - i. Within seventy-five (75') feet, horizontal distance of the normal high-water line of the Kennebec and Sebasticook Rivers and other water bodies, tributary streams, wetlands and their corresponding upland edge, there shall be no clear cut openings and a well distributed stand of trees and other vegetation, including existing ground cover, shall be maintained. The Code Enforcement Officer may require review and documentation be provided by a licensed, professional forester at the property owners expense.
 - ii. At distances greater than seventy-five (75') feet, horizontal distance, of the Kennebec and Sebasticook Rivers and other water bodies or the upland edge of a wetland, harvesting operations shall not create single clear cut openings greater than ten thousand (10,000) square feet in the forest canopy. Where such openings exceed five thousand (5,000) square feet they shall be at least one hundred (100') feet apart. Such clear cut 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.
 - b. No accumulation of slash shall be left within fifty (50') feet of the normal high-water line of a water body. In all other areas slash shall either be removed or disposed of in such a manner that it lies on the ground and no part thereof extends more than four (4') feet above the ground. Any debris that falls below the normal high-water line of a water body shall be removed.
 - c. Timber harvesting equipment shall not use stream channels as travel routes except when:
 - i. Surface waters are frozen; and
 - ii. The activity will not result in any ground disturbance.
 - d. 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.
 - e. Skid trail approaches to water crossings shall be located and designed so as to prevent water runoff from directly entering the water body or tributary stream. Upon completion of timber harvesting, temporary bridges and culverts shall be removed and areas of exposed soil revegetated.
 - f. Except for water crossings, skid trails and other sites where the operation of machinery used in timber harvesting results in the exposure of mineral soil shall be located such that an unscarified strip of vegetation of at least seventy-five (75') feet in width for slopes up to ten (10%) percent shall be retained between the exposed mineral soil and the normal high-water line of a water body or upland edge of a wetland. For each ten (10%) percent increase in slope, the unscarified strip shall be increased by twenty (20') feet. 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 water body or upland edge of a wetland.

P. Clearing of Vegetation for Development

1. Within a shoreland area zoned for Resource Protection abutting the Kennebec and Sebasticook Rivers, there shall be no cutting of vegetation within the strip of land extending seventy-five (75') feet, horizontal distance, inland from the normal high-water line, except to remove safety hazards.

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

2. Except in areas as described in Paragraph 1, above, and except to allow for the development of permitted uses, within a strip of land extending seventy-five (75') feet, horizontal distance, inland from the normal high-water line of the Kennebec and Sebasticook Rivers and other water bodies, 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 as measured from the outer limits of the tree crown. However, a footpath not to exceed ten (10') feet in width as measured between tree trunks is permitted provided that a cleared line of sight to the water through the buffer strip is not created. Adjacent to the Kennebec and Sebasticook Rivers, the width of the foot path shall be limited to six (6') feet. In each case, however, only one footpath per parcel shall be allowed.
 - b. Selective cutting of trees within the buffer strip is permitted provided that a well distributed stand of trees and other vegetation is maintained. At the discretion of the Code Enforcement Officer, a licensed, professional forester may be required to provide technical assistance (at the property owner's expense) in determining the parameters of a well-distributed stand of trees. For the purposes of this section a "well-distributed stand of trees and other vegetation" adjacent to a river or stream shall be defined as maintaining a rating score of twelve (12) or more in any 25-foot by 25-foot square (625 square feet) area as determined by the following rating system.

<u>Diameter of Tree at 4-1/2 feet</u> <u>Above Ground Level (inches)</u>	<u>Points</u>
<u>2 - 4 in.</u>	<u>1</u>
<u>>4 - 12 in.</u>	<u>2</u>
<u>>12 in.</u>	<u>4</u>

Adjacent to other water bodies, tributary streams, and wetlands, a "well-distributed stand of trees and other vegetation" is defined as maintaining a minimum rating score of 8 per 25-foot square area.

