

2016

# Town of Palermo Maine Ordinances

Palermo, Me.

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# BUILDING PERMIT ORDINANCE TOWN OF PALERMO

## SECTION 1. GENERAL

### A. TITLE

This Ordinance shall be known as the Town of Palermo Building Permit Ordinance and will be referred to as "this Ordinance".

### B. AUTHORITY

This Ordinance is enacted pursuant to the Home Rule Provisions of the constitution of the state of Maine, and the Home rule and Police Power Statutes.

### C. APPLICABILITY

The provisions of this ordinance shall apply to new construction, exterior enlargement, location or relocation of buildings and mobile homes. Buildings include, but are not limited to, structures as single or two family dwellings, cottages, garages, barns, in-ground swimming pools or storage sheds. This ordinance does not require permits for normal maintenance and repair, or for accessory structures or additions of less than one hundred and seventy-five (175) square feet measured to the outer most point of the structure excluding eaves and overhang.

### D. EFFECTIVE DATE

The effective date of this Ordinance shall be the date approved by the Town of Palermo on: March 8, 2003.

### E. CONFLICT WITH OTHER ORDINANCES

Whenever the requirements of this ordinance are inconsistent with the requirements of any other ordinance, code or statute, the more restrictive requirement shall apply.

### F. VALIDITY AND SEPARABILITY

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

## SECTION 2. PERMIT REQUIREMENTS & PROCEDURES

### A. BUILDING PERMIT REQUIRED

Before any work described in Section 1 shall be commenced, the owner or contractor shall obtain a permit from the Code Enforcement Officer.

### **B. APPLICATION FOR PERMIT**

The Code Enforcement Officer shall develop application forms to be used by all applicants seeking building permits. The application for the permit shall be in writing and shall contain a description of the proposed work. A scale drawing of the structure and a plan of the sites shall accompany the application.

### **C. APPLICATION FEE**

Each application for a building permit shall be accompanied by a fee of ~~\$200.00~~ \$.05 sq. ft

### **D. APPROVAL**

The Code Enforcement Officer shall issue or deny the permit within seven days of receipt of a written application and submission of a plumbing permit if required for building usage. All other permits required for the proposal shall be obtained prior to issuance of the permit. The application shall be approved if all relevant ordinances have been met. Notice of denial shall be in writing and shall state the reason thereof.

### **E. APPEAL**

An appeal may be taken within thirty days after any decision of the Code Enforcement Officer, by any party, to the board of Appeals. The Board may reverse the decision of the Code Enforcement Officer only upon a finding that the decision was clearly contrary to specific provisions of this Ordinance or unsupported by weight of the evidence in the record.

### **F. LIFE OF PERMIT**

Unless a specific extension of time is granted by the Code Enforcement Officer, the approval of building permits shall expire one year from the date of approval. (If construction does not begin.)

## **SECTION 3. DEVELOPMENT STANDARDS**

### **A. STATE MINIMUM LOT SIZE LAW**

A DHS permit is required for subsurface wastewater disposal if a lot is less than 20,000 square feet in area for each dwelling or has less than 100 feet of shore frontage.

### **B. PALERMO'S MINIMUM LOT SIZE**

No building or structure shall be located or relocated on any lot in the town of Palermo which has less than 40,000 square feet. The minimum lot size does not apply to lots of record as evidenced by deeds recorded in the Waldo County Registry of Deeds prior to the adoption of this amendment.

### **C. SETBACK REQUIREMENTS**

No building is to be contracted, enlarged, located or relocated on a lot in the Town of Palermo ~~(within ten (10) feet of any property line)~~ within the right-of-way of a public way, nor within forty (40) feet of the centerline of a public way, except where there is a written agreement with the abutter filed with the building permit or a variance is granted by the Board of Appeals. For setback requirements, a lot is defined as all contiguous land in the same ownership.

#### SECTION 4. SANITARY REQUIRMENTS

All plumbing and sewage disposal shall be in strict conformance with the State of Maine Law and the State Plumbing Code.

#### SECTION 5. VARIANCES

A relaxation of the terms of this ordinance in the form of a variance may be granted by the Town of Palermo Board of Appeals where such variance would not be contrary to the public interest, where owing to conditions peculiar to the property and not the result of the action of the applicant, a literal enforcement of this ordinance would result in unnecessary and undue hardship. A financial hardship shall not constitute grounds for granting a variance. The crucial points of a variance are undue hardship and unique circumstances applying to the property. A variance is not justified unless both elements are present in the case.

#### SECTION 6. ENFORCEMENT

##### A. VIOLATION AND ENFORCEMENT

The Code Enforcement Officer, upon finding that any provision of this ordinance or the condition(s) of a permit issued under this ordinance is being violated, shall issue notices of violations, orders to correct, schedules to correct and enter into administrative consent agreements. When the above action does not result in the correction of the violation the Board of Selectmen shall institute legal proceedings to enjoin violations of this ordinance.

##### B. FINES

A person who violates the provisions of this ordinance or the condition(s) of a permit shall be guilty of a civil violation and, on conviction, shall be fined not less than \$100.00 nor more than \$2,500.00. Each day such violation continues, shall constitute a separate violation. Such persons shall also be liable for court costs and reasonable attorney fees incurred by the municipality.

#### SECTION 7. AMENDMENTS

This ordinance may be amended by a majority vote of the Town Meeting or by secret ballot referendum election. Amendments may be initiated by a majority vote of the Planning Board or by request of the Board of Selectmen to the Planning Board or on petition of 10% of the voters who cast votes in the last gubernatorial election in the town. The Planning Board shall conduct a public hearing on any proposed amendment.

# FLOODPLAIN MANAGEMENT ORDINANCE

## FOR THE

## TOWN OF PALERMO, MAINE

ENACTED: 3/14/2015  
Date

EFFECTIVE: 7/6/2015  
Date

CERTIFIED BY: Sandra Devaney  
Signature

Harry Dean Potter

CERTIFIED BY: Sandra Devaney  
Print Name

Harry Dean Potter

Town Clerk  
Title

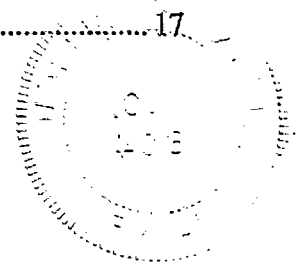
Board of Selectmen - Chairperson  
Affix Seal

⓪ attest this is an original and certified  
copy. Sandra Devaney 3/11/2015  
Town Clerk

FLOODPLAIN MANAGEMENT ORDINANCE

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60.3 (b) Rev. 01/15

## **ARTICLE 1 - PURPOSE AND ESTABLISHMENT**

Certain areas of the Town of Palermo, 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 Palermo, 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 Palermo, 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 Palermo 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 Palermo 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 Palermo, Maine.

The areas of special flood hazard, Zone A, for the Town of Palermo, Waldo County, Maine, identified by the Federal Emergency Management Agency in a report entitled "Flood Insurance Study – Waldo County, Maine" dated July 6, 2015 with accompanying "Flood Insurance Rate Map" dated July 6, 2015 with panels: 355E, 360E, 365E, 370E, 380E, 390E, 510E, 530E, 535E derived from the county wide digital Flood Insurance Rate Map entitled "Digital Flood Insurance Rate Map, Waldo County, Maine" are hereby adopted by reference and declared to be a part of this Ordinance.

## **ARTICLE 2 - PERMIT REQUIRED**

Before any construction or other development (as defined in Article 13), including the placement of manufactured homes, begins within any areas of special flood hazard established in Article 1, a Flood Hazard Development Permit shall be obtained from the Planning Board. This permit shall be in addition to any other permits which may be required pursuant to the codes and ordinances of the Town of Palermo, Maine.

## **ARTICLE 3 - APPLICATION FOR PERMIT**

The application for a Flood Hazard Development Permit shall be submitted to the Planning Board 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 in Zone A is determined:
    - a. from any base flood elevation data from federal, state, or other technical sources (such as FEMA's Quick-2 model), including information obtained pursuant to Article 6.K. and 8.D.;
    - b. 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,
    - c. 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.
- I. A description of an elevation reference point established on the site of all developments for which elevation standards apply as required in Article 6;
- 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 6 by a registered professional engineer or architect:
  - 1. a Floodproofing Certificate (FEMA Form 81-65, as amended), to verify that the floodproofing methods for any non-residential structures will meet the floodproofing criteria of Article 3.H.4.; Article 6.G.; and other applicable standards in Article 6;
  - 2. a Hydraulic Openings Certificate to verify that engineered hydraulic openings in foundation walls will meet the standards of Article 6.L.2.a.;
  - 3. a certified statement that bridges will meet the standards of Article 6.M.;
  - 4. a certified statement that containment walls will meet the standards of Article 6.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 6 will be met.

#### **ARTICLE 4 - APPLICATION FEE AND EXPERT'S FEE**

A non-refundable application fee of \$20.00 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 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 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 5 - REVIEW STANDARDS FOR FLOOD HAZARD DEVELOPMENT PERMIT APPLICATIONS**

The Planning Board 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 6 (Development Standards) have been, or will be met;
- B. Utilize, in the review of all Flood Hazard Development Permit applications:
  - 1. the base flood data contained in the "Flood Insurance Rate Map - Waldo County, Maine," as described in Article 1;
  - 2. in special flood hazard areas where base flood elevation and floodway data are not provided, the Planning Board 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 3.H.1.; Article 6.K.; and Article 8.D., in order to administer Article 6 of this Ordinance; and,
  - 3. when the community establishes a base flood elevation in a Zone A by methods outlined in Article 3.H.1., the community shall submit that data to the Maine Floodplain Management Program.
- C. Make interpretations of the location of boundaries of special flood hazard areas shown on the maps described in Article 1 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, 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 6, 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 6.G.1.,2., and 3. 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 6.I., 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 9 of this Ordinance, and copies of Elevation Certificates, Floodproofing Certificates, Certificates of Compliance and certifications of design standards required under the provisions of Articles 3, 6, and 7 of this Ordinance.

## ARTICLE 6 - 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 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 3.H.1.; Article 5.B; or Article 8.D.
- G. **Non Residential** - New construction or substantial improvement of any non-residential structure located within 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 3.H.1.; Article 5.B; or Article 8.D., or together with attendant utility and sanitary facilities shall:
1. be floodproofed to at least one foot above the base flood elevation utilizing information obtained pursuant to Article 3.H.1.; Article 5.B; or Article 8.D., so that below that elevation the structure is watertight with walls substantially impermeable to the passage of water;
  2. have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and,
  3. 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 3.K. and shall include a record of the elevation above mean sea level to which the structure is floodproofed.
- H. **Manufactured Homes** - New or substantially improved manufactured homes located within Zone A shall:
1. be elevated 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 3.H.1.; Article 5.B; or Article 8.D.;
  2. 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,
  3. 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:
    - a. 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,

- b. 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).
- c. all components of the anchoring system described in Article 6.H.3.a.& b. shall be capable of carrying a force of 4800 pounds.

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

1. Zone A 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 6.H.1 .

**J. Accessory Structures** - Accessory Structures, as defined in Article 13, located within Zone A, shall be exempt from the elevation criteria required in Article 6.F. & G. above, if all other requirements of Article 6 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 6.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** - Encroachments, including fill, new construction, substantial improvement, and other development shall not be permitted in a floodway which, in Zone A riverine areas, is 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, 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:

1. will not increase the water surface elevation of the base flood more than one foot at any point within the community; and,

2. is consistent with the technical criteria contained in FEMA's guidelines and standards for flood risk analysis and mapping.

L. **Enclosed Areas Below the Lowest Floor** - New construction or substantial improvement of any structure in Zone A that meets the development standards of Article 6, including the elevation requirements of Article 6, 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 13;
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 Zone 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 utilizing information obtained pursuant to Article 3.H.1.; Article 5.B; or Article 8.D.; 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 6.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 Zone A shall:

1. have the containment wall elevated to at least one foot above the base flood elevation utilizing information obtained pursuant to Article 3.H.1.; Article 5.B.; or Article 8.D.
2. have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and
3. 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 3.K.

O. **Wharves, Piers and Docks** - New construction or substantial improvement of wharves, piers, and docks are permitted in Zone 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 7 - 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 6, 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 8 - 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 6 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 9 - APPEALS AND VARIANCES**

The Board of Appeals of the Town of Palermo 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 9 and Article 6.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 9, 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 9, 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 Planning Board and Code Enforcement Officer a report of all variance actions, including justification for the granting of the variance and an authorization for the Planning Board 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 10 - 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, shall 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 11 - 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 12 - 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 13 - 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 Rate Map cited in Article 1 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 MRSA, 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.

**Digital Flood Insurance Rate Map (FIRM)** – see **Flood Insurance Rate Map**

**Elevated Building** - means a non-basement building

- a. built, in the case of a building in Zone 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 Zone 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 6.L..

**Elevation Certificate** - An official form (FEMA Form 81-31, 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.

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

**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), 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 6.K. 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, 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 6.I., 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. in Zone A riverine areas, the floodway 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 (b) Rev. 01/15  
Prepared by DACF/JP

## TOWN OF PALERMO HOLDING TANK ORDINANCE

**Section 1. Purpose.** The purpose of this Ordinance is to establish procedures for the use and maintenance of holding tanks designed to receive and retain waste water from residential or commercial uses. It is hereby declared that the enactment of this Ordinance is necessary for the protection, benefit, and preservation of the health, safety, and welfare of the inhabitants of this municipality.

**Section 2. Definitions.** Unless the context specifically and clearly indicates otherwise, the meaning of terms used in this Ordinance shall be as follows:

**“Holding tank”** shall mean a closed, watertight structure designed and used to receive and store waste water or septic tank effluent. A holding tank does not discharge waste water or septic tank effluent to surface or ground water or onto the surface of the ground. Holding tanks are designed and constructed to facilitate ultimate disposal of waste water at another site.

**“Improved property”** shall mean any property within the municipality upon which there is a structure intended for continuous or periodic habitation, occupancy, or use by humans or animals and from which structure waste water shall or may be discharged.

**“Owner”** shall mean any person vested with ownership, legal or equitable, sole or partial, of any property located in the municipality.

**“Person”** shall mean any individual, partnership, company, association, corporation, or other group or entity.

**“Waste water”** shall mean any domestic waste water, or other waste water from commercial, industrial, or residential sources which has constituents similar to that of domestic waste water. This term specifically excludes industrial, hazardous, or toxic wastes and materials.

**Section 3. Rights and privileges granted.** The Selectmen are hereby authorized and empowered to undertake, within the Town of Palermo, the control of and methods of disposal of holding tank waste water and the collection and transportation thereof.

**Section 4. Rules and regulations to be in conformity with applicable law.** All such rules and regulations adopted by the Selectmen shall be in conformity with the provisions herein, all other ordinances of the Town of Palermo, all applicable laws, and applicable rules and regulations of the administrative agencies of the State of Maine. Holding tanks can not be used for seasonal conversion or new construction within the shoreland zone.

**Section 5. Rates and changes.** The Selectmen shall have the right and power to fix, alter, charge, and collect rates, assessments, and other charges in the area served by its facilities at reasonable and uniform rates as authorized by applicable law.

**Section 6. Exclusiveness of rights and privileges.** The collection and transportation of all waste water from any improved property utilizing a holding tank shall be done solely by, or under the direction and control of, the Selectmen, and the disposal thereof shall be



ANNUAL REPORT, TOWN OF PALERMO, MAINE

made at such site or sites as may be approved by the Maine Department of Environmental Protection.

**Section 7. Duties of owner of improved property.** The owner of an improved property that utilizes a holding tank shall:

- A. Maintain the holding tank in conformance with this or any other Ordinance of the Town of Palermo, the provisions of any applicable law, the rules and regulations of the Selectmen, and any administrative agency of the State of Maine; and
- B. Permit only the Selectmen, or its agent, to collect, transport, and dispose of the contents therein.

**Section 8. Violations.** Any person who violates any provisions of Section 7 shall, upon conviction thereof by summary proceedings, be sentenced to pay a fine of not less than One Hundred and not more than Three Hundred dollars, plus costs.

**Section 9. Abatement of nuisances.** In addition to any other remedies provided in this ordinance, any violation of Section 7 above shall constitute a nuisance and shall be abated by the Selectmen of Palermo by seeking appropriate equitable or legal relief from a court of competent jurisdiction.

**Section 10. Alternative disposal.** An alternative means of waste water disposal shall meet first time system criteria. Replacement system criteria shall not be considered.

**Section 11. Repeal.** All ordinances or resolutions, or parts of ordinances or resolutions, insofar as they are inconsistent herewith, are hereby repealed.

**Section 12. Severability.** If any sentence, clause, Section, or part of this ordinance is for any reason found to be unconstitutional, illegal, or invalid, such unconstitutionality, illegality, or invalidity shall not affect or impair any of the remaining provisions, sentences, clauses, sections, or parts of this ordinance.

**Section 13. Effective date.** This ordinance shall become effective on March 10, 2001.

Attest: a true copy of an ordinance entitled "Town of Palermo Holding Tank Ordinance" as certified to me by the municipal officers of Palermo on the seventh day of February 2001.

---

Janet Potter  
Town Clerk

The Sheepscot River Bridge Diving Ordinance  
for the Town of Palermo, Maine.

A. Title.

This Ordinance shall be known as the Town of Palermo "Sheepscot River Bridge Diving Ordinance" and will be referred to as "this Ordinance".

B. Authority.

This Ordinance is enacted pursuant to the Home Rule Provisions of the Constitution of the State of Maine, Article VIII, Part Second and the M.R.S.A. Title 30A § 2104, et seq., Title 30A §3001 and Title 30A §3009.

C. Purpose.

The purpose of this Ordinance is to promote the safety of pedestrians and motorists in the area of the Sheepscot River Bridge on Route 3 in Palermo.

D. Effective Date.

The effective date of this Ordinance shall be the date approved by the Town of Palermo, acting through it's Municipal Officers on August 2, 2007

E. Prohibited Activities.

1. Diving Prohibited:

No person shall jump or dive into the river from the Sheepscot River Bridge on Route 3, in Palermo, Maine.

2. Loitering Prohibited:

No person shall loiter on the Sheepscot River Bridge on Route 3, in Palermo, Maine or on any section of the State Right-of-Way within 200 feet of the nearest bridge abutment of the Sheepscot River Bridge on Route 3, in Palermo, Maine except for a legitimate purpose. Legitimate purposes being: a vehicle accident, an emergency circumstance or in the performance of work.

F. Enforcement.

This Ordinance shall be enforced by the Waldo County Sheriff's Department and the Maine State Police pursuant to M.R.S.A. Title 25 § 1502.

G. Penalty.

Any violation of the provisions of this Ordinance is a civil violation and shall be punishable by a fine of \$100.00 for a first offense and a fine of \$ 200.00, for each

subsequent offense, plus costs of the Municipality, to be recovered under the procedure set forth in the Maine Rules of Court and Maine Rules of Civil Procedure. An individual charged with a violation of this Ordinance, may within 10 days of being so charged, pay to the Municipality the fine as set forth herein in lieu of Court Action and will not therefore incur the additional assessment of the costs of the Municipality.

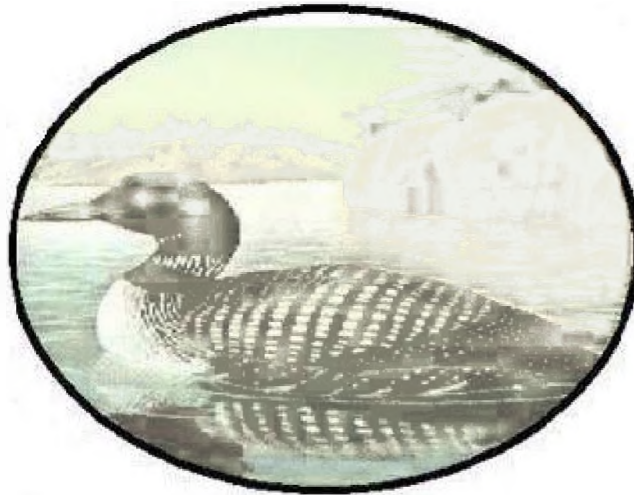
Enacted: 8-2-07  
Date

Certified by: Sheila L. McCarty  
Name

Sheila L. McCarty  
Signature

Title: Town Clerk

# **2016 Shoreland Zoning Ordinance for the Municipality of Palermo**



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**NOTE: Practicing good stewardship today will help maintain a healthy and safe environment for future generations to enjoy tomorrow.**

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**I hereby certify this to be a true copy  
of the Shoreland Zoning Ordinance  
as adopted on November 8, 2016.**

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**Sandra K. Devaney-TOWN CLERK**

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This Ordinance document replaces the Shoreland Zoning Ordinance that was adopted on March 9, 2013.