NOTE: As an example, adjacent to a great pond, if a 25-foot x 25-foot plot contains three (3) trees between two (2") and four (4") inches in diameter, three (3) trees between four (4") and twelve (12") inches in diameter, and three (3) trees over twelve (12") inches in diameter, the rating score is:

$$(3 \times 1) + (3 \times 2) + (3 \times 4) = 21 \text{ points}$$

Thus, the 25-foot by 25-foot plot contains trees worth 21 points. Trees totaling 9 points (21 - 12 = 9) may be removed from the plot provided that no cleared openings are created.

Notwithstanding the above provisions, no more than forty (40%) percent of the total volume of trees four (4") inches or more in diameter, measured at 4½ feet above ground level may be removed in any ten (10) year period.

- c. In order to protect water quality and wildlife habitat adjacent to rivers and streams, existing vegetation under three (3') feet in height and other ground cover shall not be removed, except to provide for a foot path or other permitted uses as described in paragraphs 2 and 2a. above.
- d. Pruning of tree branches, on the bottom ⅓ of the tree is permitted.
- e. In order to maintain a buffer strip of vegetation, when the removal of storm-damaged, diseased, unsafe, or dead trees results in the creation of cleared openings, these openings shall be replanted with native tree species two (2") inches in diameter or four (4') feet in height, unless existing new tree growth is present.

The provisions contained in paragraph 2 above shall not apply to those portions of public recreational facilities adjacent to public swimming areas. Cleared areas, however, shall be limited to the minimum area necessary.

3. At distances greater than seventy-five (75') feet, horizontal distance, from the Kennebec and Sebasticook Rivers and other water bodies, tributary streams, wetlands and their corresponding upland edge, except to allow for the development of permitted uses, there shall be permitted on any lot, in any ten (10) year period, selective cutting of not more than forty (40%) percent of the volume of trees four (4") inches or more in diameter, measured 4½ feet above ground level. Tree removal in conjunction with the development of permitted uses shall be included in the forty (40%) percent calculation. For the purposes of these standards volume may be considered to be equivalent to basal area.

In no event shall cleared openings for development, including but not limited to, principal and accessory structures, driveways and sewage disposal areas, exceed in the aggregate, twenty-five (25%) percent of the lot area or ten thousand (10,000) square feet, whichever is greater, including land previously developed. This provision shall not apply to the General Development District.

4. Cleared openings legally in existence on the effective date of this Ordinance may be maintained, but shall not be enlarged, except as permitted by this Ordinance.
5. Fields which have reverted to primarily shrubs, trees, or other woody vegetation shall be regulated under the provisions of this section.

Q. 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 written Soil Erosion and Sedimentation Control Plan. The Plan shall be submitted to the permitting authority for approval and shall include, where applicable, provisions for:

- a. Mulching and revegetation of disturbed soil.
 - b. Temporary runoff control features such as hay bales, silt fencing or diversion ditches.
 - c. Permanent stabilization structures such as retaining walls or riprap.
2. In order to create the least potential for erosion, development shall be designed to fit with the topography and soils of the site. Areas of steep slopes where high cuts and fills may be required shall be avoided wherever possible, and natural contours shall be followed as closely as possible.
 3. Erosion and sedimentation control measures shall apply to all aspects of the proposed project involving land disturbance, and shall be in operation during all stages of the activity. The amount of exposed soil at every phase of construction shall be minimized to reduce the potential for erosion.
 4. Any exposed ground area shall be temporarily or permanently stabilized within one (1) week from the time it was last actively worked, by use of riprap, sod, seed, and mulch, or other effective measures. In all cases permanent stabilization shall occur within nine (9) months of the initial date of exposure. In addition:
 - a. Where mulch is used, it shall be applied at a rate of at least one (1) bale per five hundred (500) square feet and shall be maintained until a catch of vegetation is established.
 - b. Anchoring the mulch with netting, peg and twine or other suitable method may be required to maintain the mulch cover.
 - c. Additional measures shall be taken where necessary in order to avoid siltation into the water. Such measures may include the use of staked hay bales and/or silt fences.
 5. Natural and man-made drainage ways and drainage outlets shall be protected from erosion from water flowing through them. Drainage ways shall be designed and constructed in order to carry water from a twenty-five (25) year storm or greater, and shall be stabilized with vegetation or lined with rip-rap.

R. Soils

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

S. 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.

T. Archaeological Sites

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

NOTE: Municipal officials should contact the Maine Historic Preservation Commission for the listing and location of Historic Places in their community.

Section 16. Administration

A. Administering Bodies and Agents

1. Code Enforcement Officer

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

2. Board of Appeals

A Board of Appeals shall be created in accordance with the provisions of Title 30-A Section 2691.

3. Planning Board

A Planning Board shall be created in accordance with the provisions of State law.

B. Permits Required

After the effective date of this Ordinance no person shall, without first obtaining a permit, engage in any activity or use of land or structure requiring a permit in the district in which such activity or use would occur; or expand, change, or replace an existing use or structure; or renew a discontinued non-conforming use.

C. Permit Application

1. Every applicant for a permit shall submit a written application which provides all pertinent information which has been requested, including a scaled site plan, on a form provided by the municipality, to the appropriate official as indicated in Section 14.

a. Applications must be accompanied by a non-refundable fee of fifty (\$50) dollars.

b. After-the-fact applications for permit shall be accompanied by a non-refundable fee of two hundred (\$200) dollars.

c. An additional fee may be charged if the Planning Board and/or Board of Appeals needs the assistance of a professional engineer

or other expert. The expert's fee shall be paid in full by the applicant. Failure to pay the bill shall constitute a violation of the Ordinance and be grounds for the issuance of a stop work order. An expert shall not be hired by the municipality at the expense of an applicant until the applicant has either consented to such hiring in writing or been given an opportunity to be heard on the subject.

2. All applications shall be signed by the owner or owners of the property or other person authorizing the work, certifying that the information in the application is complete and correct. If the person signing the application is not the owner or lessee of the property then that person shall submit a letter of authorization from the owner or lessee.
3. 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 site evaluation shall be submitted to the local Plumbing Inspector whenever the nature of the proposed structure 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 14, shall notify the applicant in writing either that the application is a complete application, or, if the application is incomplete, that specified additional material is needed to make the application complete. During this time period the Planning Board or Code Enforcement Officer may require an on-site inspection of the subject property. The Planning Board or the Code Enforcement Officer, as appropriate, shall then approve, approve with conditions, or deny all permit applications in writing within thirty-five (35) days of receiving a completed application which supplies all necessary and pertinent information as required by the Planning Board. However, if the Planning Board has a waiting list of applications, a decision on the application shall occur within thirty-five (35) days after the first available date on the Planning Board's agenda following receipt of the completed application, or within thirty-five (35) days of the public hearing, if one is held. Permits shall be approved if the proposed use or structure is found to be in conformance with the purposes and provisions of this Ordinance.

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

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

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

8. Is in conformance with the provisions of Section 15, Land Use Standards.

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

E. Expiration of Permit

Following the issuance of a permit, if no substantial start is made in construction or in the use of the property within six (6) months of the date of the permit, the permit shall lapse and become void, thus requiring that a new permit be obtained. After the initial six (6) months have elapsed, if some improvement to or construction upon the property has been made though it is not of a substantial nature, one additional six (6) month extension may be granted by the Code Enforcement Officer. However, at the discretion of the Code Enforcement Officer, the Planning Board may be asked to review the request for permit extension. The Planning Board or CEO may determine other appropriate time frames regarding the expiration of permits, dependent on the activity, as a condition of the permit.

F. Municipal Review Authority and Permit Issuance

Permits issued by the State of Maine shall not supersede the Town of Benton's review procedures regarding the approval or denial of permit applications. Construction commenced prior to receipt of a valid permit from the town shall constitute a violation of this Ordinance, irregardless of any State permits obtained.

G. Installation of Public Utility Service

No public utility, water district, sanitary district or any utility company of any kind may install services to any new structure located in the shoreland zone unless written authorization attesting to the validity and currency of all local permits required under this or any previous Ordinance, has been issued by the appropriate municipal officials. Following installation of service, the company or district shall forward the written authorization to the municipal officials, indicating that installation has been completed.