**About the Palermo Shoreland Zoning Ordinance:**

**PREFACE:** The Mandatory Shoreland Zoning Act, 38 M.R.S.A. sections 435-449, requires all municipalities to adopt, administer, and enforce ordinances which regulate land use activities within 250 feet of great ponds, rivers, freshwater and coastal wetlands, including all tidal waters; and within 75 feet of streams as defined. The Act also requires the Board of Environmental Protection to establish minimum guidelines for such ordinances. The Act requires that Palermo adopt shoreland zoning ordinances consistent with, or no less stringent than, those minimum guidelines. This Palermo Shoreland Zoning Ordinance is based on those guidelines (Chapter 1000) **dated January 26, 2015.**

Neither this "Preface" nor the "Notes" contained in this Ordinance are official parts of the Ordinance. However, the Preface and Notes do contribute to the purposes of this Ordinance and are provided for explanatory purposes only.

For more information on the shoreland zoning law, please contact the Department of Environmental Protection's Shoreland Zoning Unit, 17 State House Station, Augusta, Maine 04333.

In the Town of Palermo, the Maine Forest Service enforces the Timber Harvesting Standards within shoreland zone. See Section 15.(O-1).

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**NOTE: Contact Information:**

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<u>Name:</u>	<u>Title:</u>	<u>Telephone:</u>	<u>Email:</u>
Town Office		993-2296	<a href="mailto:palermoto@fairpoint.net">palermoto@fairpoint.net</a>
Darryl McKenney	Code Enforcement Officer	Home 993-2467 Work 832-5369	<a href="mailto:assessment@waldchormaine.org">assessment@waldchormaine.org</a>
Dale McKenney	Planning Board		
Pat Clark	Planning Board		
Troy Nelson	Planning Board		
S. Blake Brown	Planning Board		
Ryan Harmon	Planning Board		

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Palermo Shoreland Zoning Ordinance

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**Shoreland Zoning Ordinance for the Municipality of Palermo**

**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 commercial fishing and maritime industries; 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 waters; to conserve natural beauty and open space; and to anticipate and respond to the impacts of development in shoreland areas.

**2. Authority.**

This Ordinance has been prepared in accordance with the provisions of Title 38 sections 435-448 of the Maine Revised Statutes Annotated (M.R.S.A.).

**3. Applicability.**

This Ordinance applies to all land areas within 250 feet, horizontal distance, of the normal high-water line of great ponds; within 250 feet, horizontal distance, of the normal high-water line of rivers; within 250 feet, horizontal distance, of the upland edge of a freshwater wetland; and within 75 feet, horizontal distance, of the normal high-water line of a stream. This Ordinance also applies to any structure built on, over or abutting a dock, wharf or pier, or other structure extending or located below the normal high-water line of a water body or within a wetland.

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**NOTE:** Terms are defined in Section 17, including but not limited to: freshwater wetland, great pond, river and stream.

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**NOTE:** Pursuant to 38 M.R.S.A. section 440, municipalities may extend or adopt zoning controls beyond the limits established in Section 3, above, in order to protect the public health, safety, and welfare and to avoid problems associated with floodplain development.

**4. Effective Date of Ordinance and Ordinance Amendments.**

This Ordinance, which was adopted by the Palermo legislative body on November 8, 2016, shall not be effective unless approved by the Commissioner of the Department of Environmental Protection. A certified copy of the Ordinance, or Ordinance Amendment, attested and signed by the Municipal Clerk, shall be forwarded to the Commissioner for approval. If the Commissioner fails to act on this Ordinance or Ordinance Amendment, within forty-five (45) days of his/her receipt of the Ordinance, or Ordinance Amendment, it shall be automatically approved.

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



**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.

**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.

**7. Conflicts with Other Ordinances.**

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

**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 submitted to the Commissioner of the Department of Environmental Protection following adoption by the municipal legislative body and shall not be effective unless approved by the Commissioner. If the Commissioner fails to act on any amendment within forty-five (45) days of his/her receipt of the amendment, the amendment is automatically approved. Any application for a permit submitted to the municipality within the forty-five (45) day period shall be governed by the terms of the amendment, if such amendment is approved by the Commissioner.

**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

**B. Scale of Map.**

The Official Shoreland Zoning Map shall be drawn at a scale of not less than: 1 inch = 2000 feet. District boundaries shall be clearly delineated and a legend indicating the symbols for each district shall be placed on the map.

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

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**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 Palermo Town office. In the event the municipality does not have a municipal office, the Municipal Clerk shall be the custodian of the map.

**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 Commissioner of the Department of Environmental Protection.

**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.

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**NOTE:** Municipalities are encouraged to incorporate specific written descriptions of district boundaries into the Ordinance so that disputes over district boundaries are minimized. The Maine Supreme Judicial Court has held that the Official Shoreland Zoning Map is the primary tool to which to refer in determining district boundaries under ordinances that are not more explicit in their district descriptions than the language of the Guidelines, and that where there is inconsistency between the Map and these general text descriptions of the shoreland districts as provided in the minimum guidelines, the Map prevails.

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**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.

**12. Nonconformance**

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**NOTE:** Refer to Section 17 for definitions of nonconforming condition, nonconforming lot, nonconforming structure and nonconforming use.

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**A. Purpose.**

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

**B. General**

- (1) **Transfer of Ownership.** Nonconforming structures, lots, and uses may be transferred, and the new owner may continue the nonconforming use or continue to use the nonconforming 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 nonconforming uses and structures including repairs or renovations that do not involve expansion of the nonconforming use or structure, and such other changes in a nonconforming use or structure as federal, state, or local building and safety codes may require.

**C. Nonconforming Structures**

**(1) Expansions.**

All new structures must meet the shoreline setback requirements contained in Section 15(B). A nonconforming 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 nonconformity of the structure and is in accordance with the subsections of Section 12(C)(1).

**In addition to those documents already required in order to obtain a building permit, homeowners who want to expand the enclosed portion of a dwelling in shoreland zone are required to include a certification that the current septic system is performing adequately and will handle any increase in output likely to result from any increase in occupancy of the expanded structure. The certification must be conducted by a licensed inspector and submitted with the permit application.**

**Regardless of distance from the normal high-water line, no patios are to be included in the calculation of square footage for any expansion.**

**For structures less than 50 feet from the normal high-water line, all open decks must remain open (unenclosed) but may be used in the calculation of footprint determining square footage base for the proposed structure. No expansion may be any closer to the normal high-water line than the existing dwelling.**

**For structures between 50 and 100 feet from the normal high-water line, any structural changes shall comply with the January 26, 2015 Shoreland Zoning Guidelines as amended and released by the State of Maine and adopted by the Town of Palermo in this Ordinance.**

- (a) Expansion of an accessory structure that is located closer to the normal high-water line of a water body, tributary stream or upland edge of a wetland than the principal structure is prohibited, even if the expansion will not increase nonconformity with the water body, tributary stream or wetland setback requirement.
- (b) Expansion of any portion of a structure within **50 feet** of the normal high-water line of a water body, tributary stream or upland edge of a wetland is prohibited, even if the expansion will not increase nonconformity with the water body, tributary stream or wetland setback requirement.
- (c) Notwithstanding Section 12(C)(1)(b), if a nonconforming principal structure is entirely located less than **50 feet** from the normal high-water line of a water body, tributary stream or upland edge of a wetland, that structure may be expanded as follows, as long as all other applicable standards of this Ordinance are met and the expansion is not prohibited by Section 12(C)(1) above:
  - (i) The maximum total footprint of the principal structure may not be expanded to an area greater than 800 square feet or 30% larger than the footprint that existed on January 1, 1989, whichever is greater.

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- (ii) The maximum height of the principal structure may not be made greater than 15 feet or the height of the existing structure, whichever is greater.
- (d) All other nonconforming principal and accessory structures that do not meet the water body, tributary stream or wetland setback requirements may be expanded or altered as follows, as long as other applicable standards of this Ordinance are met and the expansion is not prohibited by Section 12(C)(1) and subsections (a), (b) or (c) above:
  - (i) For structures located less than 75 feet from the normal high-water line of a water body, tributary stream or upland edge of a wetland, the maximum combined total footprint of all structures may not be expanded to an area greater than 1,000 square feet or 30% larger than the footprint that existed on January 1, 1989, whichever is greater.
  - (ii) For structures located less than 75 feet from the normal high-water line of a water body, tributary stream or upland edge of a wetland, the maximum height of any structure may not be made greater than 20 feet or the height of the existing structure, whichever is greater.
  - (iii) For structures located less than 100 feet from the normal high-water line of a great pond or a river flowing to a great pond, the maximum combined total footprint of all structures may not be expanded to an area greater than 1,500 square feet or 30% larger than the footprint that existed on January 1, 1989, whichever is greater.
  - (iv) For structures located less than 100 feet from the normal high-water line of a great pond or a river flowing to a great pond, the maximum height of any structure may not be made greater than 25 feet or the height of the existing structure, whichever is greater.
  - (v) For structures located less than 100 feet from the normal high-water line of a great pond or a river flowing to a great pond, any portion of those structures located less than 75 feet from the normal high-water line of a water body, tributary stream or upland edge of a wetland must meet the footprint and height requirements of Sections 12(C)(1)(d)(i) and (ii).
- (e) In addition to the limitations in Section 12(C)(1) and subsections (a), (b) and (c) above, structures that are nonconforming due to their location within the Resource Protection District and are located at less than 250 feet from the normal high-water line of a water body or the upland edge of a wetland may be expanded or altered as follows, as long as other applicable standards of this Ordinance are met:
  - (i) The maximum combined total footprint of all structures may not be expanded to an area greater than 1,500 square feet or 30% larger than the footprint that existed at the time the Resource Protection District was established on the lot, whichever is greater.
  - (ii) The maximum height of any structure may not be made greater than 25 feet or the height of the existing structure, whichever is greater.

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- (iii) Any portion of the structures located less than 100 feet from the normal high-water line of a great pond or a river flowing to a great pond, must meet the footprint and height requirements of Sections 12(C)(1)(d)(iii) and (iv).
- (iv) Any portion of the structures located less than 75 feet from the normal high-water line of a water body, tributary stream or upland edge of a wetland must meet the footprint and height requirements of Sections 12(C)(1)(d)(i) and (ii).
- (f) Any approved plan for expansion of a nonconforming structure under Section 12(C)(1) must be recorded by the applicant in the registry of deeds of the county in which the property is located within 90 days of approval. The recorded plan must include the existing and proposed footprint of structures on the property, the existing and proposed height of structures on the property, the shoreland zone boundary and evidence of approval by the municipal permitting authority.

**(2) Foundations.**

Whenever a new, expanded or replacement foundation is constructed under a nonconforming structure, the structure and new foundation must be placed such that the shoreline setback requirement is met to the greatest practical extent as determined by the Planning Board or its designee, basing its decision on the criteria specified in Section 12(C)(3) **Relocation** below.

**(3) Relocation.**

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

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

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

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

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

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

The Planning Board may also require replanting in accordance with Section 15(S).

**(4) Reconstruction or Replacement.**

Any nonconforming structure which is located less than the required setback from a water body, tributary stream, or wetland and which is removed, or damaged or destroyed, regardless of the cause, by more than 50% of the market value of the structure before such damage, destruction or removal, may be reconstructed or replaced provided that a permit is obtained within eighteen (18) months of the date of said damage, destruction, or removal, and provided that such reconstruction or replacement is in compliance with the water body, tributary stream or wetland setback requirement to the greatest practical extent as determined by the Planning Board or its designee in accordance Section 12(C)(3) above. In no case shall a structure be reconstructed or replaced so as to increase its nonconformity.

If the reconstructed or replacement structure is less than the required setback it shall not be any larger than the original structure, except as allowed pursuant to Section 12(C)(1) above, as determined by the nonconforming footprint of the reconstructed or replaced structure at its new location. If the total amount of footprint of the original structure can be relocated or reconstructed beyond the required setback area, no portion of the relocated or reconstructed structure shall be replaced or constructed at less than the setback requirement for a new structure.

When it is necessary to remove vegetation in order to replace or reconstruct a structure, vegetation shall be replanted in accordance with Section 12(C)(3) above.

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

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

**(5) Change of Use of a Nonconforming Structure.**

The use of a nonconforming structure may not be changed to another use unless the Planning Board, after receiving a written application, determines that the new use will have no greater

adverse impact on the water body, tributary stream, or wetland, or on the subject or adjacent properties and resources than the existing use.

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

#### **D. Nonconforming Uses**

**(1) Expansions.**

Expansions of nonconforming uses are prohibited, except that nonconforming residential uses may, after obtaining a permit from the Planning Board, be expanded within existing residential structures or within expansions of such structures as allowed in Section 12(C)(1) above.

**(2) Resumption Prohibited.**

A lot, building or structure in or on which a nonconforming use is discontinued for a period exceeding one year, or which is superseded by a conforming use, may not again be devoted to a nonconforming 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 nonconforming use may be changed to another nonconforming use provided that the proposed use has no greater adverse impact on the subject and adjacent properties and resources, including water dependent uses, than the former use, as determined by the Planning Board. The determination of no greater adverse impact shall be made according to criteria listed in Section 12(C)(5) above.

#### **E. Nonconforming Lots**

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

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

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

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

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**NOTE:** Consistent with 38 M.R.S.A. section 438-A(1-A)(B), the immediately following exception may be adopted at the end of Section 12(E)(3) above if the municipality wishes to grandfather certain contiguous lots that were conforming and under the same ownership at the time lot size and shore frontage requirements were increased beyond those found in subparagraph E(3)(a).

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

- (a) Each lot contains at least 100 feet of shore frontage and at least 20,000 square feet of lot area; or
- (b) Any lots that do not meet the frontage and lot size requirements of Section 12(E)(3)(a) are reconfigured or combined so that each new lot contains at least 100 feet of shore frontage and 20,000 square feet of lot area.

### 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 Limited Commercial or General Development I Districts need not be included within the Resource Protection District.

- (1) Areas within 250 feet, horizontal distance, of the upland edge of freshwater wetlands and wetlands associated with great ponds and rivers, which are rated "moderate" or "high" value waterfowl and wading bird habitat, including nesting and feeding areas, by the Maine Department of Inland Fisheries and Wildlife (MDIF&W) that are depicted on a Geographic Information System (GIS) data layer maintained by either MDIF&W or the Department as of December 31, 2008. For the purposes of this paragraph "wetlands associated with great ponds and rivers" shall mean areas characterized by non-forested wetland vegetation and hydric soils that are contiguous with a great pond or river, and have a surface elevation at or



below the water level of the great pond or river during the period of normal high water. "Wetlands associated with great ponds or rivers" are considered to be part of that great pond or river.

- (2) Floodplains along rivers and floodplains along artificially formed great ponds along rivers, defined by the 100 year floodplain as designated on the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps or Flood Hazard Boundary Maps, or the flood of record, or in the absence of these, by soil types identified as recent floodplain soils.
- (3) Areas of two or more contiguous acres with sustained slopes of 20% or greater.
- (4) Areas of two (2) or more contiguous acres supporting wetland vegetation and hydric soils, which are not part of a freshwater wetland as defined, and which are not surficially connected to a water body during the period of normal high water.

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

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- (5) Land areas along rivers subject to severe bank erosion, undercutting, or river bed movement.

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**NOTE:** Municipalities may also include the following other areas which have been recommended for protection in the comprehensive plan of the municipality, or as otherwise endorsed for protection by the municipal legislative body, such as:

- 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.
- E. Areas within 250 feet, horizontal distance, of the upland edge of freshwater and/or coastal wetlands, which are rated "moderate" or "high" value waterfowl and wading bird habitat, including nesting and feeding areas, by the Maine Department of Inland Fisheries and Wildlife (MDIF&W). These areas are generally depicted on a Geographic Information System (GIS) data layer.

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**B. Limited Residential District.**

The Limited Residential District includes those areas suitable for residential and recreational development. It includes areas other than those in the Resource Protection District, or Stream Protection District.

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**NOTE:** See definition of "great pond classified GPA" in Section 17. In most municipalities all of the great ponds are classified GPA. In municipalities where all of the great ponds are classified GPA, the term "great ponds classified GPA" can be changed to "great ponds". It may also be helpful to list the names of the great ponds found in the municipality within the definition of "great pond" in Section 17.

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**NOTE:** A municipality may opt to identify one or more CFMA Districts, each of which may be as small as a single parcel, provided that the municipality includes in this district or combination of CFMA districts, all land currently occupied by or suitable for active water dependent uses, taking into consideration the above-listed factors.

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**C. 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 great pond, or river, or 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 are located within two-hundred and fifty (250) feet, horizontal distance, of the above water bodies or wetlands, that land area shall be regulated under the terms of the shoreland district associated with that water body or wetland.

**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 - Allowed with permit issued by the Planning Board.

CEO - Allowed with permit issued by the Code Enforcement Officer

LPI - Allowed with permit issued by the Local Plumbing Inspector

**Abbreviations:**

RP - Resource Protection

LR - Limited Residential

SP - Stream Protection

The following notes are applicable to the Land Uses Table on the following page:

## Palermo Shoreland Zoning Ordinance

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**NOTE:** The term "functionally water-dependent use" as defined, includes a very diverse group of uses ranging from large, industrial facilities that receive shipments by water or use water for cooling, to traditional commercial fishing enterprises, and public shorefront parks. Communities are encouraged to define the functionally water-dependent uses which are to be allowed and which are prohibited in each CFMA district, based on considerations of prevailing existing uses, desired future uses, available support facilities, site suitability and compatibility with adjacent uses. A municipality can narrow the range of allowed uses by precluding certain functionally water-dependent uses, or by adopting conditional uses for certain functionally water-dependent uses that it determines would only be compatible with its plan for the waterfront under certain conditions.

**NOTE:** Recreational water-dependent uses such as marinas and excursion vessels may, in some communities, displace or threaten to displace traditional commercial fisheries and maritime activities. Therefore communities may wish to preclude or further limit these types of uses in this district in order to protect berthing space and onshore staging areas for commercial fishing enterprises.

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TABLE 1. LAND USES IN THE SHORELAND ZONE

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

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

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

<sup>3</sup>In RP not allowed in areas so designated because of wildlife value.

<sup>4</sup>Provided that a variance from the setback requirement is obtained from the Board of Appeals.

<sup>5</sup>See further restrictions in Section 15(L).

<sup>6</sup>Except when area is zoned for resource protection due to floodplain criteria in which case a permit is required from the PB.

<sup>7</sup>Except as provided in Section 15(H).

<sup>8</sup>Single family residential structures may be allowed by special exception only according to the provisions of Section 16(E), Special Exceptions. Two-family residential structures are prohibited.

<sup>9</sup>Except for commercial uses otherwise listed in this Table, such as marinas and campgrounds, that are allowed in the respective district.

<sup>10</sup>Excluding bridges and other crossings not involving earthwork, in which case no permit is required.

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<sup>11</sup>Permit not required but must file a written “notice of intent to construct” with *CEO*.

<sup>12</sup> Provided this ordinance contains Section 15(O), or as provided in an agreement between the municipality and Maine Forest Service under Section 15(O-1).

<sup>13</sup>Option 3 towns only.

**NOTE:** Item 17, in its entirety, should be deleted from Table 1 if a municipality elects not to regulate “piers, docks, wharfs, bridges and other structures and uses extending over or below the normal high-water line or within a wetland”.

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

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

**15. Land Use Standards.**

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

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**NOTE:** Municipalities should review the land use standards contained herein to determine whether they will result in a scale of development that is compatible with existing development or with the future desired scale of development. If not, more restrictive land use standards may be adopted by the municipality.

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**A. Minimum Lot Standards**

	<b>Minimum Lot Area (sq. ft.)</b>	<b>Minimum Shore Frontage (ft.)</b>
(1)		
(a) Residential per dwelling unit		
(i) Within the Shoreland Zone	40,000	200
(b) Governmental, Institutional, Commercial or Industrial per principal structure	60,000	300
(c) 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 one hundred (100) feet, horizontal distance, of the normal high-water line of a water body or upland edge of a wetland shall be equal to or greater than the shore frontage requirement for a lot with the proposed use.		
(5) If more than one residential dwelling unit, principal governmental, institutional, commercial or industrial structure or use, or combination thereof, is constructed or established on a single		

parcel, all dimensional requirements shall be met for each additional dwelling unit, principal structure, or use.