H. Appeals

1. Powers and Duties of the Board of Appeals

The Board of Appeals shall have the following powers:

- a. Administrative Appeals: To hear and decide appeals where it is alleged that there is an error in any order, requirement, decision, or determination made by, or failure to act by, the Code Enforcement Officer or Planning Board in the enforcement or administration of this Ordinance.
- b. Variance Appeals: To authorize variances upon appeal, within the limitations set forth in this Ordinance.

2. Variance Appeals

Variances may be permitted only under the following conditions:

- a. Variances may be granted only from dimensional requirements including but not limited to, lot width, structure height, percent of lot coverage, and setback requirements.

- b. Variances shall not be granted for establishment of any uses otherwise prohibited by this Ordinance.
- c. The Board shall not grant a variance unless it finds that:
 - (1) The proposed structure or use would meet the provisions of Section 15 except for the specific provision which has created the non-conformity and from which relief is sought; and
 - (2) The strict application of the terms of this Ordinance would result in undue hardship.

The term "undue hardship" shall mean:

- (i) That the land in question cannot yield a reasonable return unless a variance is granted;
 - (ii) That the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;
 - (iii) That the granting of a variance will not alter the essential character of the locality; and
 - (iv) That the hardship is not the result of action taken by the applicant or a prior owner.
- d. The Board of Appeals shall limit any variances granted as strictly as possible in order to insure conformance with the purposes and provisions of this Ordinance to the greatest extent possible, and in doing so may impose such conditions to a variance as it deems necessary. The party receiving the variance shall comply with any conditions imposed.
 - e. At the discretion of the Appeals Board a copy of variance request, including the application and all supporting information supplied by the applicant, may be forwarded by the municipal officials to the Commissioner of the Department of Environmental Protection prior to action by the Board of Appeals. Any comments received from the Commissioner prior to action by the Board of Appeals shall be made part of the record and shall be taken into consideration by the Board of Appeals.
 - f. A copy of all variances granted by the Board of Appeals shall be submitted to the Department of Environmental Protection within fourteen (14) days of the decision.

3. Appeal Procedure

a. Making an Appeal

- (1) An administrative or variance appeal may be taken to the Board of Appeals by an aggrieved party from any decision of the Code Enforcement Officer or the Planning Board. Such appeal shall be taken within thirty (30) days of the date of the decision appealed from, and not otherwise, except that the Board, upon a showing of good cause, may waive the thirty (30) day requirement.
- (2) Such appeal shall be made by filing with the Board of Appeals a written notice of appeal which includes:
 - (i) A concise written statement indicating what relief is requested and why it should be granted.
 - (ii) A sketch drawn to scale showing lot lines, location of existing buildings and structures and other physical features of the lot pertinent to the relief sought.
- (3) Upon being notified of an appeal, the Code Enforcement Officer or Planning Board, as appropriate, shall transmit to the Board of Appeals all of the papers constituting the record of the decision appealed from.
- (4) The Board of Appeals shall hold a public hearing on the appeal within thirty-five (35) days of its receipt of an appeal request.

b. Decision by Board of Appeals

- (1) A majority of the board shall constitute a quorum for the purpose of deciding an appeal. A member who abstains shall not be counted in determining whether a quorum exists.
- (2) The concurring vote of a majority of the members of the Board of Appeals present and voting shall be necessary to reverse an order, requirement, decision, or determination of the Code Enforcement Officer or Planning Board, or to decide in favor of the applicant on any matter on which it is required to decide under this Ordinance, or to affect any variation in the application of this Ordinance from its stated terms. The Board may reverse the decision, or failure to act, of the Code Enforcement Officer or Planning Board only upon a finding that the decision, or failure to act, was clearly contrary to specific provisions of this Ordinance.
- (3) The person filing the appeal shall have the burden of proof.
- (4) The Board shall decide all appeals within thirty-five (35) days after the close of the hearing, and shall issue a written decision on all appeals.
- (5) All decisions shall become a part of the record and shall include a statement of findings and conclusions as well as the reasons or basis therefor, and the appropriate order, relief or denial thereof.

4. Appeal to Superior Court

Any aggrieved party who participated as a party during the proceedings before the Board of Appeals may take an appeal to Superior Court

in accordance with State laws within thirty (30) days from the date of any decision of the Board of Appeals.

5. Reconsideration

The Board of Appeals may reconsider any decision within thirty (30) days of its prior decision. The Board may conduct additional hearings and receive additional evidence and testimony.

I. Enforcement

1. Nuisances

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

2. Code Enforcement Officer

- a. It shall be the duty of the Code Enforcement Officer to enforce the provisions of this Ordinance. If the Code Enforcement Officer shall find that any provision of this Ordinance is being violated, he or she shall notify in writing the person responsible for such violation, indicating the nature of the violation and ordering the action necessary to correct it, including discontinuance of illegal use of land, buildings or structures, or work being done, removal of illegal buildings or structures, and abatement of nuisance conditions. A copy of such notices shall be submitted to the municipal officers and be maintained as a permanent record.
- b. The Code Enforcement Officer shall conduct on-site inspections to insure compliance with all applicable laws and conditions attached to permit approvals. The Code Enforcement Officer shall also investigate all complaints of alleged violations of this Ordinance.
- c. The Code Enforcement Officer shall keep a complete record of all essential transactions of the office, including applications submitted, permits granted or denied, variances granted or denied, revocation actions, revocation of permits, appeals, court actions, violations investigated, violations found, and fees collected. On an annual basis, a summary of this record shall be submitted to the Director of the Bureau of Land Quality Control within the Department of Environmental Protection.

3. Legal Actions

When the above action does not result in the correction or abatement of the violation or nuisance condition, the Municipal Officers, upon notice from the Code Enforcement Officer, are hereby directed to institute any and all actions and proceedings, either legal or equitable, including seeking injunctions of violations and the imposition of fines, that may be appropriate or necessary to enforce the provisions of this Ordinance in the name of the municipality. The municipal officers, or their authorized agent, are hereby authorized to enter into administrative consent agreements for the purpose of eliminating violations of this Ordinance and recovering fines without Court action. Such agreements shall not allow an illegal structure or use to continue unless there is clear and convincing evidence that the illegal structure or use was constructed or conducted as a direct result of erroneous advice given by an authorized municipal official (i.e. the CEO and/or PB) and there is no evidence that the owner acted in bad faith, or unless the removal of the structure or use will result in a threat or hazard to public health and safety or will result in substantial environmental damage. Notwithstanding corrective actions taken by the violator of any Ordinance, the Town has the right to pursue legal action to recompense the municipality for

administrative costs to process the violation.

4. Fines

Any person, including but not limited to a landowner, a landowner's agent or a contractor, who orders or conducts any activity in violation of this Ordinance shall be penalized in accordance with Title 30-A, Maine Revised Statutes Annotated, Subsection 4452.

NOTE: Current penalties include fines of not less than \$100 nor more than \$2,500 per violation for each day that the violation continues.

Section 17. Definitions

Abutters - for the purpose of notification, abutters shall include owners whose land directly touches the applicant's land as well as the owner(s) of land directly across a road from the applicant's land.

Accessory structure or use - A use or structure of a nature customarily incidental or subordinate to that of the principal use or structure and not used for residential occupancy. A deck or similar extension of the principal structure or a garage attached to the principal structure by a roof or a common wall is considered part of the principal structure.

Agriculture - the production, keeping or maintenance for sale or lease, of plants and/or animals, including but not limited to: forages and sod crops; grains and seed crops; dairy animals and dairy products; poultry and poultry products; livestock; fruits and vegetables; and ornamental and green house products. Agriculture does not include forest management and timber harvesting activities.

Aggrieved party - a person whose land is directly or indirectly affected by the grant or denial of a permit or variance under this Ordinance; a person whose land abuts land for which a permit or variance has been granted; or any other person or group of persons within the municipality who have suffered particularized injury as a result of the granting or denial of such permit or variance.

Animal husbandry - dairying, raising of livestock, breeding, or keeping of animals, fowl, or birds as a gainful occupation.

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

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 boat trailers.

Building or structure - anything built for the support, shelter, or enclosure of persons, animals, good or property of any kind, exclusive of fences. The term includes structures permanently located, such as decks and satellite dishes.