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**NOTE:** Municipalities may include provisions for clustered housing within the shoreland zone provided that the overall dimensional requirements, including frontage and lot area per dwelling unit, are met. When determining whether dimensional requirements are met, only land area within the shoreland zone shall be considered.

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**B. Principal and Accessory Structures**

- (1) All new principal and accessory structures shall be set back at least one hundred (100) feet, horizontal distance, from the normal high-water line of great ponds and rivers that flow to great ponds, and seventy-five (75) feet, horizontal distance, from the normal high-water line of other water bodies, tributary streams, or the upland edge of a wetland, except that in the General Development I District the setback from the normal high-water line shall be at least twenty five (25) feet, horizontal distance. In the Resource Protection District the setback requirement shall be 250 feet, horizontal distance, except for structures, roads, parking spaces or other regulated objects specifically allowed in that district in which case the setback requirements specified above shall apply.

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**NOTE:** The Natural Resources Protection Act, 38 M.S.R.A. sections 480-A through 480-HH, requires the Department of Environmental Protection to designate areas of "significant wildlife habitat".

Permitting under the Natural Resources Protection Act for activities adjacent to significant wildlife habitat areas may require greater setbacks. Contact your local Department of Environmental Protection office to see if additional permitting is required.

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**In addition:**

- (a) The water body, tributary stream, or wetland setback provision shall neither apply to structures which require direct access to the water body or wetland as an operational necessity, such as piers, docks and retaining walls, nor to other functionally water-dependent uses.
- (b) All principal structures along Significant River Segments as listed in 38 M.R.S.A. section 437, shall be set back a minimum of one hundred and twenty-five (125) feet, horizontal distance, from the normal high-water line and shall be screened from the river by existing vegetation. This provision does not apply to structures related to hydropower facilities.
- (c) On a nonconforming lot of record on which only a residential structure exists, and it is not possible to place an accessory structure meeting the required water body, tributary stream or wetland setbacks, the code enforcement officer may issue a permit to place a single accessory structure, with no utilities, for the storage of yard tools and similar equipment. Such accessory structure shall not exceed eighty (80) square feet in area nor eight (8) feet in height, and shall be located as far from the shoreline or tributary stream

as practical and shall meet all other applicable standards, including non-vegetated surfaces and vegetation clearing limitations. In no case shall the structure be located closer to the shoreline or tributary stream than the principal structure.

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**NOTE:** A municipality may within its ordinance, authorize the Planning Board to 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 setback 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.

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**NOTE:** Refer to Section 17 for definition of tributary stream. A tributary stream may be perennial or intermittent. Where a tributary stream is present within the shoreland zone, setback standards from that tributary stream are applicable.

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- (2) Principal or accessory structures and expansions of existing structures which are permitted in the Resource Protection, Limited Residential, Limited Commercial, and Stream Protection Districts, shall not exceed thirty-five (35) feet in height.
  - (a) This provision shall not apply to structures such as transmission towers, windmills, antennas, and similar structures having no floor area.
  - (b) The height of a structure shall exclude a nonhabitable feature mounted on a structure roof for observation purposes, such as a cupola, a dome or a widow's walk, provided the following conditions are met:
    - (i) the feature is being added to, or is part of, a conforming structure,
    - (ii) the structure is not located in a Resource Protection or Stream Protection District,
    - (iii) the feature does not extend beyond the exterior walls of the structure,
    - (iv) the feature has a floor area of fifty-three (53) square feet or less, and
    - (v) the feature does not increase the height the structure, as defined, more than seven (7) feet.
- (3) The lowest floor elevation or openings of all buildings and structures, including basements, shall be elevated at least one foot above the elevation of the 100 year flood, the flood of record, or in the absence of these, the flood as defined by soil types identified as recent floodplain soils. Accessory structures may be placed in accordance with the standards of the Floodplain Management Ordinance that is consistent with the April 2005 or later version under the National Flood Insurance Program.
- (4) Except in the shoreland zone of rivers that do not flow to great ponds that are designated as General Development Districts, non-vegetated surfaces shall not exceed twenty (20) percent of the portion of the lot located within the shoreland zone. In the shoreland zone of rivers that do not flow to great ponds that are designated as General Development Districts, non-vegetated surfaces shall not exceed seventy (70) percent of the portion of the lot within the shoreland zone. Non-vegetated surfaces include, but are not limited to the following: structures, driveways, parking areas, and other areas from which vegetation has been removed. Naturally occurring ledge and rock outcroppings are not counted as non-vegetated surfaces for lots that were recorded on March 24, 1990, and that have been in continuous existence since that date.

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Section 15(B)(4) shall not apply to public boat launching facilities, regardless of the district in which the facility is located.

- (5) Retaining walls that are not necessary for erosion control shall meet the structure setback requirement, except for low retaining walls and associated fill provided all of the following conditions are met:
- (a) The site has been previously altered and an effective vegetated buffer does not exist;
  - (b) The wall(s) is(are) at least 25 feet, horizontal distance, from the normal high-water line of a water body, tributary stream, or upland edge of a wetland;
  - (c) The site where the retaining wall will be constructed is legally existing lawn or is a site eroding from lack of naturally occurring vegetation, and which cannot be stabilized with vegetative plantings;
  - (d) The total height of the wall(s), in the aggregate, is no more than 24 inches;
  - (e) Retaining walls are located outside of the 100-year floodplain on rivers, streams, and tributary streams, as designated on the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps or Flood Hazard Boundary Maps, or the flood of record, or in the absence of these, by soil types identified as recent floodplain soils.
  - (f) The area behind the wall is revegetated with grass, shrubs, trees, or a combination thereof, and no further structural development will occur within the setback area, including patios and decks; and
  - (g) A vegetated buffer area is established within 25 feet, horizontal distance, of the normal high-water line of a water body, tributary stream, or upland edge of a wetland when a natural buffer area does not exist. The buffer area must meet the following characteristics:
    - (i) The buffer must include shrubs and other woody and herbaceous vegetation. Where natural ground cover is lacking the area must be supplemented with leaf or bark mulch;
    - (ii) Vegetation plantings must be in quantities sufficient to retard erosion and provide for effective infiltration of stormwater runoff;
    - (iii) Only native species may be used to establish the buffer area;
    - (iv) A minimum buffer width of 15 feet, horizontal distance, is required, measured perpendicularly to the normal high-water line or upland edge of a wetland;
    - (v) A footpath not to exceed the standards in Section 15(P)(2)(a), may traverse the buffer.



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

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- (6) Notwithstanding the requirements stated above, stairways or similar structures may be allowed with a permit from the Code Enforcement Officer, to provide shoreline access in areas of steep slopes or unstable soils provided: that the structure is limited to a maximum of four (4) feet in width; that the structure does not extend below or over the normal high-water line of a water body or upland edge of a wetland, (unless permitted by the Department of Environmental Protection pursuant to the Natural Resources Protection Act, 38 M.R.S.A. section 480-C); and that the applicant demonstrates that no reasonable access alternative exists on the property.
  
- (7) Notwithstanding the requirements in Section 15(B)(1) above, the permitting authority may approve a deck over a river if it is part of a downtown revitalization project that is defined in a project plan approved by the legislative body of Palermo, which may include the revitalization of structures formally used as mills that do not meet the setback requirements, provided that the following requirements are met:
  - (a) The total deck area attached to the structure does not exceed seven hundred (700) square feet;
  - (b) The deck is cantilevered over a segment of the river that is located within the boundaries of the downtown revitalization project;
  - (c) The deck is attached to or accessory to an allowed commercial use in a structure that was constructed prior to 1971 and is located within the downtown revitalization project; and
  - (d) The construction of the deck complies with all other applicable standards, except the setback requirements in Section 15(B)(1).

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

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**C. Piers, Docks, Wharves, Bridges and Other Structures and Uses Extending or Located Below the Normal High-Water Line of a Water Body or Within a Wetland; and Shoreline Stabilization**

- (1) No more than one structure extending or located below the normal high-water line of a water body or within a wetland is allowed on a single lot; except that when a single lot contains at least twice the minimum shore frontage as specified in Section 15(A), a second structure may be allowed and may remain as long as the lot is not further divided.
  
- (2) Access from shore shall be developed on soils appropriate for such use and constructed so as to control erosion.

- (3) The location shall not interfere with existing developed or natural beach areas.
- (4) The facility shall be located so as to minimize adverse effects on fisheries.
- (5) The facility shall be no larger in dimension than necessary to carry on the activity and be consistent with the surrounding character and uses of the area. A temporary pier, dock or wharf shall not be wider than six feet for non-commercial uses.
- (6) No new structure shall be built on, over or abutting a pier, wharf, dock or other structure extending or located below the normal high-water line of a water body or within a wetland unless the structure requires direct access to the water body or wetland as an operational necessity.

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

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- (7) New permanent piers and docks shall not be permitted unless it is clearly demonstrated to the Planning Board that a temporary pier or dock is not feasible, and a permit has been obtained from the Department of Environmental Protection, pursuant to the Natural Resources Protection Act.
- (8) No existing structures built on, over or abutting a pier, dock, wharf or other structure extending or located below the normal high-water line of a water body or within a wetland shall be converted to residential dwelling units in any district.
- (9) Except in the General Development Districts, structures built on, over or abutting a pier, wharf, dock or other structure extending or located below the normal high-water line of a water body or within a wetland shall not exceed twenty (20) feet in height above the pier, wharf, dock or other structure.

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

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- (10) The Planning Board may approve shoreline stabilization of an eroding shoreline, provided that the following requirements are met:
  - (a) Construction equipment must access the shoreline by barge when feasible, as determined by the Planning Board.
  - (b) When necessary, the removal of vegetation to allow for construction equipment access to the stabilization site via land must be limited to no more than twelve (12) feet in width. When the shoreline stabilization is complete, the construction equipment access way must be restored.
  - (b) Any restoration or revegetation shall occur in accordance with Section 15(S).

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NOTE: A permit pursuant to the Natural Resources Protection Act is required from the Department of Environmental Protection for shoreline stabilization activities.

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**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 one hundred (100) feet, horizontal distance, from the normal high-water line of a great pond or a river flowing to a great pond, and seventy-five (75) feet, horizontal distance, from the normal high-water line of other water bodies, tributary streams, or the upland edge of a wetland.

**E. Individual Private Campsites.**

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

- (1) On a vacant lot, 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) On a lot that contains a principal use or structure, the lot shall contain the minimum lot dimensional requirements for that principal use or structure separately from the thirty thousand (30,000) square feet of lot area within the shoreland zone required per individual private campsite.
- (3) Campsite placement on any lot, including the area intended for a recreational vehicle or tent platform, shall be set back one hundred (100) feet, horizontal distance, from the normal high-water line of a great pond or river flowing to a great pond, and seventy-five (75) feet, horizontal distance, from the normal high-water line of other water bodies, tributary streams, or the upland edge of a wetland.
- (4) Only one recreational vehicle shall be allowed on a campsite. The recreational vehicle shall not be located on any type of permanent foundation except for a gravel pad, and no structure except a canopy shall be attached to the recreational vehicle.
- (5) The clearing of vegetation for the siting of the recreational vehicle, tent or similar shelter in a Resource Protection District shall be limited to one thousand (1000) square feet.
- (6) 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.

- (7) 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 great ponds, and rivers and streams which flow to great ponds:

- (1) Auto washing facilities
- (2) Auto or other vehicle service and/or repair operations, including body shops
- (3) Chemical and bacteriological laboratories
- (4) Storage of chemicals, including herbicides, pesticides or fertilizers, other than amounts normally associated with individual households or farms
- (5) Commercial painting, wood preserving, and furniture stripping
- (6) Dry cleaning establishments
- (7) Electronic circuit assembly
- (8) Laundromats, unless connected to a sanitary sewer
- (9) Metal plating, finishing, or polishing
- (10) Petroleum or petroleum product storage and/or sale except storage on same property as use occurs and except for storage and sales associated with marinas
- (11) Photographic processing
- (12) Printing

**G. Parking Areas**

- (1) Parking areas shall meet the shoreline and tributary stream setback requirements for structures for the district in which such areas are located. The setback requirement for parking areas serving public boat launching facilities in Districts other than the General Development I District shall be no less than fifty (50) feet, horizontal distance, from the shoreline or tributary stream if the Planning Board finds that no other reasonable alternative exists further from the shoreline or tributary stream.

- (2) Parking areas shall be adequately sized for the proposed use and shall be designed to prevent stormwater runoff from flowing directly into a water body, tributary stream or wetland and where feasible, to retain all runoff on-site.
- (3) 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 one-hundred (100) feet, horizontal distance, from the normal high-water line of a great pond or a river that flows to a great pond, and seventy-five (75) feet, horizontal distance from the normal high-water line of other water bodies, tributary streams, or the upland edge of a wetland unless no reasonable alternative exists as determined by the Planning Board. If no other reasonable alternative exists, the road and/or driveway setback requirement shall be no less than fifty (50) feet, horizontal distance, upon clear showing by the applicant that appropriate techniques will be used to prevent sedimentation of the water body, tributary stream, or wetland. Such techniques may include, but are not limited to, the installation of settling basins, and/or the effective use of additional ditch relief culverts and turnouts placed so as to avoid sedimentation of the water body, tributary stream, or wetland.

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

Section 15 (H)(1) does not apply to approaches to water crossings or to roads or driveways that provide access to permitted structures and facilities located nearer to the shoreline or tributary stream due to an operational necessity, excluding temporary docks for recreational uses. Roads and driveways providing access to permitted structures within the setback area shall comply fully with the requirements of Section 15(H)(1) except for that portion of the road or driveway necessary for direct access to the structure.

- (2) Existing public roads may be expanded within the legal road right of way regardless of their setback from a water body, tributary stream or wetland.
- (3) New permanent roads are not allowed within the shoreland zone along Significant River Segments except:
  - (a) To provide access to structures or facilities within the zone; or
  - (b) When the applicant demonstrates that no reasonable alternative route exists outside the shoreland zone. When roads must be located within the shoreland zone they shall be set back as far as practicable from the normal high-water line and screened from the river by existing vegetation.

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- (4) New roads and driveways are prohibited in a Resource Protection District except that the Planning Board may grant a permit to construct a road or driveway to provide access to permitted uses within the district. A road or driveway may also be approved by the Planning Board in a Resource Protection District, upon a finding that no reasonable alternative route or location is available outside the district. When a road or driveway is permitted in a Resource Protection District the road and/or driveway shall be set back as far as practicable from the normal high-water line of a water body, tributary stream, or upland edge of a wetland.
- (5) Road and driveway banks shall be no steeper than a slope of two (2) horizontal to one (1) vertical, and shall be graded and stabilized in accordance with the provisions for erosion and sedimentation control contained in Section 15(T).
- (6) Road and driveway grades shall be no greater than ten (10) percent except for segments of less than two hundred (200) feet.
- (7) In order to prevent road and driveway surface drainage from directly entering water bodies, tributary streams or wetlands, roads and driveways shall be designed, constructed, and maintained to empty onto an unscarified buffer strip at least (50) feet plus two times the average slope, in width between the outflow point of the ditch or culvert and the normal high-water line of a water body, tributary stream, or upland edge of a wetland. Surface drainage which is directed to an unscarified buffer strip shall be diffused or spread out to promote infiltration of the runoff and to minimize channelized flow of the drainage through the buffer strip.
- (8) Ditch relief (cross drainage) culverts, drainage dips and water turnouts shall be installed in a manner effective in directing drainage onto unscarified buffer strips before the flow gains sufficient volume or head to erode the road, driveway, or ditch. To accomplish this, the following shall apply:
  - (a) Ditch relief culverts, drainage dips and associated water turnouts shall be spaced along the road, or driveway at intervals no greater than indicated in the following table:

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

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

(d) Ditch relief culverts shall be sufficiently sized and properly installed in order to allow for effective functioning, and their inlet and outlet ends shall be stabilized with appropriate materials.

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

**I. Signs.**

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

(1) Signs relating to goods and services sold on the premises shall be allowed, provided that such signs shall not exceed six (6) square feet in area and shall not exceed two (2) signs per premises. In the Limited Commercial District, however, such signs shall not exceed sixteen (16) square feet in area. Signs relating to goods or services not sold or rendered on the premises shall be prohibited.

(2) Name signs are allowed, provided such signs shall not exceed two (2) signs per premises, and shall not exceed twelve (12) square feet in the aggregate.

(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 allowed 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 allowed 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.

**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 predevelopment conditions. Where possible, existing natural runoff control features, such as berms, swales, terraces and wooded areas, shall be retained in order to reduce runoff and encourage infiltration of stormwaters.

(2) Storm water runoff control systems shall be maintained as necessary to ensure proper functioning.

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**NOTE:** The Stormwater Management Law (38 M.R.S.A. section 420-D) requires a full permit to be obtained from the DEP prior to construction of a project consisting of 20,000 square feet or more of impervious area or 5 acres or more of a developed area in an urban impaired stream watershed or most-at-risk lake watershed, or a project with 1 acre or more of developed area in any other stream, coastal or wetland watershed. A permit-by-

rule is necessary for a project with one acre or more of disturbed area but less than 1 acre impervious area (20,000 square feet for most-at-risk lakes and urban impaired streams) and less than 5 acres of developed area. Furthermore, a Maine Construction General Permit is required if the construction will result in one acre or more of disturbed area.

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**K. Septic Waste Disposal**

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

(a) clearing or removal of woody vegetation necessary to site a new system and any associated fill extensions, shall not extend closer than seventy-five (75) feet, horizontal distance, from the normal high-water line of a water body or the upland edge of a wetland; and

(b) a holding tank is not allowed for a first-time residential use in the shoreland zone.

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

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**L. Essential Services**

(1) Where feasible, the installation of essential services shall be limited to existing public ways and existing service corridors.

(2) The installation of essential services, other than road-side distribution lines, is not allowed in a Resource Protection or Stream Protection District, except to provide services to a permitted use within said district, or except where the applicant demonstrates that no reasonable alternative exists. Where allowed, such structures and facilities shall be located so as to minimize any adverse impacts on surrounding uses and resources, including visual impacts.

(3) Damaged or destroyed public utility transmission and distribution lines, towers and related equipment may be replaced or reconstructed without a permit.

**M. Mineral Exploration and Extraction.**

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

Mineral extraction may be permitted under the following conditions:

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



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- (2) No part of any extraction operation, including drainage and runoff control features, shall be permitted within one hundred (100) feet, horizontal distance, of the normal high-water line of a great pond or a river flowing to a great pond, and within seventy-five (75) feet, horizontal distance, of the normal high-water line of any other water body, tributary stream, or the upland edge of a wetland. Extraction operations shall not be permitted within fifty (50) feet, horizontal distance, of any property line without written permission of the owner of such adjacent property.
- (3) Developers of new gravel pits along Significant River Segments shall demonstrate that no reasonable mining site outside the shoreland zone exists. When gravel pits must be located within the zone, they shall be set back as far as practicable from the normal high-water line and no less than seventy-five (75) feet and screened from the river by existing vegetation.
- (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.

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NOTE: The State of Maine Solid Waste Laws, 38 M.R.S.A., section 1301 and the solid waste management rules, Chapters 400-419 of the Department of Environmental Protection's regulations may contain other applicable provisions regarding disposal of such materials.

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- (b) The final graded slope shall be two and one-half to one (2 1/2:1) 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 of manure shall be accomplished in conformance with the *Manure Utilization Guidelines* published by the former Maine Department of Agriculture on November 1, 2001, and the Nutrient Management Law (7 M.R.S.A. sections 4201-4209).
- (2) Manure shall not be stored or stockpiled within one hundred (100) feet, horizontal distance, of a great pond or a river flowing to a great pond, or within seventy-five (75) feet horizontal distance, of other water bodies, tributary streams, or wetlands. All manure storage areas within the shoreland zone must be constructed or modified such that the facility produces no discharge of effluent or contaminated storm water.

- (3) Agricultural activities involving tillage of soil greater than forty thousand (40,000) square feet in surface area, within the shoreland zone shall require a Conservation Plan to be filed with the Planning Board. Nonconformance with the provisions of said plan shall be considered to be a violation of this Ordinance.