Building height - the vertical distance measured from the mean elevation of the finished lot grade along the street yard face of the structure to the highest point of flat roofs; to the mean height level between the eaves and the ridges of gable, gambrel, hip, and pitch roofs; or to the deck line of mansard roofs.

Campground - any area or tract of land to accommodate two (2) or more parties in temporary living quarters, including, but not limited to tents, recreational vehicles or other shelters.

Commercial use - the use of lands, buildings, or structures, other than a "home occupation," defined below, the intent and result of which activity is the production of income from the buying and selling of goods and/or services, exclusive of rental residential buildings and dwelling units.

Conforming use - a use of buildings, structures, or land which complies with all applicable provisions of this Ordinance.

Conversion - conversion of a seasonal dwelling located in the Shoreland or Resource Protection District to a year-round dwelling means a change of occupancy from seasonal to year-round or principal dwelling. For purposes of this Ordinance, conversion of such a seasonal dwelling to a year-round dwelling shall be a change of use.

Dimensional requirements - numerical standards relating to spatial relationships including but not limited to setback, lot area, shore frontage and height.

Driveway - a vehicular access-way less than five hundred (500') feet in length serving two lots or less.

Emergency operations - operations conducted for the public health, safety or general welfare, such as protection of resources from immediate destruction or loss, law enforcement, and operations to rescue human beings, property and livestock from the threat of destruction or injury.

Essential services - the construction, alteration or maintenance of gas, electrical or communication facilities; steam, fuel, electric power or water transmission or distribution lines, towers and related equipment; telephone cables or lines, poles and related equipment; gas, oil, water, slurry or other similar pipelines; municipal sewage lines, collection or supply systems; and associated storage tanks. Such systems may include towers, poles, wires, mains, drains, pipes, conduits, cables, fire alarms and police call boxes, traffic signals, hydrants and similar accessories, but shall not include service drops or buildings which are necessary for the furnishing of such services.

Excavation - a process of creating a cavity by cutting, digging, or scooping.

Expansion of a structure - an increase in the floor area or volume of a structure, including all extensions such as, but not limited to attached: decks, garages, porches and greenhouses.

Expansion of use - the addition of weeks or months to a use's operating season; additional hours of operation; or the use of more floor area or ground area devoted to a particular use.

Family - one or more persons occupying a premises and living as a single house-keeping unit.

Filling - to bring to the desired level, shape, smoothness, or condition by introducing other materials.

Floor area - the sum of the horizontal areas of the floor(s) of a structure enclosed by exterior walls, plus the horizontal area of any unenclosed portions of a structure such as porches and decks.

Forest management activities - timber cruising and other forest resource evaluation activities, pesticide or fertilizer application, management planning activities, timber stand improvement, pruning, regeneration of forest stands, and other similar or associated activities, exclusive of timber harvesting and the construction, creation or maintenance of roads.

Foundation - the supporting substructure of a building or other structure, usually masonry or concrete and at least partially underground, including but not limited to basements, slabs, sills, posts or frost walls.

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

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

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

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, fin fish and shellfish processing, fish storage and retail and wholesale fish marketing facilities, waterfront dock and port facilities, ship-yards 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.

Height of a structure - the vertical distance between the mean original grade at the downhill side of the structure and the highest point of the structure, excluding chimneys, steeples, antennas, and similar appurtenances which have no floor area.

Home occupation - an occupation or profession which is customarily conducted on or in a residential structure or property and which is 1) clearly incidental to and compatible with the residential use of the property and surrounding residential uses; and 2) which employs no more than two (2) persons other than family members residing in the home.

Individual private campsite - an area of land which is not associated with a campground, but which is developed for repeated camping by only one group not to exceed ten (10) individuals and which involves site improvements which may include but not be limited to gravel pads, parking areas, fire places, or tent platforms.

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

Inland wetland - areas enclosed by the normal high water mark of inland waters and areas otherwise identified on the basis of soils, vegetation, or other criteria as inland wetland, including but not limited to freshwater swamps, marshes or bogs and similar areas which are:

1. of ten (10) or more contiguous acres; or of less than ten (10) contiguous acres and adjacent to a surface waterbody, excluding any river, stream or brook such that in excess of ten (10) acres; and
2. inundated or saturated by surface or ground water at a frequency and for a duration sufficient to support, and which under normal circumstances do support, a prevalence of wetland vegetation typically adapted for life in saturated soils.