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

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- (4) There shall be no new tilling of soil within one-hundred (100) feet, horizontal distance, of the normal high-water line of a great pond; within seventy-five (75) feet, horizontal distance, from other water bodies; nor within twenty-five (25) feet, horizontal distance, of tributary streams and freshwater wetlands. Operations in existence on the effective date of this ordinance and not in conformance with this provision may be maintained.
- (5) Newly established livestock grazing areas shall not be permitted within one hundred (100) feet, horizontal distance, of the normal high-water line of a great pond; within seventy-five (75) feet, horizontal distance, of other water bodies; nor within twenty-five (25) feet, horizontal distance, of tributary streams and freshwater wetlands. Livestock grazing associated with ongoing farm activities, and which are not in conformance with the above setback provisions may continue, provided that such grazing is conducted in accordance with a Conservation Plan that has been filed with the Planning Board.

- O. Timber Harvesting – **Repealed.** Palermo repealed all timber harvesting provisions from a previous Shoreland Zoning Ordinances, (Option 1). NOTE: Contact the Maine Forest Service.

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**NOTE RELATING TO TIMBER HARVESTING STANDARDS:**

Title 38 M.R.S.A. section 438-A provides that, notwithstanding other provisions of the *Mandatory Shoreland Zoning Act*, the regulation of timber harvesting and timber harvesting activities in shoreland areas must be in accordance with section 438-B and rules adopted by the Maine Forest Bureau pursuant to Title 12, section 8867-B. Section 438-B establishes three options from which each municipality may choose as the State implements a set of statewide timber harvesting standards in shoreland areas.

**Option 1:** The first option available to a municipality is the complete repeal of timber harvesting provisions from the shoreland zoning ordinance. Under this option the Bureau of Forestry will administer the regulation of all forestry activities within the Palermo.

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**O-1. Timber Harvesting – Statewide Standards**

- (1) **Shoreline integrity and sedimentation.** Persons conducting timber harvesting and related activities must take reasonable measures to avoid the disruption of shoreline integrity, the occurrence of sedimentation of water, and the disturbance of water body and tributary stream banks, water body and tributary stream channels, shorelines, and soil lying within water bodies, tributary streams and wetlands. If, despite such precautions, the disruption of shoreline integrity, sedimentation of water, or the disturbance of water body and tributary stream banks, water body and tributary stream channels, shorelines, and soil lying within water bodies, tributary streams and wetlands occurs, such conditions must be corrected.

- (2) **Slash treatment.** Timber harvesting and related activities shall be conducted such that slash or debris is not left below the normal high-water line of any water body or tributary stream, or the upland edge of a wetland. Section 15(O-1)(2) does not apply to minor, incidental amounts of slash that result from timber harvesting and related activities otherwise conducted in compliance with this section.
- (a) Slash actively used to protect soil from disturbance by equipment or to stabilize exposed soil, may be left in place, provided that no part thereof extends more than 4 feet above the ground.
- (b) Adjacent to great ponds, rivers and wetlands:
- (i) No accumulation of slash shall be left within 50 feet, horizontal distance, of the normal high-water line or upland edge of a wetland; and
- (ii) Between 50 feet and 250 feet, horizontal distance, of the normal high-water line or upland edge of a wetland, all slash larger than 3 inches in diameter must be disposed of in such a manner that no part thereof extends more than 4 feet above the ground.
- (3) Timber harvesting and related activities must leave adequate tree cover and shall be conducted so that a well-distributed stand of trees is retained. This requirement may be satisfied by following one of the following three options:
- (a) **Option 1 (40% volume removal),** as follows:
- (i) Harvesting of no more than 40 percent of the total volume on each acre of trees 4.5 inches DBH or greater in any 10 year period is allowed. Volume may be considered to be equivalent to basal area;
- (ii) A well-distributed stand of trees which is windfirm, and other vegetation including existing ground cover, must be maintained; and,
- (iii) Within 75 feet, horizontal distance, of the normal high-water line of rivers, streams, and great ponds, and within 75 feet, horizontal distance, of the upland edge of a freshwater wetland, there must be no cleared openings. At distances greater than 75 feet, horizontal distance, of the normal high-water line of a river or great pond or upland edge of a wetland, timber harvesting and related activities must not create single cleared openings greater than 14,000 square feet in the forest canopy. Where such openings exceed 10,000 square feet, they must be at least 100 feet, horizontal distance, apart. Such cleared openings will be included in the calculation of total volume removal. Volume may be considered equivalent to basal area.
- (b) **Option 2 (60 square foot basal area retention),** as follows:
- (i) The residual stand must contain an average basal area of at least 60 square feet per acre of woody vegetation greater than or equal to 1.0 inch DBH, of which 40 square feet per acre must be greater than or equal to 4.5 inches DBH;

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- (ii) A well-distributed stand of trees which is windfirm, and other vegetation including existing ground cover, must be maintained; and,
  - (iii) Within 75 feet, horizontal distance, of the normal high-water line of water bodies and within 75 feet, horizontal distance, of the upland edge of wetlands, there must be no cleared openings. At distances greater than 75 feet, horizontal distance, of the normal high-water line of a river or great pond, or upland edge of a wetland, timber harvesting and related activities must not create single cleared openings greater than 14,000 square feet in the forest canopy. Where such openings exceed 10,000 square feet, they must be at least 100 feet, horizontal distance, apart. Such cleared openings will be included in the calculation of the average basal area. Volume may be considered equivalent to basal area.
- (c) **Option 3 (Outcome based)**, which requires: An alternative method proposed in an application, signed by a Licensed Forester or certified wildlife professional, submitted by the landowner or designated agent to the State of Maine Department of Conservation's Bureau of Forestry (Bureau) for review and approval, which provides equal or better protection of the shoreland area than this rule.

Landowners must designate on the Forest Operations Notification form required by 12 M.R.S.A. chapter 805, subchapter 5 which option they choose to use. If landowners choose Option 1 or Option 2, compliance will be determined solely on the criteria for the option chosen. If landowners choose Option 3, timber harvesting and related activities may not begin until the Bureau has approved the alternative method.

The Bureau may verify that adequate tree cover and a well-distributed stand of trees is retained through a field procedure that uses sample plots that are located randomly or systematically to provide a fair representation of the harvest area.

- (4) **Skid trails, yards, and equipment operation.** This requirement applies to the construction, maintenance, and use of skid trails and yards in shoreland areas.
- (a) Equipment used in timber harvesting and related activities shall not use river, stream or tributary stream channels as travel routes except when surface waters are frozen and snow covered, and the activity will not result in any ground disturbance.
  - (b) Skid trails and yards must be designed and constructed to prevent sediment and concentrated water runoff from entering a water body, tributary stream, or wetland. Upon termination of their use, skid trails and yards must be stabilized.
- (c) **Setbacks:**
- (i) Equipment must be operated to avoid the exposure of mineral soil within 25 feet, horizontal distance, of any water body, tributary stream, or wetland. On slopes of 10 percent or greater, the setback for equipment operation must be increased by 20 feet, horizontal distance, plus an additional 10 feet, horizontal distance, for each 5 percent increase in slope above 10 percent. Where slopes fall away from the resource, no increase in the 25-foot setback is required.

- (ii) Where such setbacks are impracticable, appropriate techniques shall be used to avoid sedimentation of the water body, tributary stream or wetland. Such techniques may include the installation of sump holes or settling basins, and/or the effective use of additional ditch relief culverts and ditch water turnouts placed to avoid sedimentation of the water body, tributary stream, or wetland. If, despite such precautions, sedimentation or the disruption of shoreline integrity occurs, such conditions must be corrected.
- (5) **Land Management Roads.** Land management roads, including approaches to crossings of water bodies, tributary stream channels, and freshwater wetlands, ditches and other related structures, must be designed, constructed, and maintained to prevent sediment and concentrated water runoff from directly entering the water body, tributary stream or wetland. Surface water on or adjacent to water crossing approaches must be diverted through vegetative filter strips to avoid sedimentation of the watercourse or wetland. Because roadside ditches may not extend to the resource being crossed, vegetative filter strips must be established in accordance with the setback requirements in Section 15(O-1)(7) of this rule.
- (a) Land management roads and associated ditches, excavation, and fill must be set back at least:
    - (i) 100 feet, horizontal distance, from the normal high-water line of a great pond, river or freshwater wetland;
    - (ii) 50 feet, horizontal distance, from the normal high-water line of streams; and
    - (iii) 25 feet, horizontal distance, from the normal high-water line of tributary streams
  - (b) The minimum 100 foot setback specified in Section 15(O-1)(5)(a)(i) above may be reduced to no less than 50 feet, horizontal distance, and the 50 foot setback specified in Section 15(O-1)(5)(a)(ii) above may be reduced to no less than 25 feet, horizontal distance, if, prior to construction, the landowner or the landowner's designated agent demonstrates to the Planning Board's satisfaction that no reasonable alternative exists and that appropriate techniques will be used to prevent sedimentation of the water body, tributary stream, or wetland. Such techniques may include, but are not limited to, the installation of settling basins, and/or the effective use of additional ditch relief culverts and turnouts placed to avoid sedimentation of the water body, tributary stream or wetland. If, despite such precautions, sedimentation or the disruption of shoreline integrity occurs, such conditions must be corrected.
  - (c) On slopes of 10 percent or greater, the land management road setback must be increased by at least 20 feet, horizontal distance, plus an additional 10 feet, horizontal distance, for each 5 percent increase in slope above 10 percent.
  - (d) New land management roads are not allowed within the shoreland area along Significant River Segments as identified in 38 M.R.S.A. section 437, nor in a Resource Protection District, unless, prior to construction, the landowner or the landowner's designated agent makes a clear demonstration to the Planning Board's satisfaction that no reasonable alternative route exists outside the shoreland zone, and that the new road must be set back as far as practicable from the normal high-water line and screened from the river by existing vegetation.

- (e) Ditches, culverts, bridges, dips, water turnouts and other water control installations associated with roads must be maintained on a regular basis to assure effective functioning. Drainage structures shall deliver a dispersed flow of water into an unscarified filter strip no less than the width indicated in the setback requirements in Section 15(O-1)(7). Where such a filter strip is impracticable, appropriate techniques shall be used to avoid sedimentation of the water body, tributary stream, or wetland. Such techniques may include the installation of sump holes or settling basins, and/or the effective use of additional ditch relief culverts and ditch water turnouts placed to avoid sedimentation of the water body, tributary stream, or wetland. If, despite such precautions, sedimentation or the disruption of shoreline integrity occurs, such conditions must be corrected.
  - (f) **Road closeout and discontinuance.** Maintenance of the water control installations required in Section 15(O-1)(5)(e) must continue until use of the road is discontinued and the road is put to bed by effective installation of water bars or other adequate road drainage structures at appropriate intervals, constructed to avoid surface water flowing over or under the water bar, and extending a sufficient distance beyond the traveled way so that water does not reenter the road surface.
  - (g) **Upgrading existing roads.** Extension or enlargement of presently existing roads must conform to the provisions of Section 15(O-1). Any nonconforming existing road may continue to exist and to be maintained, as long as the nonconforming conditions are not made more nonconforming.
  - (h) **Exception.** Extension or enlargement of presently existing roads need not conform to the setback requirements of Section 15(O-1)(5)(a) if, prior to extension or enlargement, the landowner or the landowner's designated agent demonstrates to the Planning Board's satisfaction that no reasonable alternative exists and that appropriate techniques will be used to prevent sedimentation of the water body, tributary stream, or wetland. Such techniques may include, but are not limited to, the installation of settling basins, and/or the effective use of additional ditch relief culverts and turnouts placed to avoid sedimentation of the water body, tributary stream, or wetland. If, despite such precautions, sedimentation or the disruption of shoreline integrity occurs, such conditions must be corrected.
  - (i) **Additional measures.** In addition to the foregoing minimum requirements, persons undertaking construction and maintenance of roads and river, stream and tributary stream crossings must take reasonable measures to avoid sedimentation of surface waters.
- (6) **Crossings of waterbodies.** Crossings of rivers, streams, and tributary streams must allow for fish passage at all times of the year, must not impound water, and must allow for the maintenance of normal flows.
- (a) **Determination of flow.** Provided they are properly applied and used for the circumstances for which they are designed, methods including but not limited to the following are acceptable as a means of calculating the 10 year and 25 year frequency water flows and thereby determining water crossing sizes as required in Section 15(O-1): The United States Geological Survey (USGS) Methods; specifically: Hodgkins, G. 1999. Estimating the Magnitude of Peak Flows for Streams in Maine for Selected Recurrence Intervals. U.S. Geological Survey. Water Resources Investigations Report 99-4008. 45 pp.

- (b) **Upgrading existing water crossings.** Extension or enlargement of presently existing water crossings must conform to the provisions of Section 15(O-1). Any nonconforming existing water crossing may continue to exist and be maintained, as long as the nonconforming conditions are not made more nonconforming; however, any maintenance or repair work done below the normal high-water line must conform to the provisions of Section 15(O-1).
- (c) **Other Agency Permits.** Any timber harvesting and related activities involving the design, construction, and maintenance of crossings on waterbodies other than a river, stream or tributary stream may require a permit from the Land Use Regulation Commission, the Department of Environmental Protection, or the US Army Corps of Engineers.
- (d) Any timber harvesting and related activities involving the design, construction, and maintenance of crossings of freshwater wetlands identified by the Department of Inland Fisheries and Wildlife as essential wildlife habitat require prior consultation with the Department of Inland Fisheries and Wildlife.
- (e) **Notice to Bureau of Forestry.** Written notice of all water crossing construction maintenance, alteration and replacement activities in shoreland areas must be given to the Bureau prior to the commencement of such activities. Such notice must contain all information required by the Bureau, including:
  - (i) a map showing the location of all proposed permanent crossings;
  - (ii) the GPS location of all proposed permanent crossings;
  - (iii) for any temporary or permanent crossing that requires a permit from state or federal agencies, a copy of the approved permit or permits; and
  - (iv) a statement signed by the responsible party that all temporary and permanent crossings will be constructed, maintained, and closed out in accordance with the requirements of this Section.
- (f) **Water crossing standards.** All crossings of rivers require a bridge or culvert sized according to the requirements of Section 15(O-1)(6)(g) below. Streams and tributary streams may be crossed using temporary structures that are not bridges or culverts provided:
  - (i) concentrated water runoff does not enter the stream or tributary stream;
  - (ii) sedimentation of surface waters is reasonably avoided;
  - (iii) there is no substantial disturbance of the bank, or stream or tributary stream channel;
  - (iv) fish passage is not impeded; and,
  - (v) water flow is not unreasonably impeded.

Subject to Section 15(O-1)(6)(f)(i-v) above, skid trail crossings of streams and tributary streams when channels of such streams and tributary streams are frozen and snow-covered or are composed of a hard surface which will not be eroded or otherwise damaged are not required to use permanent or temporary structures.

- (g) **Bridge and Culvert Sizing.** For crossings of river, stream and tributary stream channels with a bridge or culvert, the following requirements apply:
  - (i) Bridges and culverts must be installed and maintained to provide an opening sufficient in size and structure to accommodate 25 year frequency water flows or with a cross-

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sectional area at least equal to 3 times the cross-sectional area of the river, stream, or tributary stream channel.

- (ii) Temporary bridge and culvert sizes may be smaller than provided in Section 15(O-1)(6)(g)(i) if techniques are effectively employed such that in the event of culvert or bridge failure, the natural course of water flow is maintained and sedimentation of the water body or tributary stream is avoided. Such crossing structures must be at least as wide as the channel and placed above the normal high-water line. Techniques may include, but are not limited to, the effective use of any, a combination of, or all of the following:

1. use of temporary skidder bridges;
2. removing culverts prior to the onset of frozen ground conditions;
3. using water bars in conjunction with culverts;
4. using road dips in conjunction with culverts.

- (iii) Culverts utilized in river, stream and tributary stream crossings must:

1. be installed at or below river, stream or tributary stream bed elevation;
2. be seated on firm ground;
3. have soil compacted at least halfway up the side of the culvert;
4. be covered by soil to a minimum depth of 1 foot or according to the culvert manufacturer's specifications, whichever is greater; and
5. have a headwall at the inlet end which is adequately stabilized by riprap or other suitable means to reasonably avoid erosion of material around the culvert.

- (iv) River, stream and tributary stream crossings allowed under Section 15(O-1), but located in flood hazard areas (i.e. A zones) as identified on a community's Flood Insurance Rate Maps (FIRM) or Flood Hazard Boundary Maps (FHBM), must be designed and constructed under the stricter standards contained in that community's National Flood Insurance Program (NFIP). For example, a water crossing may be required to pass a 100-year flood event.

- (v) **Exception.** Skid trail crossings of tributary streams within shoreland areas and wetlands adjacent to such streams may be undertaken in a manner not in conformity with the requirements of the foregoing subsections provided persons conducting such activities take reasonable measures to avoid the disruption of shoreline integrity, the occurrence of sedimentation of water, and the disturbance of stream banks, stream channels, shorelines, and soil lying within ponds and wetlands. If, despite such precautions, the disruption of shoreline integrity, sedimentation of water, or the disturbance of stream banks, stream channels, shorelines, and soil lying within ponds and wetlands occurs, such conditions must be corrected.

- (h) **Skid trail closeout.** Upon completion of timber harvesting and related activities, or upon the expiration of a Forest Operations Notification, whichever is earlier, the following requirements apply:



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- (i) Bridges and culverts installed for river, stream and tributary stream crossings by skid trails must either be removed and areas of exposed soil stabilized, or upgraded to comply with the closeout standards for land management roads in Section 15(O-1)(6)(i) below.
  - (ii) Water crossing structures that are not bridges or culverts must either be removed immediately following timber harvesting and related activities, or, if frozen into the river, stream or tributary stream bed or bank, as soon as practical after snowmelt.
  - (iii) River, stream and tributary stream channels, banks and approaches to crossings of water bodies and tributary streams must be immediately stabilized on completion of harvest, or if the ground is frozen and/or snow-covered, as soon as practical after snowmelt. If, despite such precautions, sedimentation or the disruption of shoreline integrity occurs, such conditions must be corrected.
- (i) **Land management road closeout.** Maintenance of the water control features must continue until use of the road is discontinued and the road is put to bed by taking the following actions:
- (i) Effective installation of water bars or other adequate road drainage structures at appropriate intervals, constructed to reasonably avoid surface water flowing over or under the water bar, and extending sufficient distance beyond the traveled way so that water does not reenter the road surface.
  - (ii) Water crossing structures must be appropriately sized or dismantled and removed in a manner that reasonably avoids sedimentation of the water body or tributary stream.
  - (iii) Any bridge or water crossing culvert in roads to be discontinued shall satisfy one of the following requirements:
    1. it shall be designed to provide an opening sufficient in size and structure to accommodate 25 year frequency water flows;
    2. it shall be designed to provide an opening with a cross-sectional area at least 3 1/2 times the cross-sectional area of the river, stream or tributary stream channel; or
    3. it shall be dismantled and removed in a fashion to reasonably avoid sedimentation of the river, stream or tributary stream.

If, despite such precautions, sedimentation or the disruption of shoreline integrity occurs, such conditions must be corrected.

**(7) Slope Table**

Filter strips, skid trail setbacks, and land management road setbacks must be maintained as specified in Section 15(O-1), but in no case shall be less than shown in the following table.

Average slope of land between exposed mineral soil and the shoreline (percent)	Width of strip between exposed mineral soil and shoreline (feet along surface of the ground)
0	25

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<b>10</b>	<b>45</b>
<b>20</b>	<b>65</b>
<b>30</b>	<b>85</b>
<b>40</b>	<b>105</b>
<b>50</b>	<b>125</b>
<b>60</b>	<b>145</b>
<b>70</b>	<b>165</b>

(8) **Definitions.** Unless otherwise provided in this Section 15(O-1), the definitions contained in the Maine Forest Service Rules Chapter 20, Forest Regeneration and Clearcutting Standards, and Chapter 21, Statewide Standards for Timber Harvesting and Related Activities in Shoreland Areas, are incorporated by reference in this Section 15(O-1).

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

(1) In a Resource Protection District abutting a great pond, there shall be no cutting of vegetation within the shoreline buffer extending 75 feet, horizontal distance, inland from the normal high-water line, except to remove hazard trees in accordance with Section 15(Q).

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

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

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

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

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

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

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NOTE: As an example, adjacent to a great pond, if a 25-foot x 50-foot plot contains four (4) trees between 2 and 4 inches in diameter, two trees between 4 and 8 inches in diameter, three trees between 8 and 12 inches in diameter, and two trees over 12 inches in diameter, the rating score is:

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

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

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The following shall govern in applying this point system:

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

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

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

- (c) In order to protect water quality and wildlife habitat, existing vegetation under three (3) feet in height and other ground cover, including leaf litter and the forest duff layer, shall not be cut, covered, or removed, except to provide for a footpath as described in Section 15(P) paragraphs (2) and (2)(a) above.
- (d) Pruning of tree branches, on the bottom 1/3 of the tree is allowed.
- (e) In order to maintain the vegetation in the shoreline buffer, removal of storm-damaged, hazard or dead trees and any required replanting shall occur in accordance with Section 15(Q).

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- (f) In order to maintain the vegetation in the shoreline buffer, clearing or removal of vegetation for allowed activities, including associated construction and related equipment operation, within or outside the shoreline buffer, must comply with the requirements of Section 15(P)(2).
- (3) At distances greater than one hundred (100) feet, horizontal distance, from a great pond or a river flowing to a great pond, and seventy-five (75) feet, horizontal distance, from the normal high-water line of any other water body, tributary stream, or the upland edge of a wetland, there shall be allowed on any lot, in any ten (10) year period, selective cutting of not more than forty (40) percent of the volume of trees four (4) inches or more in diameter, measured 4 1/2 feet above ground level. Tree removal in conjunction with the development of permitted uses shall be included in the forty (40) percent calculation. For the purposes of these standards volume may be considered to be equivalent to basal area.
- (4) In no event shall cleared openings for any purpose, including but not limited to, principal and accessory structures, driveways, lawns and sewage disposal areas, exceed in the aggregate, 25% of the lot area within the shoreland zone or ten thousand (10,000) square feet, whichever is greater, including land previously cleared. This provision applies to the portion of the lot within the shoreland zone, including the shoreline buffer area. This provision shall not apply to the General Development Districts.
- (5) Legally existing nonconforming cleared openings may be maintained, in accordance with Section 15(R). If these areas, fields or other cleared openings have reverted back to primarily woody vegetation, as a result of not maintaining them in accordance with Section 15(R), then the provisions of Section 15(P) shall apply.

### **Q. Hazard Trees, Dead Trees and Storm-Damaged Trees**

- (1) Hazard trees may be removed without a permit after consultation with the Code Enforcement Officer, provided the following requirements are met:
  - (a) Within the shoreline buffer, if the removal of a hazard tree results in a cleared opening in the tree canopy greater than two hundred and fifty (250) square feet, the opening shall be replaced with native tree species, unless there is new tree growth already present near to where the hazard tree was removed. New tree growth is considered to be at least two (2) inches in diameter, measured at four and one half (4.5) feet above ground level. If new growth is not present, then replacement trees shall consist of native species, be at least four (4) feet in height and be no less than two (2) inches DBH. Stumps shall not be removed.
  - (b) Outside the shoreline buffer, if the removal of hazard trees results in more than forty (40) percent of the volume of trees, four (4) inches or more in diameter as measured at four and one half (4.5) feet above ground level, being removed in any ten (10) year period; or results in cleared openings of more than twenty-five (25) percent of the lot area within the shoreland zone or more than ten thousand (10,000) square feet, whichever is greater; then replacement with native tree species is required, unless there is new tree growth already present near to where the hazard tree was removed. New tree growth is considered to be at least two (2) inches DBH. If new growth is not present, then replacement trees shall consist of native species and be no less than two (2) inches DBH.

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- (c) The code enforcement officer may require the applicant to submit an evaluation from a licensed forester or arborist before any hazard tree can be removed within the shoreland zone.
  - (d) The code enforcement officer may require more than a one-for-one replacement for removed hazard trees that exceeded eight (8) inches in diameter at four and one half (4.5) feet above ground level.
- (2) Dead trees may be removed without a permit, provided the following requirements are met:
- (a) The trees are dead from natural causes. Dead trees are those that contain no foliage during the growing season.
  - (b) The removal of dead trees does not result in the creation of new lawn areas or other permanently cleared areas.
  - (c) Stumps shall not be removed.
- (3) Storm-damaged trees may be removed without a permit after consultation with the Code Enforcement Officer, provided the following requirements are met:
- (a) Within the shoreline buffer, if the removal of storm-damaged trees results in a cleared opening in the tree canopy greater than two hundred and fifty (250) square feet, the following shall be required:
    - (i) The area shall be required to naturally revegetate. If after one growing season, no natural regeneration or regrowth is present, replanting of native tree seedlings or saplings shall be required at a density of one seedling/sapling per every eighty (80) square feet of open canopy.
    - (ii) The removal of storm-damaged trees does not result in the creation of new lawn areas or other permanently cleared areas.
    - (iii) Stumps shall not be removed.
    - (iv) Limbs damaged from a storm event may be pruned even if they extend beyond the bottom one-third (1/3) of the tree.
  - (b) Outside the shoreline buffer, if the removal of storm-damaged trees results in more than forty (40) percent of the volume of trees, four (4) inches or more in diameter as measured at four and one half (4.5) feet above ground level, being removed in any ten (10) year period; or results in cleared openings of more than twenty-five (25) percent of the lot area within the shoreland zone or more than ten thousand (10,000) square feet, whichever is greater; then the area shall be required to naturally revegetate. If after one growing season, no natural regeneration or regrowth is present, replanting of native tree seedlings or saplings shall be required on a one-for-one basis.

**R. Exemptions to Section 15(P).**

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

- (1) The clearing or removal of vegetation that occurs at least once every two (2) years for the maintenance of legally existing areas that do not comply with the standards of Section 15(P), such as but not limited to cleared openings in the canopy or fields. If any of these areas revert back to primarily woody vegetation, due to a lack of removal of vegetation every two (2) years, the requirements of Section 15(P) shall apply.
- (2) The clearing or removal of vegetation from the location of allowed structures or allowed uses, when the shoreline setback requirements of Section 15(B) are not applicable.
- (3) The clearing or removal of vegetation from the location of public swimming areas associated with allowed public recreational facilities.
- (4) The clearing or removal of vegetation associated with allowed agricultural uses, provided that all requirements of Section 15(N) are complied with, and that best management practices are utilized.
- (5) The clearing or removal of vegetation associated with brownfields or voluntary response action program projects pursuant to 38 M.R.S.A section 343-E, provided that the following provisions are met:
  - (a) The clearing or removal of vegetation is within the shoreland zone of rivers that do not flow to great ponds that are designated as General Development Districts; and
  - (b) The clearing or removal of vegetation is necessary for remediation activities to clean up contamination.
- (6) The clearing or removal of non-native invasive vegetation, provided that the following requirements are met:
  - (a) If clearing or removal of vegetation occurs via wheeled or tracked motorized equipment, then the wheeled or tracked motorized equipment is operated and stored at least twenty-five (25) feet, horizontal distance, from the shoreline, except that the wheeled or tracked motorized equipment may be operated or stored on existing structural surfaces, such as pavement or gravel;
  - (b) The clearing or removal of vegetation within twenty-five (25) feet, horizontal distance, from the shoreline occurs via hand tools; and
  - (c) If the clearing or removal of non-native invasive vegetation results in a standard of Section 15(P) being exceeded, then the area shall be revegetated in accordance with Section 15(S) to achieve compliance with the applicable standard(s) of Section 15(P).

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

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

**S. Revegetation Requirements.**

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

- (1) The applicant must submit a revegetation plan, prepared with and signed by a qualified professional, that describes revegetation activities and maintenance. The plan must include a scaled site plan, depicting where vegetation was, or is to be removed, where existing vegetation is to remain, and where vegetation is to be planted, including a list of all vegetation to be planted.
- (2) Revegetation must occur along the same segment of shoreline and in the same area where vegetation was removed, and must occur at a density comparable to the pre-existing vegetation. If this is not feasible due to shoreline stabilization, then revegetation must occur along the same segment of shoreline and as close as possible to the area where vegetation was removed.
- (3) If part of a permitted activity, revegetation shall occur before the expiration of the permit. If the activity or revegetation is not completed before the expiration of the permit, a new revegetation plan shall be submitted with any renewal or new permit application.
- (4) Revegetation activities must meet the following requirements for trees and saplings:
  - (a) All trees and saplings removed must be replaced with native noninvasive species;
  - (b) Replacement vegetation must consist of saplings at a minimum;
  - (c) If more than three (3) trees or saplings are planted, then at least three (3) different species shall be used;
  - (d) No one species shall make up 50% or more of the number of trees and saplings planted;
  - (e) If revegetation is required for shoreline stabilization, and it is not possible to plant trees and saplings in the same area where trees or saplings were removed, then trees or saplings must be planted in a location that effectively reestablishes the screening between the shoreline and structures; and
  - (f) A survival rate of at least eighty (80) percent of planted trees/saplings is required for a minimum of five (5) years.
- (5) Revegetation activities must meet the following requirements for all woody vegetation and for other vegetation under three (3) feet in height:

- (a) All woody vegetation and vegetation under three (3) feet in height must be replaced with native noninvasive species of woody vegetation and vegetation under three (3) feet in height as applicable;
  - (b) Woody vegetation and vegetation under three (3) feet in height shall be planted in quantities and variety sufficient to prevent erosion and provide for effective infiltration of stormwater;
  - (c) If more than three (3) woody vegetation plants are to be planted, then at least three (3) different species shall be planted;
  - (d) No one species shall make up 50% or more of the number of planted woody vegetation plants; and
  - (e) Survival of planted woody vegetation and vegetation under three feet in height must be sufficient to remain in compliance with the standards contained in Section 15(P) for a minimum of five (5) years.
- (6) Revegetation activities must meet the following requirements for ground vegetation and ground cover:
- (a) All ground vegetation and ground cover removed must be replaced with native herbaceous vegetation, in quantities and variety sufficient to prevent erosion and provide for effective infiltration of stormwater;
  - (b) Where necessary due to a lack of sufficient ground cover, the area must be supplemented with leaf mulch and/or bark mulch at a minimum of four (4) inches deep to prevent erosion and provide for effective infiltration of stormwater; and
  - (c) Survival and functionality of ground vegetation and ground cover must be sufficient to remain in compliance with the standards contained within this Ordinance for a minimum of five (5) years.

**T. 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 also require a written soil erosion and sedimentation control plan. The plan shall be submitted to the permitting authority for approval and shall include, where applicable, provisions for:
  - (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 riprap.
- (6) When an excavation contractor will perform these activities, compliance with the following shall be required:
  - (a) A person certified in erosion control practices by the Maine Department of Environmental Protection shall be responsible for management of erosion and sedimentation control practices at the site. This person shall be present at the site each day these activities occur for a duration that is sufficient to ensure that proper erosion and sedimentation control practices are followed. This is required until installation of erosion and sedimentation control measures that will either stay in place permanently or stay in place until the area is sufficiently covered with vegetation necessary to prevent soil erosion.
  - (b) Include on the required plan or permit application, the name and certification number of the person who will oversee activities causing or resulting in soil disturbance.

**U. Soils.**

All land uses shall be located on soils in or upon which the proposed uses or structures can be established or maintained without causing adverse environmental impacts, including severe erosion, mass soil movement, improper drainage, and water pollution, whether during or after construction. Proposed uses requiring subsurface waste disposal, and commercial or industrial development and other similar intensive land uses, shall require a soils report based on an on-site investigation and be prepared by state-certified professionals. Certified persons may include Maine Certified Soil Scientists, Maine Registered Professional Engineers, Maine State Certified Geologists and other persons who have training and experience in the recognition and evaluation of soil properties. The report shall be based upon the 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.

**V. Water Quality.**

No activity shall deposit on or into the ground or discharge to the waters of the State any pollutant that, by itself or in combination with other activities or substances, will impair designated uses or the water classification of the water body, tributary stream or wetland.

**W. Archaeological Site.**

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

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

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**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 30-A M.R.S.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 nonconforming use. A person who is issued a permit pursuant to this Ordinance shall have a copy of the permit on site while the work authorized by the permit is performed.

- (1) A permit is not required for the replacement of an existing road culvert as long as:
  - (a) The replacement culvert is not more than 25% longer than the culvert being replaced;
  - (b) The replacement culvert is not longer than 75 feet; and

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

**C. Permit Application**

- (1) Every applicant for a permit shall submit a written application, including a scaled site plan, on a form provided by the municipality, to the appropriate official as indicated in Section 14.
- (2) All applications shall be signed by an owner or individual who can show evidence of right, title or interest in the property or by an agent, representative, tenant, or contractor of the owner with authorization from the owner to apply for a permit hereunder, certifying that the information in the application is complete and correct.
- (3) All applications shall be dated, and the Code Enforcement Officer or Planning Board, as appropriate, shall note upon each application the date and time of its receipt.
- (4) If the property is not served by a public sewer, a valid plumbing permit or a completed application for a plumbing permit, including the site evaluation approved by the Plumbing Inspector, shall be submitted whenever the nature of the proposed structure or use would require the installation of a subsurface sewage disposal system.

**D. Procedure for Administering Permits.**

Within 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. The Planning Board or the Code Enforcement Officer, as appropriate, shall approve, approve with conditions, or deny all permit applications in writing within 35 days of receiving a completed application. However, if the Planning Board has a waiting list of applications, a decision on the application shall occur within 35 days after the first available date on the Planning Board's agenda following receipt of the completed application, or within 35 days of the public hearing, if the proposed use or structure is found to be in conformance with the purposes and provisions of this Ordinance.

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

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

- (1) Will maintain safe and healthful conditions;

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- (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 waters;
- (6) Will protect archaeological and historic resources as designated in the comprehensive plan;
- (7) Will not adversely affect existing commercial fishing or maritime activities;
- (8) Will avoid problems associated with floodplain development and use; and
- (9) Is in conformance with the provisions of Section 15, Land Use Standards.

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

### **E. Special Exceptions.**

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

- (1) There is no location on the property, other than a location within the Resource Protection District, where the structure can be built.
- (2) The lot on which the structure is proposed is undeveloped and was established and recorded in the registry of deeds of the county in which the lot is located before the adoption of the Resource Protection District.
- (3) All proposed buildings, sewage disposal systems and other improvements are:
  - (a) Located on natural ground slopes of less than 20%; and
  - (b) Located outside the floodway of the 100-year floodplain along rivers and artificially formed great ponds along rivers, based on detailed flood insurance studies and as delineated on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate Maps; all buildings, including basements, are elevated at least one foot above the 100-year floodplain elevation; and the development is otherwise in compliance with any applicable municipal floodplain ordinance. If the floodway is not shown on the Federal Emergency Management Agency Maps, it is deemed to be 1/2 the width of the 100-year floodplain.
- (4) The total footprint, as defined, is limited to a maximum of 1,500 square feet. This limitation shall not be altered by variance.

- (5) All structures, except functionally water-dependent structures, are set back from the normal high-water line of a water body, tributary stream or upland edge of a wetland to the greatest practical extent, but not less than 75 feet, horizontal distance. In determining the greatest practical extent, the Planning Board shall consider the depth of the lot, the slope of the land, the potential for soil erosion, the type and amount of vegetation to be removed, the proposed building site's elevation in regard to the floodplain, and its proximity to moderate-value and high-value wetlands.

**F. Expiration of Permit.**

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

**G. Installation of Public Utility Service.**

A public utility, water district, sanitary district or any utility company of any kind may not install services to any new structure located in the shoreland zone unless written authorization attesting to the validity and currency of all local permits required under this or any previous Ordinance has been issued by the appropriate municipal officials or other written arrangements have been made between the municipal officials and the utility.

**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 administrative appeals, on an appellate basis, where it is alleged by an aggrieved party that there is an error in any order, requirement, decision, or determination made by, or failure to act by, the Planning Board in the administration of this Ordinance; and to hear and decide administrative appeals on a de novo basis where it is alleged by an aggrieved party that there is an error in any order, requirement, decision or determination made by, or failure to act by, the Code Enforcement Officer in his or her review of and action on a permit application under this Ordinance. Any order, requirement, decision or determination made, or failure to act, in the enforcement of this ordinance is not appealable to the Board of Appeals.

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**NOTE:** Whether an administrative appeal is decided on an “appellate” basis or on a “de novo” basis, or whether an enforcement decision is appealable to the board of appeals, shall be the decision of the municipality through its specific ordinance language. The Department is not mandating one alternative over the other. If a municipality chooses appeals procedures different from those in Section 16(H), it is recommended that assistance be sought from legal counsel to ensure that the adopted language is legally sound.

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- (b) **Variance Appeals:** To authorize variances upon appeal, within the limitations set forth in this Ordinance.

- (2) **Variance Appeals.** Variances may be granted only under the following conditions:

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- (a) Variances may be granted only from dimensional requirements including, but not limited to, lot width, structure height, percent of non-vegetated surfaces, 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:
  - (i) The proposed structure or use would meet the provisions of Section 15 except for the specific provision which has created the nonconformity and from which relief is sought; and
  - (ii) The strict application of the terms of this Ordinance would result in undue hardship. The term "undue hardship" shall mean:
    - a. That the land in question cannot yield a reasonable return unless a variance is granted;
    - 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;
    - 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.
- (d) Notwithstanding Section 16(H)(2)(c)(ii) above, in accordance with 30-A M.R.S.A section 4353-A, the Code Enforcement Officer may approve a permit to the owner of a residential dwelling unit for the purpose of making that dwelling accessible to a person with a disability who resides in or regularly uses that dwelling. The permit is deemed to include the variance, which shall be solely for installation of equipment or the construction of structures necessary for access to or egress from the dwelling by the person with the disability. The Code Enforcement Officer may impose conditions on the permit, including limiting the permit to the duration of the disability or to the time that the person with the disability lives in the dwelling. The term "structures necessary for access to or egress from the dwelling" shall include ramps and associated railing, and wall or roof systems necessary for the safety or effectiveness of the structure. Such permitting is subject to Sections 16(H)(2)(f) and 16(H)(4)(b)(iv) below.
- (e) The Board of Appeals shall limit any variances granted as strictly as possible in order to ensure conformance with the purposes and provisions of this Ordinance to the greatest extent possible, and in doing so may impose such conditions to a variance as it deems necessary. The party receiving the variance shall comply with any conditions imposed.
- (f) A copy of each variance request, including the application and all supporting information supplied by the applicant, shall be forwarded by the municipal officials to the Commissioner of the Department of Environmental Protection at least twenty (20) days prior to action by the Board of Appeals. Any comments received from the Commissioner

prior to the action by the Board of Appeals shall be made part of the record and shall be taken into consideration by the Board of Appeals.

**(3) Administrative Appeals**

When the Board of Appeals reviews a decision of the Code Enforcement Officer the Board of Appeals shall hold a “de novo” hearing. At this time the Board may receive and consider new evidence and testimony, be it oral or written. When acting in a “de novo” capacity the Board of Appeals shall hear and decide the matter afresh, undertaking its own independent analysis of evidence and the law, and reaching its own decision.

When the Board of Appeals hears a decision of the Planning Board, it shall hold an appellate hearing, and may reverse the decision of the Planning Board only upon finding that the decision was contrary to specific provisions of the Ordinance or contrary to the facts presented to the Planning Board. The Board of Appeals may only review the record of the proceedings before the Planning Board. The Board Appeals shall not receive or consider any evidence which was not presented to the Planning Board, but the Board of Appeals may receive and consider written or oral arguments. If the Board of Appeals determines that the record of the Planning Board proceedings is inadequate, the Board of Appeals may remand the matter to the Planning Board for additional fact finding.

**(4) Appeal Procedure**

**(a) Making an Appeal**

- (i) 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, except for enforcement-related matters as described in Section 16(H)(1)(a) above. Such an appeal shall be taken within thirty (30) days of the date of the official, written decision appealed from, and not otherwise, except that the Board, upon a showing of good cause, may waive the thirty (30) day requirement.
- (ii) Applications for appeals shall be made by filing with the Board of Appeals a written notice of appeal which includes:
  - a. A concise written statement indicating what relief is requested and why the appeal or variance should be granted.
  - b. 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.
- (iii) Upon receiving an application for an administrative appeal or a variance, 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.
- (iv) The Board of Appeals shall hold a public hearing on an administrative appeal or a request for a variance within thirty-five (35) days of its receipt of a complete written application, unless this time period is extended by the parties.