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

Lot area - The area of land enclosed within the boundary lines of a lot, minus land below the normal high-water line of a water body or upland edge of a wetland and areas beneath roads serving more than two lots.

Lot of record - a parcel of land of which a legal description or the dimensions are recorded on a document or map on file with the Kennebec County Registry of Deeds on the effective date of this Ordinance or any amendment of this Ordinance.

Lot width - width between side lot lines measured at the intersection with the street right-of-way line.

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.

Market value - the estimated price a property will bring in the open market and under prevailing market conditions in a sale between a willing seller and a willing buyer, both conversant with the property and with prevailing general price levels.

Minimum lot width - the closest distance between the side lot lines of a lot.

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

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

Mobile home - or "manufactured housing" is defined in the statute as "a structural unit or units designed for occupancy and constructed in a manufacturing facility and transported, by the use of its own chassis or an independent chassis, to a building site."

Multi-unit residential - a residential structure containing three (3) or more residential dwelling units. A residence designed for or occupied by three or more family units with separate housekeeping and cooking facilities for each.

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

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

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

Normal high water mark of inland waters - that line on the shores and banks of non-tidal waters which is apparent because of the contiguous different character of the soil or the vegetation due to the prolonged action of the water. Relative to vegetation, it is that line where the vegetation changes from predominantly aquatic vegetation to predominantly terrestrial vegetation. (By way of illustration, aquatic vegetation includes but is not limited to the following plants and plant groups: water lily, pond lily, pickerel weed, cattail, wild rice, sedges, rushes, and marsh grasses; and terrestrial vegetation includes but is not limited to the following plants and plant groups: upland grasses, aster, lady slipper, wintergreen, partridge berry, sasparilla, pines, cedars, oaks, ashes, alders, elms, and maples). In places where the shore or bank is of such character that the high water mark cannot be easily determined (rockslides, ledges, rapidly eroding or slumping banks), the normal high water mark shall be estimated from places where it can be determined by the above method.

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, the normal high-water line is the upland edge of the wetland, and not the edge of the open water.

Permitted use - a use specifically allowed by an Ordinance. A permit may or may not be required.

Person - an individual, corporation, governmental agency, municipality, trust, estate, partnership, association, two or more individuals having a joint or common interest, or other legal entity.

Piers, docks, 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.

Pond - any inland body of water which has a surface area in excess of ten (10) acres, except where such body of water is manmade and in addition is completely surrounded by land held by a single owner, and except those privately-owned ponds which are held primarily as waterfowl and fish breeding areas or for hunting and fishing.

Principal structure - a building associated with a primary use which has been established on a particular lot. Principal structure may include residences (dwelling units), constructed for the support, shelter or enclosure of human beings. Commercial buildings may also be considered "principal structures" provided that such a commercial use has been established and is clearly a primary use (i.e., a use other than one which is wholly incidental or accessory to another use on the same premises) on said property. When two such uses exist on a single lot, any residential use shall be considered a principal structure.

Principal use - a use other than one which is wholly incidental or accessory to another use on the same premises.

Privy - a waterless toilet placed over an excavation where black waste is deposited.

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

Public utility - any person, firm, corporation, municipal department, board, or commission authorized to furnish electricity, communication facilities, transportation, or water to the public.

Recent flood plain soils - the following soil series as described and identified by the National Cooperative Soil Survey:

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

Reconstruction - restoration, remodeling, or rebuilding of a structure.

Recreational facility - a place designed and equipped for the conduct of sports, leisure time activities, and other customary and usual recreational activities, excluding boat launching facilities.

Recreational vehicle - a vehicle or an attachment to a vehicle designed to be towed, and designed for temporary sleeping or living quarters for one or more persons, and which may include a pick-up camper, travel trailer, tent trailer, camp trailer, and motor home. In order to be considered as a vehicle and not as a structure, the unit must remain with its tires on the ground, and must be registered with the State Division of Motor Vehicles. Recreational vehicles shall not be used as principal residential structure for more than one hundred twenty (120) days.