**(b) Decision by Board of Appeals**

- (i) A majority of the full voting membership of the Board shall constitute a quorum for the purpose of deciding an appeal.
  - (ii) The person filing the appeal shall have the burden of proof.
  - (iii) The Board shall decide all administrative appeals and variance appeals within thirty five (35) days after the close of the hearing, and shall issue a written decision on all appeals.
  - (iv) The Board of Appeals shall state the reasons and basis for its decision, including a statement of the facts found and conclusions reached by the Board. The Board shall cause written notice of its decision to be mailed or hand-delivered to the applicant and to the Department of Environmental Protection within seven (7) days of the Board's decision. Copies of written decisions of the Board of Appeals shall be given to the Planning Board, Code Enforcement Officer, and the municipal officers.
- (5) **Appeal to Superior Court.** Except as provided by 30-A M.R.S.A. section 2691(3)(F), any aggrieved party who participated as a party during the proceedings before the Board of Appeals may take an appeal to Superior Court in accordance with State laws within forty-five (45) days from the date of any decision of the Board of Appeals.
- (6) **Reconsideration.** In accordance with 30-A M.R.S.A. section 2691(3)(F), the Board of Appeals may reconsider any decision within forty-five (45) days of its prior decision. A request to the Board to reconsider a decision must be filed within ten (10) days of the decision that is being reconsidered. A vote to reconsider and the action taken on that reconsideration must occur and be completed within forty-five (45) days of the date of the vote on the original decision. Reconsideration of a decision shall require a positive vote of the majority of the Board members originally voting on the decision, and proper notification to the landowner, petitioner, planning board, code enforcement officer, and other parties of interest, including abutters and those who testified at the original hearing(s). The Board may conduct additional hearings and receive additional evidence and testimony.

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

**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



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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 ensure compliance with all applicable laws and conditions attached to permit approvals. The Code Enforcement Officer shall also investigate all complaints of alleged violations of this 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.
- (3) **Legal Actions.** When the above action does not result in the correction or abatement of the violation or nuisance condition, the Municipal Officers, upon notice from the Code Enforcement Officer, are hereby directed to institute any and all actions and proceedings, either legal or equitable, including seeking injunctions of violations and the imposition of fines, that may be appropriate or necessary to enforce the provisions of this Ordinance in the name of the municipality. The municipal officers, or their authorized agent, are hereby authorized to enter into administrative consent agreements for the purpose of eliminating violations of this Ordinance and recovering fines without Court action. Such agreements shall not allow an illegal structure or use to continue unless there is clear and convincing evidence that the illegal structure or use was constructed or conducted as a direct result of erroneous advice given by an authorized municipal official and there is no evidence that the owner acted in bad faith, or unless the removal of the structure or use will result in a threat or hazard to public health and safety or will result in substantial environmental damage.
- (4) **Fines.** Any person, including but not limited to a landowner, a landowner's agent or a contractor, who violates any provision or requirement of this Ordinance shall be penalized in accordance with 30-A, M.R.S.A. section 4452.

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

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### 17. Definitions

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

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

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**Agriculture** - the production, keeping or maintenance for sale or lease, of plants 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 green-house products. Agriculture does not include forest management and timber harvesting activities.

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

**Basal Area** - the area of cross-section of a tree stem at 4 1/2 feet above ground level and inclusive of bark.

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

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

**Bureau of Forestry** – State of Maine Department of Agriculture, Conservation and Forestry, Bureau of Forestry.

**Campground** - 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.

**Canopy** – the more or less continuous cover formed by tree crowns in a wooded area.

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

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

**DBH** – the diameter of a standing tree measured 4.5 feet from ground level.

**Development** – a change in land use involving alteration of the land, water or vegetation, or the addition or alteration of structures or other construction not naturally occurring.

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

**Disability** - any disability, infirmity, malformation, disfigurement, congenital defect or mental condition caused by bodily injury, accident, disease, birth defect, environmental conditions or illness; and also includes the physical or mental condition of a person which constitutes a substantial

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handicap as determined by a physician or in the case of mental handicap, by a psychiatrist or psychologist, as well as any other health or sensory impairment which requires special education, vocational rehabilitation or related services.

**Disruption of shoreline integrity** - the alteration of the physical shape, properties, or condition of a shoreline at any location by timber harvesting and related activities. A shoreline where shoreline integrity has been disrupted is recognized by compacted, scarified and/or rutted soil, an abnormal channel or shoreline cross-section, and in the case of flowing waters, a profile and character altered from natural conditions.

**Driveway** - a vehicular access-way less than five hundred (500) feet in length serving two single-family dwellings or one two-family dwelling, 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** - 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 contractor** - an individual or firm that either is engaged in a business that causes the disturbance of one or more cubic yards of soil, or is in a business in which the disturbance of one or more cubic yards of soil results from an activity that the individual or firm is retained to perform. Disturbance includes: grading, filling, and removal. A person or firm engaged in agriculture or timber harvesting activities is not considered an excavation contractor as long as best management practices for erosion and sedimentation control are used. Municipal, state and federal employees engaged in projects associated with that employment are not considered excavation contractors.

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

**Expansion of use** - the addition of one or more months to a use's operating season; or the use of more footprint or ground area devoted to a particular use.

**Family** - one or more persons occupying a premises and living as a single housekeeping unit.

**Floodway** - the channel of a river or other watercourse and adjacent land areas that must be reserved in order to discharge the 100-year flood without cumulatively increasing the water surface elevation by more than one foot in height.

**Floor area** - the sum of the horizontal areas of the floor(s) of a structure enclosed by exterior walls.

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

**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.

**Forest Stand** - a contiguous group of trees sufficiently uniform in age class distribution, composition, and structure, and growing on a site of sufficiently uniform quality, to be a distinguishable unit.

**Forested wetland** - a freshwater wetland dominated by woody vegetation that is six (6) meters tall (approximately twenty (20) feet) or taller.

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

**Freshwater wetland** - freshwater swamps, marshes, bogs and similar areas, other than forested wetlands, which are:

1. Of ten or more contiguous acres; or of less than 10 contiguous acres and adjacent to a surface water body, excluding any river, stream or brook, such that in a natural state, the combined surface area is in excess of 10 acres; and
2. Inundated or saturated by surface or ground water at a frequency and for 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, waters and that can not be located away from these waters. The uses include, but are not limited to commercial and recreational fishing and boating facilities, finfish and shellfish processing, fish-related storage and retail and wholesale fish marketing facilities, waterfront dock and port facilities, shipyards and boat building facilities, marinas, navigation aids, basins and channels, shoreline structures necessary for erosion control purposes, industrial uses dependent upon water-borne transportation or requiring large volumes of cooling or processing water that can not reasonably be located or operated at an inland site, and uses that primarily provide general public access to waters. Recreational boat storage buildings are not considered to be a functional water-dependent use.

**Great pond** - any inland body of water which in a natural state has a surface area in excess of ten acres, and any inland body of water artificially formed or increased which has a surface area in excess of thirty (30) acres except for the purposes of this Ordinance, where the artificially formed or increased inland body of water is completely surrounded by land held by a single owner,

**Ground cover** – small plants, fallen leaves, needles and twigs, and the partially decayed organic matter of the forest floor.

**Harvest Area** - the area where timber harvesting and related activities, including the cutting of trees, skidding, yarding, and associated road construction take place. The area affected by a harvest encompasses the area within the outer boundaries of these activities, excepting unharvested areas greater than 10 acres within the area affected by a harvest.

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

**Height of a structure** - the vertical distance between the mean original (prior to construction) grade at the downhill side of the structure and the highest point of the structure, excluding chimneys, steeples, antennas, and similar appurtenances that have no floor area.

**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.

**Increase in nonconformity of a structure** - any change in a structure or property which causes further deviation from the dimensional standard(s) creating the nonconformity such as, but not limited to, reduction in water body, tributary stream or wetland setback distance, increase in non-vegetated surfaces, or increase in height of a structure. Property changes or structure expansions which either meet the dimensional standard or which cause no further increase in the linear extent of nonconformance of the existing structure shall not be considered to increase nonconformity. For example, there is no increase in nonconformity with the setback requirement for water bodies, wetlands, or tributary streams if the expansion extends no further into the required setback area than does any portion of the existing nonconforming structure. Hence, a structure may be expanded laterally provided that the expansion extends no closer to the water body, tributary stream, or wetland than the closest portion of the existing structure from that water body, tributary stream, or wetland. Included in this allowance are expansions which in-fill irregularly shaped structures.

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

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

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

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

**Licensed Forester** - a forester licensed under 32 M.R.S.A. Chapter 76.

**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.

**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, bait and tackle shops and marine fuel service facilities.

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

**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.

**Minimum lot width** - the closest distance between the side lot lines of a lot. When only two lot lines extend into the shoreland zone, both lot lines shall be considered to be side lot lines.

**Multi-unit residential** - a residential structure containing three (3) or more residential dwelling units.

**Native** – indigenous to the local forests.

**Nonconforming condition** – nonconforming lot, structure or use which is allowed solely because it was in lawful existence at the time this Ordinance or subsequent amendment took effect.

**Nonconforming 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.

**Nonconforming structure** - a structure which does not meet any one or more of the following dimensional requirements; setback, height, non-vegetated surfaces or footprint, but which is allowed

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solely because it was in lawful existence at the time this Ordinance or subsequent amendments took effect.

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

**Non-native invasive species of vegetation** - species of vegetation listed by the Maine Department of Agriculture, Conservation and Forestry as being invasive in Maine ecosystems and not native to Maine ecosystems.

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

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

**Piers, docks, wharves, bridges and other structures and uses** extending or located below the normal high-water line or within a wetland.

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

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

**Principal structure** - a structure other than one which is used for purposes wholly incidental or accessory to the use of another structure or use on the same lot.

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

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

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

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

**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.

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

**Residual basal area** - the average of the basal area of trees remaining on a harvested site.

**Residual Stand** - a stand of trees remaining in the forest following timber harvesting and related activities

**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 floodplain wetlands from that point at which it provides drainage for a watershed of twenty five (25) square miles to its mouth.

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

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

**Seedling** – a young tree species that is less than four and one half (4.5) feet in height above ground level.

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

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



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

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

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

**Shoreland zone** - the land area located within two hundred and fifty (250) feet, horizontal distance, of the normal high-water line of any great pond or river; within 250 feet of the upland edge of a freshwater wetland; or within seventy-five (75) feet, horizontal distance, of the normal high-water line of a stream.

**Shoreline** – the normal high-water line, or upland edge of a freshwater wetland.

**Significant River Segments** - See 38 M.R.S.A. section 437.

**Skid Road or Skid Trail** - a route repeatedly used by forwarding machinery or animal to haul or drag forest products from the stump to the yard or landing, the construction of which requires minimal excavation.

**Slash** - the residue, e.g., treetops and branches, left on the ground after a timber harvest.

**Storm-damaged tree** – a tree that has been uprooted, blown down, is lying on the ground, or remains standing, and is damaged beyond the point of recovery as a result of a storm event.

**Stream** - a free-flowing body of water from the outlet of a great pond or the confluence of two (2) perennial streams as depicted on the most recent, highest resolution version of the national hydrography dataset available from the United States Geological Survey, on the website of the United States Geological Survey or the national map, to the point where the stream becomes a river or where the stream meets the shoreland zone of another water body or wetland. When a stream meets the shoreland zone of a water body or wetland and a channel forms downstream of the water body or wetland as an outlet, that channel is also a stream.

**Structure** - whether temporary or permanent: anything located, built, constructed or erected for the support, shelter or enclosure of persons, animals, goods or property of any kind; anything built, constructed or erected on or in the ground. The term structure includes decks and satellite dishes. Structure does not include fences; poles; wiring, guy wires, guy anchors and other aerial equipment normally associated with service drops; subsurface waste water disposal systems as defined in Title 30-A, section 4201, subsection 5; geothermal heat exchange wells as defined in Title 32, section 4700-E, subsection 3-C; and wells or water wells as defined in Title 32, section 4700-E, subsection 8.

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

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

**Timber harvesting** - the cutting and removal of timber for the primary purpose of selling or processing forest products. The cutting or removal of vegetation in the shoreland zone associated with any other land use activity, and the cutting or removal of trees in the shoreland zone on a lot that has less than two (2) acres within the shoreland zone, shall not be considered timber harvesting. Such cutting or removal of vegetation shall be regulated pursuant to Section 15 (P), *Clearing or Removal of Vegetation for Activities Other Than Timber Harvesting*.

**Timber harvesting and related activities** - timber harvesting, the construction and maintenance of roads used primarily for timber harvesting and other activities conducted to facilitate timber harvesting.

**Tree** – a woody perennial plant that has a well-defined trunk(s) at least two (2) inches in diameter at four and one half (4.5) feet above the ground, that has a more or less definite crown and that reaches a height of at least ten (10) feet at maturity.

**Tributary stream** – means a channel between defined banks created by the action of surface water, which is characterized by the lack of terrestrial vegetation or by the presence of a bed, devoid of topsoil, containing waterborne deposits or exposed soil, parent material or bedrock; and which is connected hydrologically with other water bodies. “Tributary stream” does not include rills or gullies forming because of accelerated erosion in disturbed soils where the natural vegetation cover has been removed by human activity. 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.

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NOTE: Water setback requirements apply to tributary streams within the shoreland zone.

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**Upland edge of a wetland** - the boundary between upland and wetland. For purposes of a freshwater wetland, the upland edge is formed where the soils are not saturated for a duration sufficient to support wetland vegetation; or where the soils support the growth of wetland vegetation, but such vegetation is dominated by woody stems that are six (6) meters (approximately twenty (20) feet) tall or taller.

**Vegetation** - all live trees, shrubs, and other plants including without limitation, trees both over and under 4 inches in diameter, measured at 4 1/2 feet above ground level.

**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 great pond, river or stream.

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

**Wetland** - a freshwater wetland.

**Windfirm** - the ability of a forest stand to withstand strong winds and resist windthrow, wind rocking, and major breakage.

**Woody Vegetation** - live trees or woody, non-herbaceous shrubs.

#### **APPENDIX A: 38 §437. Significant river segments identified**

For purposes of this chapter, significant river segments include the following:

- 1. Aroostook River.** The Aroostook River from St. Croix Stream in Masardis to the Masardis and T.10, R.6, W.E.L.S. townline, excluding segments in T.9, R.5, W.E.L.S.; including its tributary the Big Machias River from the Aroostook River in Ashland to the Ashland and Garfield Plantation townlines;
- 2. Dennys River.** The Dennys River from the railroad bridge in Dennysville Station to the dam at Meddybemps Lake, excluding the western shore in Edmunds Township and No. 14 Plantation;
- 3. East Machias River.** The East Machias River from 1/4 of a mile above the Route 1 bridge in East Machias to the East Machias and T.18, E.D., B.P.P. townline, and from the T.19, E.D., B.P.P. and Wesley townline to the outlet of Crawford Lake in Crawford, excluding Hadley Lake;

Palermo Shoreland Zoning Ordinance

4. **Fish River.** The Fish River from the bridge in Fort Kent Mills to the outlet of Eagle Lake in Wallagrass, and from the Portage Lake and T.14, R.6, townline to the Portage Lake and T.13, R.7, W.E.L.S. townline, excluding Portage Lake;
5. **Machias River.** The Machias River from the Whitneyville and Machias townline to the Northfield T.19, M.D., B.P.P. townline;
6. **Mattawamkeag River.** The Mattawamkeag River from the outlet of Mattakeunk Stream in Winn to the Mattawamkeag and Kingman Township townline, and from the Reed Plantation and Bancroft townline to the East Branch, including its tributaries the West Branch from the Mattawamkeag River to the Haynesville T.3, R.3, W.E.L.S. townline and from its inlet into Upper Mattawamkeag Lake to the Route 2 bridge; the East Branch from the Mattawamkeag River to the Haynesville and Forkstown Township townline and from the T.4, R.3, W.E.L.S. and Oakfield townline to Red Bridge in Oakfield; the Fish Stream from the Route 95 bridge in Island Falls to the Crystal-Patten townline; and the Baskehegan Stream from its inlet into Crooked Brook Flowage in Danforth to the Danforth and Brookton Township townline;
7. **Narraguagus River.** The Narraguagus River from the ice dam above the railroad bridge in Cherryfield to the Beddington and Devereaux Township townline, excluding Beddington Lake;
8. **East Branch of Penobscot.** The East Branch of the Penobscot from the Route 157 bridge in Medway to the East Millinocket and Grindstone Township townline;
9. **Pleasant River.** The Pleasant River from the railroad bridge in Columbia Falls to the Columbia and T.18, M.D., B.P.P. townline, and from the T.24, M.D., B.P.P. and Beddington townline to the outlet of Pleasant River Lake;
10. **Rapid River.** The Rapid River from the Magalloway Plantation and Upton townline to the outlet of Pond in the River;
11. **West Branch Pleasant River.** The West Branch Pleasant River from the East Branch to the Brownville and Williamsburg Township townline; and
12. **West Branch of Union River.** The West Branch of the Union River from the Route 9 bridge in Amherst to the outlet of Great Pond in the Town of Great Pond.



The next Generation.

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# TOWN OF PALERMO

## SUBDIVISION ORDINANCE

March 9, 2002

Signed \_\_\_\_\_

Date 03-19-02

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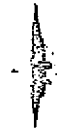
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## Preface

The goal of the Subdivision Ordinance is to make sure that future Town residents will enjoy the same rural character that is valued by current inhabitants of Palenno and at the same time meet the demands for new development. While this Ordinance will require subdivisions to conform to minimum development standards it is also the hope of the Town that new residents and developers will exceed these minimum standards in order to further enhance the quality of life in our community.

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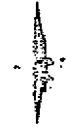
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Section 1 .. General

A Title:



This Ordinance shall be known as the Town of Palermo Subdivision Ordinance and will be referred to as" this Ordinance".

B. Authority:

This Ordinance has been prepared in accordance with the provisions of Title 30- A, M.R.S.A Section 4403.

C. Purpose:

The purposes of this Ordinance are:

- 1. To provide for an expeditious and efficient process for the review of proposed subdivisions.
- 2. To clarify the approval criteria of the State Subdivision Law, found in Title 30-A, M.R.S.A. Section 44 .
- 3. To preserve and enhance the rural character of the community.
- 4. To assure the safety, health, and welfare of the people of the Town of Palermo.
- 5. To protect the natural resources of the Town of Palermo.
- 6. To assure that a minimal level of services and facilities are available to the residents of new subdivisions and that lots in subdivisions are capable of supporting the proposed uses and structures.
- 7. To promote the development of an economically sound and stable community.

D. Applicability:

The provisions of this Ordinance shall apply to all development considered to be a subdivision as defined by Title 30 -A, -R.S.A Section 4401 and this Ordinance.

E. Effective Date:

The effective date of this Ordinance shall be the date of the adoption by the Town of Palermo on: **March 9, 2002.**

F. Conflicts with other Ordinances:

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

G. Validity and 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.

H. Availability:

A certified copy of this Ordinance shall be filed with the Town Clerk and shall be accessible to any member of the public. Copies shall be made available to the public. Notice of availability of this Ordinance shall be posted in the Town Office.

I. Application Forms:

The **W** of Palermo Planning Board shall develop application forms to be used by all applicants seeking subdivision approval.

J. Application Fee:

All applications for subdivision approval shall be accompanied by the following fees:

The fee for filing a preliminary plan shall be \$25.00 per lot and/or unit-  
(The fee for a minor subdivision that is permitted to file a final plan shall be the same as a preliminary plan.)

A fee equivalent to the cost incurred by the Board for postage, publishing and any other miscellaneous expenses.

All fees are non-refundable and shall be paid to the Town of Palermo upon filing the appropriate subdivision application.

K. Amendments:

An amendment to this Ordinance may be adopted by a majority vote of the Town Meeting.

## Section 2 Definitions

**Abutter:** The owner of any property with one or more common boundaries, or across the road or stream, from the property involved in an application.

**Aggrieved Party:** An owner of land whose property is directly or indirectly affected by the granting of, denial of a permit under this Ordinance; a person whose land abuts land for which a permit has been granted; or any other person or group of persons who have suffered particularized injury as a result of the granting or denial of a permit

**Applicant:** The person applying for subdivision approval under this Ordinance.

**Complete Application:** An application shall be considered complete upon submission of the required fee and all the information required by this Ordinance, or by a vote to waive certain submission or performance standards by a vote of the Planning Board.

**Direct Watershed of a Pond:** That portion of the watershed which drains directly to the pond through sheet or concentrated flow without first passing through an upstream pond or river.

**Final Plan:** The final drawings and other required materials on which the applicant's plan of subdivision is presented to the Planning Board for approval and which, if approved, may be recorded at the registry of Deeds.

**Minor Subdivision:** A minor subdivision shall be considered a subdivision proposal consisting of no more than 4 lots and/or units and which do not involve the construction of any private or public roads. All of these conditions must exist to qualify for a minor subdivision.

**Persona** includes a firm, association, organization, partnership, trust, company or corporation, as well as an individual.

**Preliminary Plan:** The preliminary drawings and other required materials indicating the proposed layout of the subdivision to be submitted to the Planning Board for consideration.

**Property Owner:** The owner of land shall be determined to be that person listed as the present owner of record as recorded in the Waldo County Registry of Deeds.

**Public Improvements:** The term shall include all roads proposed for public acceptance; fire protection structures and ponds; any structure or land proposed to be dedicated to the Town; any land or structure which is offered as an easement to the Town; and, all storm drainage structures which are designed to allow water to flow outside the property of the subdivision.

**Sketch Plan:** Conceptual maps, renderings and supportive data describing the project proposed by the applicant for initial inquiry and review prior to submitting, an application for subdivision approval.

**Subdivision:** As defined in Title 30-A, M.R.S.A. Section 4401.

**Wetland:** Areas which are inundated or saturated by surface or groundwater at a frequency and for a duration sufficient to support, and which under normal circumstances do support, a prevalence of wetland vegetation typically adapted for life in saturated soils; and are not part of a great pond, river, stream or brook. Wetlands may contain small stream channels or inclusions of land that do not conform to the above criteria.

### Section 3 Review Criteria

The Planning Board shall consider the following criteria and before granting approval must determine that:

#### A. Pollution

The proposed subdivision will not result in undue water or air pollution. In making this determination, it shall at least consider:

The elevation of the land above sea level and its relation to the floodplain,  
The nature of the soils and subsoils and their ability to adequately support waste disposal,  
The slope of the land and its effect upon effluents, and,  
The applicable state and local health and water resources rules and regulations.

#### B. Sufficient water

The proposed subdivision has sufficient water available for the reasonable needs of the subdivision.

#### C. Water supply

The proposed subdivision will not cause an unreasonable burden on an existing water supply, if one is to be used.

#### D. Erosion

The proposed subdivision will not cause unreasonable soil erosion, unmitigated stormwater runoff, or a reduction in the land's capacity to hold water so that a dangerous or unhealthy condition results.

#### E. Traffic

The proposed subdivision will not cause unreasonable highway or public road congestion or unsafe intersections or other conditions with respect to the use of the highways or public roads existing or proposed.

F. Sewage disposal

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The proposed subdivision will provide for adequate sewage waste disposal and will not cause an unreasonable burden on municipal services if they are utilized.

G. Municipal solid waste disposal

The proposed subdivision will not cause an unreasonable burden on the town's ability to dispose of solid waste, if Town services are used.

H. Aesthetic, cultural and natural values

The proposed subdivision will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, archeological sites, significant wildlife habitat as identified by the Department of Inland Fisheries and Wildlife or the Town, or rare and irreplaceable natural areas or any public rights for physical or visual access to the shoreline.

I. Conformity with local ordinances and plans

The proposed subdivision conforms with all the applicable standards and requirements of this Ordinance, the comprehensive plan, and other local ordinances. In making this determination, the planning Board may interpret these ordinances and plans.

J. Financial and technical capacity

The subdivider has adequate financial and technical capacity to meet all the Review Criteria and performance standards and requirements contained in this Ordinance.

K. Surface waters; outstanding river segments

Whenever situated entirely or partially within the watershed of any pond or lake or within 250 feet of any wetland, great pond or river as defined in Title 38, Chapter 3, Subchapter 1, Article 2-B, the proposed subdivision will not adversely affect the quality of that body of water or unreasonably affect the shoreline of that body of water.

When lots in a subdivision have frontage on an outstanding river segment, the proposed subdivision plan must require principle structures to have a combined shore frontage and setback from the nominal high-water mark of 500 feet.

To avoid circumventing the intent of this provision, whenever a proposed subdivision adjoins a shoreland strip narrower than 250 feet which is not lotted, the proposed subdivision shall be reviewed as if the lot lines extend to the shore.

The frontage and setback provisions of this paragraph do not apply either within areas zoned general development or its equivalent under Shoreland Zoning, Title 38, Chapter 3, Subchapter 1, Article 2-B, or within areas designated by ordinance as densely developed. The determination of which areas are densely developed must be based on a finding that existing development met the definitional requirement of Section 4401, Subsection 1, on September 23, 1983.

L. Ground water

The proposed subdivision will not, alone or in conjunction with existing activities, adversely affect the quality or quantity of ground water.

M. Flood areas

Based on Federal Emergency Management Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate Maps, and information presented by the applicant whether the subdivision is in a flood-prone area: If the subdivision, or any part of it, is in such an area, the subdivider shall determine the 100-year flood elevation and flood hazard boundary within the subdivision. The proposed subdivision plan must include a condition of plan approval requiring that principal structures in the subdivision will be constructed with the lowest floor, including the basement, at least one foot above the 100-year flood elevation.

N. Freshwater wetlands

All fresh water wetlands within the proposed subdivision have been identified and delineated on any maps submitted as part of the application, regardless of the size of these wetlands. All wetlands shall be preserved to the greatest extent practicable.

O. River, stream or brook

Any river, stream or brook within or abutting the proposed subdivision has been identified on any maps submitted as part of the application. All rivers, streams or brooks shall be protected from any adverse development impacts.

P. Storm Water

The proposed subdivision will provide for adequate storm water management.

Q. Spaghetti-lots prohibited

If any lots in the proposed subdivision have shore frontage on a river, stream, brook, great pond or wetland as these features are defined in Title 38, Section 480-8, none of the lots created within the subdivision shall have a lot depth to shore frontage ratio greater than 5 to 1.

R. Lake phosphorus concentration

The cumulative effects of the proposed subdivision will not increase a great pond's phosphorus concentration during the construction phase and life of the proposed subdivision.

## Section 4 Administration and General Procedures

A. Administration:

- i. **The Planning Board shall administer this Ordinance and review all subdivision applications** according to the applicable review criteria and performance standards.
2. The Planning Board shall provide the Code Enforcement Officer a copy of its decision on a subdivision application including all application materials.

B. Decisions:

1. The Planning Board shall determine if the subdivision application is complete before it schedules a public hearing and begins a review of the application.
2. After review of a complete application the Planning Board shall determine whether or not the application meets the Review Criteria contained in Section 3 of this Ordinance. The Planning Board shall make a written finding of fact to support its decision and vote to approve the application, deny the application, or approve the application with conditions.

3. If in its findings, the Planning Board determines that the application may not meet the review criteria, 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 forth requirements in addition to those set forth in the Ordinance only when the Planning Board finds it necessary to further the purposes of this Ordinance. All conditions approved by the Planning Board shall be listed along with the reasons for the conditions in the Planning Board's decision and on the final subdivision plan.
4. The Planning Board shall list any waivers approved by the Board in its decision and on the final subdivision plan and the reasons for such approvals.

C. Burden of Proof.

1. The applicant shall have the burden of proof to show the proposed subdivision application meets the applicable review criteria and performance standards contained in this Ordinance.

D. Additional Studies:

1. The Planning Board may require the applicant, to perform additional studies or hire a consultant to review the entire or portions of the subdivision application. The cost to perform additional studies or hire a consultant shall be borne by the applicant. The Planning Board may require the applicant to deposit with the Town the estimated cost of any consultant or additional study which shall be placed in an escrow account. The Town shall pay for the services rendered and reimburse the applicant, if funds remain after payments are completed. The applicant shall place additional funds into the **escrow account in order to meet expenses.**

E. Rights Not Vested:

1. The submittal of a sketch plan or a preliminary plan to the Planning Board to review for a complete application shall not be considered the initiation of the review process for the purposes of bringing the application under the protection of Title 1, M.R.S.A., Section 302. The formal review process shall begin upon written notification to the applicant that a complete application has been received.

F. Site Inspection:

1. The Planning Board may vote to schedule an on-site inspection of the proposed project. The Planning Board shall schedule the date and time of the site-inspection at the sketch plan meeting or at another time. The Planning Board shall post the date, time and place of the site inspection at the Town Office.
2. The purpose of the site inspection is for the Planning Board to obtain knowledge about the site and **surrounding area. The Planning Board shall not discuss the merits of the application or render any decision concerning the application during the site inspection.**

G. Waivers:

1. Waiver of Submission Requirements

Where the Board makes written findings of fact that there are special circumstances of a particular site proposed to be subdivided, it may waive portions of the submission requirements, provided the public health, safety and welfare are protected and provided the waivers do not have the effect of nullifying the intent and purpose of the Official Map, the Comprehensive Plan, or any Ordinance.

2. Waiver of Performance standards

Where the Board makes written findings of fact that there are special circumstances; if a particular site proposed to be subdivided, it may waive portions of the performance standard, unless otherwise indicated in this Ordinance, to be more practical and economic development, provided the public health, safety and welfare are protected and provided the waivers do not have the effect of nullifying the intent and purpose of the Official Map, the Comprehensive Plan, or any Ordinance.

3. Waivers of Required Improvements

Where the Board makes written findings of fact that due to special circumstances of a particular site proposed to be subdivided, the provision of certain required improvements is not requisite to provide for the public health, safety or welfare, or are inappropriate because of inadequate or lacking connecting facilities adjacent to or in proximity to the proposed subdivision or development, it may waive the requirement for such improvements, provided the waivers do not have the effect of nullifying the intent and purpose of the Official Map, the Comprehensive Plan, or any Ordinance.

4. Waivers Conditionally Granted

In granting waivers to any of the provisions of this Ordinance in accordance with subsections G-1, 2 and 3, above, The Board shall require such conditions as will assure the purposes and objectives of this Ordinance are met.

5. Waivers Limited

No other waivers of the provisions of this Ordinance may be granted, except as expressly authorized by this section.

6. Waiver Revocable

All waivers granted by the Planning Board under this Section of the Ordinance are revocable up to the date of Final Plan approval.

H. Subdivision Review Process:

- 1. All subdivision applicants shall be required to follow a three tier review process as follows:

- Sketch Plan Review
- Preliminary Plan Review
- Final Plan Review

The Planning Board may vote to allow Minor Subdivisions to submit a final plan for review directly after the Sketch Plan Review meeting. The Planning Board shall make this decision after reviewing the sketch plan proposal.

The Planning Board shall hold a public hearing to review the final plan application for a Minor Subdivision.

I. Revisions to Approved Plans

- 1. An application for a revision to a previously approved plan shall be submitted to the Planning Board at least 7 days prior to a scheduled meeting of the Planning Board. If the revision involves a modification to a condition imposed by the Planning Board; the addition of additional units; the addition of new lots; or an expansion of the subdivision, then the procedure for a new application shall be followed. If the revision only involves minor modifications to the plan, the Planning Board.



may consider the request at the meeting. The Planning Board may vote to hold a public hearing on the proposed revision.

2. The Planning Board's scope of review shall be limited to those portions of the plan which are proposed to be revised or that are adversely impacted by the proposed revision.
3. The applicant shall submit a copy of the approved plans and 7 copies of the revised portions of the plans. The application shall include enough supporting data to allow the Planning Board to make a decision that the proposed revision meets the review criteria.
4. The Planning Board shall vote to approve the revision, deny the revision or approve the revision with conditions. The Planning Board may vote to require that additional information be submitted in order to ensure that the review criteria are met.

J. As Built-Plans:

1. Upon completion of all the public improvements contained in the subdivision, the applicant shall submit a copy of as-built plans to the Planning Board. This requirement does not apply to minor subdivisions.

K. Appeals to Superior Court:

1. An aggrieved party may appeal any final decision of the Planning Board under this Ordinance to Superior Court, within 30 days of the date the Planning Board issues a written order of its decision.
2. An appeal involving administrative procedure and/or interpretation may first be heard and decided by the Board of Appeals within thirty (30) days of the Planning Board's decision. When errors of administrative procedures are found, the case shall be referred back to the Planning Board for recertification. When errors of interpretation are found, the Board of Appeals may modify or reverse the order or action but may not alter the conditions attached by the Planning Board. All changes in conditions shall be made by the Planning Board in accordance with the Board of Appeals interpretation. An appeal shall not be heard "de nova" by the Board but rather shall be reviewed by the Board to determine whether the Planning Board's decision was within the scope of its authority and supported by substantial evidence on the record.

L. Public Hearing Requirements:

1. The Planning Board shall hold a public hearing on all preliminary plan applications. The Planning Board may vote to hold a public hearing on a final application.
2. The public hearing notice shall be made as follows:
  - a. The Planning Board shall hold a public hearing within 30 days after determining that the application is complete. A notice of the date, time and place of the public hearing shall be:
    - (1) Published, at least two times, in the Town line newspaper which has general circulation in the Pareremo. The date of the first publication shall be at least 7 days before the hearing.
    - (2) Mailed by first class mail to the applicant, at least 7 days prior to the public hearing.
    - (3) Mailed by first class mail to all property abutters, at least 7 days prior to the public hearing. The Planning Board shall maintain a list of all property abutters and record the date the notice was mailed. Failure of an abutter to receive a notice shall not invalidate the public hearing, nor shall it require the Board to schedule a new public hearing.

3. The Planning Board may vote to continue the public hearing in order to receive additional public comment or information concerning the application. The Board is not required to meet the notice requirements listed above for the continued public hearing.

V- . - .



**Joint Meetings:**

- I. If any portion of a proposed subdivision crosses municipal boundaries, the Planning Board shall follow the notice, meeting, and review requirements specified in Title 30-A; M.R.S.A., Sections 4401-4407.

**N. Performance Guarantee:**

1. A performance guarantee shall be required for all public improvements proposed for the subdivision. The applicant shall submit a proposal for the performance guarantee at the time of submission of the Final Plan.
2. The performance guarantee shall include a conditional agreement with the Town, whereby no lot in the subdivision may be sold and no building permit issued until the applicant installs all public improvements and include one or more of the following:
  - a. A certified check, in an amount equal to the expense of installing the public improvements, made payable to the Town.
  - b. A performance bond, in an amount equal to the expense of installing the public improvements, made payable to the Town, issued by a surety company.
3. The Planning Board, prior to approval of the final plan, shall consult with the Selectmen on the terms proposed by the applicant for the performance guarantee. The Selectmen may recommend that the amount of the certified check or performance bond or the terms of the performance guarantees be amended or revised. The Planning Board shall consider the recommendation of the Selectman and decide on the contents of the performance guarantee.
4. Prior to the release of the performance guarantee, the Planning Board shall determine that the proposed improvements meet or exceed the design and construction requirements specified in this ordinance and the subdivision plans. The Planning Board shall base its decision upon the inspection reports filed by the Code Enforcement Officer, other Municipal Officials or other designated inspector.
5. Submittal of the, as-built subdivision plans, is a requirement for the release of the performance guarantee.
6. If, the Planning Board, Code Enforcement Officer, or other designated inspection official finds that any of the public improvements have not been constructed in accordance with the plans and specifications filed as part of the application, they shall report this condition to the Selectmen. The Selectmen shall take any steps necessary to preserve the Town's rights.

**O. Inspection Requirements:**

1. The Code Enforcement Officer shall be responsible for conducting and/or coordinating all inspections with other municipal officials. The following municipal officials shall perform the following inspections (a,b,c and d):
  - a. The Road Commissioner shall inspect all roads including roads to be considered for public acceptance and private roads and associated drainage systems.  
(All roads proposed for public acceptance shall also be inspected by a professional engineer as per the road performance standards contained in this Ordinance)

- b. The Local Plumbing Inspector shall inspect the installation of all subsurface waste water treatment systems.
  - c. The Code Enforcement Officer shall inspect all erosion control measures, stormwater management features, and all other site features.
  - d. The Fire Chief shall inspect the subdivision's fire protection as indicated on the final plan.
2. The applicant shall be responsible for scheduling all inspections with the Code Enforcement Officer. The Code Enforcement Officer and all other inspection officials shall keep a record of all inspections and all deficiencies. Inspection officials shall promptly provide the CEO with a copy of all inspection reports. It shall be the responsibility of the Code Enforcement Officer to notify the applicant in writing that a deficiency exists and the steps necessary to remedy the situation. The Code Enforcement Officer shall notify the Planning Board and the Selectmen whenever the applicant fails to remedy a deficiency. Upon completion of the subdivision and/or consideration of release of the performance guarantee, all inspection reports shall be made available to the Planning Board and the Selectmen.

## Section 5 Sketch Plan Review

### A. Purpose:

The purpose of the sketch plan submittal is for the applicant to present general information regarding the proposed subdivision to the Planning Board and to receive the Planning Board's comments prior to the expenditure of substantial sums of money for developing the subdivision plan.

### B. Procedure:

1. The applicant shall submit a complete sketch plan application to the Planning Board at least 7 days before a scheduled meeting of the Planning Board.
2. The applicant shall present the sketch plan application to the Planning Board and make a verbal presentation regarding the site and the proposed subdivision.
3. During and following the applicant's presentation, the Planning Board may ask questions and make suggestions to be incorporated by the applicant into the application.
4. The Planning Board shall determine the contour intervals to be shown on the plan.
5. The Planning Board shall decide if the proposed subdivision meets the definition of a minor subdivision and if the applicant may submit a final plan for consideration.

### C. Submissions:

1. The sketch plan shall show in simple sketch form the proposed layout of roads, lots, buildings, and other features in relation to existing site conditions. The sketch plan does not have to be an engineered plan and may be a free-handed penciled sketch.
2. The sketch plan shall be submitted on the application forms provided by the Planning Board and include the following:
  - a. A copy of the Tax Assessors map of the site and surrounding area.
  - b. A copy of the U.S.G.S. topographic map of the area showing the outline of the proposed subdivision.
  - c. A copy of the County Soil Survey showing the area of the proposed subdivision.
  - d. A map showing the watershed in which the subdivision is located.

## Section 6 Preliminary Plan Review

### A Procedure: 1.

1. The applicant shall at least 10 days prior to a scheduled meeting of the Planning Board, submit a complete preliminary plan-application to the Planning Board Chairperson. The applicant shall be issued a dated receipt and the preliminary plan application shall be placed on the Planning Board's agenda in order to review for a complete application.
2. The application shall consist of 8 complete copies including all maps and related attachments. The Planning Board shall receive 7 copies and one shall be placed in the Town Office for public review.
3. As soon as possible, after the receipt of the preliminary plan the Town shall notify by first class mail all abutters to the proposed subdivision that an application for a subdivision has been submitted to the Planning Board, specifying the location of the proposed subdivision and including a general description of the project. The notice shall also indicate that a copy of the application is available for public review at the Town Office. The Planning Board shall maintain a list of all abutters notified by first class mail, specifying the date the notice was mailed.
4. Within 30 days of the receipt of the preliminary plan application, the Planning Board shall determine whether the application is complete and notify the applicant in writing of its determination. If the application is not complete, the board shall notify the applicant of the specific material needed to complete the application.
5. The Planning Board shall hold a public hearing within 30 days of determining that it has received a complete application.
6. Within 30 days of the public hearing, or within another time period as may be mutually agreed to by the Board and the applicant, the Planning Board shall make a decision on the application.
7. Upon approval of the preliminary plan, the applicant is eligible to submit a final plan to the Planning Board for consideration. The approval of the preliminary plan shall not constitute approval of the final plan or intent to approve the final plan, but rather it shall be deemed an expression of approval of the design of the preliminary plan as a guide to preparation of the final plan. The final plan shall be submitted for consideration upon fulfillment of the requirements of this Ordinance and conditions of preliminary approval, if any.

### 8. Preliminary Plan Submissions:

1. The applicant is responsible for supplying all the necessary information to show that the proposed subdivision is in compliance with the review criteria, and requirements and performance standards contained in this Ordinance. The preliminary plan submissions shall consist of the following:
  - a. A receipt from the Town indicating that the application fee has been paid.
  - b. A preliminary plan application form and all required attachments and maps.
  - c. Waiver request form, if applicable.
  - d. A location map, drawn at an appropriate scale to show the relationship of the proposed subdivision to adjacent properties, The map shall show the following:
    - (1) Existing subdivisions in the proximity of the proposed subdivision.
    - (2) Locations and names of existing and proposed roads.
    - (3) Boundaries and designations of all shore land zoning and other land use districts.

- (4) An outline of the proposed subdivision and any remaining portion of the owner's property if not included in the subdivision proposal.