Repair - a routine maintenance of a structure for the purpose of preserving its useful life. Repair does not include the construction or reconstruction of a

structure.

Replacement system - a system intended to replace: 1) an existing septic system which is either malfunctioning or being upgraded with no significant change of design flow or use of the structure, or 2) any existing overboard wastewater discharge.

Residential dwelling unit - a room or group of rooms designed and equipped exclusively for use as permanent, seasonal, or temporary living quarters for only one family. The term shall include mobile homes, but not recreational vehicles.

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

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

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

Seasonal dwelling - a seasonal dwelling is a dwelling which has not been utilized as a year-round or principal dwelling during the period from January 1, 1984 to March 1, 1985.

Service drop - any utility line extension which does not cross or run beneath any portion of a water body provided that:

1. In the case of electric service

- a. the placement of wires and/or the installation of utility poles is located entirely upon the premises of the customer requesting service or upon a roadway right-of-way; and
- b. the total length of the extension is less than one thousand (1,000') feet.

2. In the case of telephone service

- a. the extension, regardless of length, will be made by the installation of telephone wires to existing utility poles, or
- b. the extension requiring the installation of new utility poles or placement underground is less than one thousand (1,000') feet in length.

Setback - the nearest horizontal distance from the normal high-water line to the nearest part of a structure, road, parking space or other regulated object or area.

Setback from water - the minimum horizontal distance from the normal high water elevation to the nearest part of a building or structure, including any overhangs such as decks, steps, or any other projecting part of the building or structure.

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

Shoreland zone - the land area located within two hundred and fifty (250') feet, horizontal distance, of the normal high-water line of the Sebasticook and Kennebec Rivers, or within two hundred and fifty (250') feet of the upland edge of a freshwater wetland; or within seventy-five (75') 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 a Shoreland Zone.

Street - for the purpose of this Ordinance, identical to road and way.

Structure - anything built for the support, shelter or enclosure of persons, animals, goods or property of any kind, together with anything constructed or erected with a fixed location on or in the ground, exclusive of fences. The term includes structures temporarily or permanently located, such as decks and satellite dishes.

Structure coverage - when calculating the percentage of lot coverage taken up by a structure, the area of the structure shall include the foundation and, in addition, overhangs including decks and steps.

Substantial start - completion of thirty (30%) percent of a permitted structure or use measured as a percentage of estimated total cost.

Subsurface sewage disposal system - a collection of treatment tank(s), disposal area(s), holding tank(s) and pond(s), surface spray system(s), cesspool(s), well(s), surface ditch(es), alternative toilet(s), or other devices and associated piping designed to function as a unit for the purpose of disposing of wastes or wastewater on or beneath the surface of the earth. The term shall not include any wastewater discharge system licensed under 38 MRSA Section 414, any surface wastewater disposal system licensed under 38 MRSA Section 413 Subsection 1-A, or any public sewer. The term shall not include a wastewater disposal system designed to treat wastewater which is in whole or in part hazardous waste as defined in 38 MRSA Chapter 13, subchapter 1.

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

Timber harvesting - the cutting and removal of trees from their growing site, and the attendant operation of cutting and skidding machinery but not the construction or creation of roads. Timber harvesting does not include the clearing of land for approved construction.

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 a bed devoid of topsoil containing water borne 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.

Upland edge - the boundary between upland and wetland.

Vegetation - all live trees, shrubs, ground cover, and other plants including without limitation, trees both over and under four (4") inches in diameter, measured at four and one-half (4½') feet above ground level.

Volume of a structure - the volume of all portions of a structure enclosed by roof and fixed exterior walls as measured from the exterior faces of these walls and roof.

Water body - any river or stream.

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.

Wetland - a freshwater, inland wetland.

Wetlands associated with rivers - wetlands contiguous with or adjacent to a river, and which during normal high water, are connected by surface water to the river. Also included are wetlands which are separated from the river by a berm, causeway, or similar feature less than one hundred (100') feet in width, and which have a surface elevation at or below the normal high-water line of the river. Wetlands associated with rivers are considered to be part of that river.