The following general information:

- (1) Name and address of the applicant and applicant's agent
- (2) Verification of right, title or interest in the property.
- (3) A copy of the most recently recorded deed for the parcel.
- (4) A copy of all existing and proposed, deed restrictions, rights-of-way, or other encumbrances affecting the property .
- (5) The book and page and Map and lot information of the property.
- (6) The names of all property owners abutting the property .
- (7) Acreage of the proposed subdivision and acreage of any land not included in the subdivision to be retained by the owner.

- f. A subdivision plan consisting of one or more maps drawn to a scale of not more than 100 feet to the inch. The plan shall show the following:

- (1) Name of the subdivision.
- (2) Number of lots.
- (3) Date, north point, graphic scale.
- (4) Proposed lot lines with dimensions.
- (5) A survey of the perimeter of the tract, giving complete descriptive data by bearing and distances, made and certified by a Registered Land Surveyor. The corner of the tract shall be located on the ground and marked by permanent markers. The plan shall indicate the type of permanent marker proposed to be set or found at each lot **corner**.
- (6) Contour intervals as specified by the Planning Board.
- (7) The location of all wetlands regardless of size.
- (8) The location of all rivers, streams, brooks and ponds within or adjacent to the **subdivision**.
- (9) The location of all slopes in excess of 20% slope.
- (10) The number of acres within the subdivision, location of property lines, existing buildings, vegetative cover type, and other essential existing features.
- (11) The location of any significant sand and gravel aquifers,
- (12) The boundaries of any flood hazard areas and the 100-year flood elevation as depicted on the Town's most recent FIRM Map.
- (13) The boundaries of all shoreland zoning districts.
- (14) The location and boundaries of any significant wildlife habitat as identified by the Department of Inland Fisheries and Wildlife.
- (15) The location of any site or structure listed on the National Register of Historic Places or any archeological site identified by the State Historic Preservation Commission.
- (16) The location of all scenic areas and rare and endangered plants as identified in the Town's Comprehensive Plan.
- (17) The location of all subsurface wastewater disposal system test pits/test borings and test data and appropriate documentation.
- (18) The location of all existing and proposed wells and appropriate documentation.
- (19) All temporary and permanent erosion control features proposed for the site.
- (20) All stormwater control hydrology and mitigation design features proposed for the site.
- (21) All parcels of land proposed to be owned or held in common or joint ownership by the subdivision or individual lot owners. All land proposed to be offered for public acceptance to the Town.

- (22) Phosphorus control measures, if the subdivision is located within the direct watershed of a great pond. -1
  - (23) Road plans and specifications and appropriate documentation.
  - (24) Traffic access data for the site including an estimate of the amount of vehicular traffic to be generated on a daily basis.
  - (25) The type and location of any proposed fire control features, and appropriate documentation.
  - (26) A list of all proposed deed covenants and restrictions on the plan.
- g. A statement indicating how the solid waste from the subdivision will be handled.
  - h. Documentation indicating that the applicant has the financial and technical capacity to meet the requirements of this Ordinance.
- L Any other data necessary in order to meet the requirements of this Ordinance.

## Section 7 Final Plan Review

### A Procedure:

1. The applicant shall, at least 10 days prior to a scheduled meeting of the Planning Board, submit a *complete* final plan application to the Town Clerk and/or Planning Board Secretary. The applicant shall be issued a dated receipt and the final plan application shall be placed on the Planning Board's agenda in order to review for a complete application.
2. The application shall consist of 2 stable-based transparencies and 8 paper copies. One paper copy shall be placed in the Town Office for Public review.
3. Within 30 days of the receipt of the final plan application, the Planning Board shall determine whether the application is complete and notify the applicant in writing of its determination. If the application is not complete, the board shall notify the applicant of the specific material needed to complete the application.
4. The Planning Board may decide to hold a public hearing on the proposed final plan. The Planning Board shall schedule a public hearing or a meeting to review the final plan within 30 days of determining that it has received a complete application.
5. Within 30 days of the public hearing or meeting, or within another time-period as may be mutually agreed to by the Board and the applicant, the Planning Board shall make a decision on the application.
5. Upon voting to approve the final plan, the Planning Board shall sign the 2 stable-based transparencies. The Planning Board shall retain one copy and the other shall be provided to the applicant. The applicant shall file the approved final subdivision plan with the Register of Deeds, within 90 days of the date upon which the plan is approved. Failure to file the plan with the Register of Deeds, within 90 days, shall make the plan null and void. Final Plans not filed in the appropriate time period shall be re-submitted to the Board according to the requirements of Section 7 of this Ordinance.

B. Final Plan Submissions: 1

1. The applicant is responsible for supplying all the necessary information to show that the proposed subdivision is in compliance with the review criteria and requirements and performance standards contained in this Ordinance. The final plan submissions shall consist of the following:

- a. A receipt from the Town indicating that the application fees have been paid.
- b. A final plan application form and all required attachments and maps.
- c. All the submission materials required for a preliminary plan.
- d. All conditions and modifications approved by the Planning Board for the preliminary plan shall be contained on the final plan.
- e. All waivers approved by the Planning Board shall be shown on the final plan.
- f. All additional studies and/or materials required by the Planning Board, as applicable.
- g. A signature block shall be provided on the final plan.
- h. A performance guarantee, if applicable.
- i. The location and type of all permanent markers set at all lot corners.
- j. If the subdivision contains any private roads, the plan shall contain a statement as follows: The subdivision roads designed as private roads are not eligible for acceptance by the Town of Palermo unless the roads are improved to meet the appropriate standards for road acceptance.
- k. Written copies of any documents of land dedication, and written evidence that the Board of Selectmen are satisfied with the legal sufficiency of any documents accomplishing such land dedication,
- l. Any conditions placed on the final plan by the Planning Board shall be clearly listed on the plan. Planning Board imposed conditions shall be listed separately from any conditions or restrictions placed on the subdivision by the applicant.

Section 8 Performance Standards

A. The performance standards contained in this section shall apply to all subdivision proposals in the Town of Palermo.

B. General Lot Requirements:

1. The following general lot requirements shall be considered as minimum standards and shall not be eligible for a waiver.

a. All lots shall meet the following dimensional standards:

Minimum Lot Size	40,000 sq. ft. ( 100,000 square feet if located wholly or in part in an aquifer)
Minimum Road Frontage	100 feet
Maximum Lot Depth to Width Ratio	none
Side Property Line Setback	10 feet
Rear Property Line Setback	10 feet
Front Setback ( measured from the road centerline)	75 feet
Multi-Family Density Standards	1 acre plus 5,000 Square Feet per dwelling unit

- b. Land located in the following areas shall not be used to calculate the required minimum lot size: wetlands; rivers; streams; brooks; stormwater drainage features; resource protection areas as defined in the Town's Shoreland Zoning Ordinance; slopes in excess of 20%; areas within the floodway as defined in the Town's Floodplain Management Ordinance; and, areas within public and private right-of-way.

C. Monuments;

- I. Monumentation as required by the Maine Board of Registration of Land Surveyors shall be installed at the following:
- a. At all road intersections and points of curvature, but no farther than 750 feet apart along road lines without intersections or curves.
  - b. At all corners and angle points of the subdivision boundaries where the interior angle of the subdivision boundaries is 135 degrees or less.
  - c. At all other subdivision boundary corners and angle points as well as lot boundary corners and angle points.

D. Water Supply:

1. Individual wells shall be sited and constructed to prevent infiltration of surface water, and contamination from subsurface wastewater disposal systems and other sources of pollution. The lot design shall permit the placement of wells, subsurface wastewater disposal systems and reserve areas in compliance with the Maine Subsurface Wastewater Disposal Rules and the Well Drillers and Pump Installers Rules.
2. The water supply for the subdivision and each lot shall be adequate to supply all the potable, and other water requirements of the development. The applicant shall submit documentation from a hydrologist or a Well Driller familiar with the area, stating that adequate water is available to supply the subdivision.

E. Fire Protection:

1. The subdivision shall be designed so that the Town of Palermo Volunteer Fire Department shall have unrestricted access to all developed areas within the subdivision and adequate provisions are made for a supply of water for fire suppression. The applicant shall review the proposed subdivision with the Fire Chief and shall obtain a written statement from the Fire Chief approving the plan's fire protection measures. This statement shall be submitted with the preliminary plan application.
2. The Fire Chief in making his/her determination that adequate provisions are made for fire protection shall consider the following:
  - a. The road is adequate for the passage of fire equipment.
  - b. An adequate water supply is available near or within the subdivision to serve the density of the development.

The Fire Chief shall approve the fire protection measures proposed for the subdivision or shall make specific recommendations to improve the fire protection measures. In making recommendations the Fire Chief may recommend the installation of fire ponds or other similar features.

F: Subsurface Wastewater Disposal Systems;

1. The applicant shall submit evidence of site suitability for subsurface wastewater disposal system prepared by a Licensed Site Evaluator or Soil Scientist in compliance with the Subsurface Wastewater Disposal Rules of the State of Maine. All test pit/test boring locations shall be shown on



the subdivision plan and<sup>1</sup> be accompanied by a HHE-200 Form Or other format which shows the appropriate soils data. Test pit locations shall also be marked on the site. Test borings using an auger or a soil core sampler shall be performed solely by a soil scientist.

2. The applicant shall submit the test pit data to the Town of Palermo LPI for review. The LPI shall review the data for conformance with State Law and this Ordinance and issue the applicant a written statement. The LPI shall state whether that the data submitted is sufficient to make a reasonable determination that the soils will accommodate a subsurface system or indicate if additional data or site analysis is needed. The applicant shall submit the LPI's statement with the preliminary plan application.
3. In no instance shall a disposal area for a lot or structure require a New System Variance from the Subsurface Wastewater Disposal Rules. Holding tanks systems shall not be allowed to serve new lots or structures.

**G. Erosion Control:**

1. All activities which involve filing, grading, excavation or other similar activities which result in unstabilized soil conditions shall comply with the following:
  - a. The site shall be developed so as to prevent soil erosion from entering waterbodies, wetlands, stormwater drainage features, and adjacent land. All temporary and permanent erosion control measures shall be designed in accordance with the current edition of "Maine Erosion and Sedimentation Control Handbook for Construction: Best Management Practices, published by the Cumberland County Soil and Water Conservation District and the Maine Department of Environmental Protection, March 1991.
  - b. All temporary and permanent erosion features shall be shown on the subdivision plan. Provisions for the maintenance of both temporary and permanent measures shall be included on the plan.

**H. Phosphorus Control:**

1. The following standards for phosphorus shall apply to all subdivisions located in the direct watershed of a great pond.
2. A phosphorus control plan shall be developed in accordance with the design criteria contained in the current edition of "Phosphorus Control in Lake Watersheds: A Technical Guide for Evaluating New Development", published by the Maine Department of Environmental Protection, revised September, 1992.
3. The size and location of proposed developed and disturbed sites on each lot shall be shown on the plans based upon the phosphorus and stormwater control plan for the subdivision.

**I. Stormwater Control:**

1. All construction and development shall be designed to minimize storm water runoff from the site. Where possible existing natural runoff control features shall be retained in order to reduce runoff and encourage infiltration. A storm water control plan shall be developed for the site according to the following standards:
  - a. A storm water control plan shall be developed to limit peak discharges from the site to predevelopment levels through a system of swales, culverts, and best management practices equivalent to those described in the current edition of "Stormwater Management for Maine: Best Management Practices", published by the Maine Department of Environmental Protection, 1995.
  - b. Peak discharges shall be limited to the predevelopment levels for the 2-year, 10-year and 25-year frequency, 24-hour duration storm.
  - c. A storm water control plan that is developed according to the requirements of the Department of Environmental Protection Regulations, Chapter 500, Stormwater

Management and Chapter 502, Direct Watersheds of Waterbodies Most at Risk from New Development shall be deemed to be a suitable equivalent to these standards.

- d. Road culverts shall be designed to handle 5 to 50 year storm frequency.
- e. The size and location of proposed development and disturbed sites on each lot shall be shown on the plan based upon the proposed stormwater control plan for the subdivision.

**J. Waterbody Protection:**

1. The locations of all rivers, streams, brooks, and wetlands shall be identified on the subdivision plan. This shall include all perennial and intermittent streams and forested and non-forested wetlands.
2. Waterbodies shall not be developed or disturbed unless the applicant can provide evidence that no other alternative exist. Any development planned within 100 feet of the high-water line of any waterbody including the upland edge of a wetlands shall require a plan which includes the following:
  - a. A description of the proposed development including the reasons why this is the only alternative.
  - b. Construction drawings of the disturbance area showing all structures, fill areas, vegetative disturbance, and erosion control measures.
  - c. List of state and federal permits required, if applicable:

**K. Ground Water**

1. Any development proposed within a Sand and Gravel Aquifer as identified in the Town's Comprehensive Plan, shall be designed and constructed according to a plan which takes into account the impact of the development upon the aquifer.
2. The Planning Board may require the applicant to have the plan developed by a hydrologist which shows that the proposed development will not have an adverse impact upon the aquifer. The Planning Board, in making the determination that a plan be required, shall consider the density of the development, and existing conditions or problems within the area.

**L. Historic, Archeological, Wildlife Habitat, Scenic Areas, and Rare and Natural Areas:**

1. The subdivision plan shall show the locations of any historic and archeological sites, wildlife habitat, scenic areas and rare and natural areas. If any of these areas are located on the site, a protection plan shall be developed in accordance with the following:
  - a. If any portion of the site is designated as a significant archeological or historic site by the Maine Historic Commission, Comprehensive Plan, or listed on the National Register of Historic Places, the applicant shall develop appropriate measures for the protection of these resources according to local, state and federal regulations.
  - b. If any portion of the site is located within an area designated as a scenic area or a unique natural area by the Maine Natural Areas program of the Comprehensive Plan, the applicant shall develop appropriate measures for the preservation of the values which qualify the site for such designation.
  - c. If any portion of the site is within a wildlife habitat area, the applicant shall consult with the Maine Department of Inland Fisheries and Wildlife or a qualified wildlife biologist and develop measures to protect these areas from environmental damage and habitat loss. Wildlife habitat areas shall include the following:
    - (1) habitat or endangered species appearing on the official state or federal list of endangered or threatened species.

- (2) High or inoderat; value waterfowl and wading-bird habitats as defined by the Maine Department of Inland Fisheries and Wildlife
- (3) Deer\_wintering as as identified, by the Maine Department of Inland Fisheries and Wildlife.

**M. Financial and Technical Capacity:**

- 1. The applicant shall submit evidence that he/s.he has adequate financial and technical capacity to design and construct the development in accordance with all applicable local, state and federal laws and regulations. Evidence of adequate financfal and technical capacity shall consist of the following:
  - a.. A list of all technical and professi,mal staff involved with the proposal and preparation of the application including their qualifications and past experience with projects of similar size and s\_cale.
  - b. A list of all persons with inspection and CJV\_ersight responsibilities for the development and if available, the persons selected to construct the project, including their qualifications and past experience with projects of similar size and scale.
  - c. A letter from a financial institution such as a bank or other lending institution thai"states that the applicant has the necessary funds available or a loan co\_mmitment from this institution to complete the proposed development within the time period specified by the applicant.

**N. Confonmity With All Other Applicable Local Ordinances:**

- 1. The applicant shall show that the subdivision meets all other applicable local ordinances including Shoreland Zoning, FloodplaiiwManagement.

**O. Road and Traffic Access Standards:**

- 1. The purpose of the road and traffic access standards are to:
  - a. To establish minimum specifications for all public and privatemads.
  - b. To establish procedures and standards for the acceptance of a public road.
  - c. To establish a review and inspection procedure for public and private roads.
  - d. To establish design and construction standards for safe traffic access.
  - e. To establish minimum standards for traffic safety and the carrying capacity of roads.
  - f. To establish standards for roadway drainage systems.
  - g. To establish standards for road durability and a reasonable service life.
- 2. General Requirements
  - a. Access to a maximum cif 2 dwelling units may be provided by a driveway ni 1eting the following requirements:
    - (1) The driveway shall serve not more than 2 dwelling units.
    - (2) The driveway shall have a minimum travei width of 12 feel
    - (3) A turn-around area shall be provided for every portion of the driveway in excess of 800 feet in lengih.
    - (4) The driveway shall be upgraded to c,onfom to the road standards whenever more than 2 dwelling units are proposed to be accessed by the driveway. It shall be the sole responsibility of the property owners to make an necessary improvements.
    - (5) The driveway shall provide the necessary road frontage requirement for the dwelling units served by the driveway.
    - (6). The driveway shall be considered a private way and shall not be considered for public acceptance.

of 30 feet on one-way access, the curb radii shall be 30 feet for right turns into and out of the site, with a 5 foot radius on the opposite curb.

- g. On a two-way access, the width shall be between 24 and 26 feet, with a preferred width of 26 feet. On a one-way access, the width shall be between 16 feet and 20 feet, with a preferred width of 16 feet.
- h. On a two-way access, the curb-cut width shall be between 74 feet and 110 feet, with a preferred width of 86 feet. On a one-way access, the curb-cut width shall be between 46 feet and 70 feet, with a preferred width of 50 feet.
- i. Appropriate traffic control signage shall be erected at the intersection of the access and the street.
- j. Corner clearance shall be measured from the point of tangency for the corner to the point of tangency for the access. The maximum corner clearance, based upon site conditions, should be provided. The minimum corner clearance shall be 50 feet.
- k. All roads with access onto an existing paved state or local road shall be paved with bituminous pavement a minimum distance of 75 feet as measured from the edge of the existing road onto the proposed road.

## 5. Road Categories

- a. The type of road proposed for the subdivision shall be selected according to the following road classification definitions which are based upon the number of dwelling units to be served by the road.
  - (1) Collector Road is designed to serve more than 30 dwelling units.
  - (2) Local road is designed to serve between 10 and 29 dwelling units.
  - (3) Rural road is designed to serve between 1 and 9 dwelling units.
- b. The applicant may choose to construct a road that exceeds minimum design category.
- c. The Planning Board shall review the type of road selected by the applicant to ensure that the road will be capable of accommodating future expansion of the subdivision. The Planning Board shall consider the following in its review:
  - (1) Particular conditions of the site do not allow for future expansion.
  - (2) A phase build-out of the subdivision is proposed.
  - (3) The applicant owns or has retained land adjacent to the subdivision with future development potential.

The Planning Board may, after reviewing the particular site conditions, require that a road be constructed to a road category that is more suitable to the potential build-out of the site.

### Please Note:

On/v roads designed and constructed as a collector or local road with a bituminous pavement surface shall be eligible for consideration or public acceptance. Any road not conforming to this requirement shall be a private road.

## 6. Road Design Standards

- a. The design standards for each type of road type are listed in Appendix B. These standards shall be considered as minimum requirements.
- b. The applicant shall submit detailed construction drawings showing a plan view, profile, and typical cross-section of the proposed road. The plan shall be at a scale of one inch equals no more than 50 feet. The vertical scale shall be one inch equals no more than 5 feet. The

plan shall include the following information:

- (1) Date, scale and north point.
  - (2) Intersections of the proposed with existing roads.
  - (3) Roadway and right-of-way limits including edge of pavement and edge of shoulder.
  - (4) Kind, size, location, material, profile and cross section of all existing and proposed drainage structures and their location with respect to the existing natural waterways and proposed drainage ways.
  - (5) Complete curve data shall be indicated for all horizontal and vertical curves.
  - (6) Turning radii at all intersections.
  - (7) Centerline gradients.
  - (8) Size, type and locations of all existing and proposed utilities.
- C. Before any clearing is started in the right-of-way, the centerlines and sidelines of the road shall be flagged or staked at 50 foot intervals. The entire travel way including shoulders shall be cleared of all stumps, roots, brush and other materials. All organic and unsuitable materials shall be removed from the road sub-grade. All rocks and boulders visible at the subgrade and exceeding 6 inches in size shall be removed. Except in a ledge cut all side slopes shall be no greater than a slope of three (feet horizontal to one foot vertical, and shall be graded, loamed and seeded.

#### 7. Inspection Requirements for Roads Proposed for Public Acceptance

- a. In addition to the inspection requirements listed in Section 4, sub-section 0, of the Ordinance, all roads proposed to be considered for public acceptance shall meet the following inspection requirements:
- (1) The applicant shall at his/her expense hire a Professional Engineer licensed in the State of Maine to inspect the roadway construction. The engineer shall inspect the roadway during construction and certify in writing that the road was installed according to the subdivision plans and the requirements of this Ordinance.
  - (2) The applicant shall submit to the Selectmen and the Planning Board, the engineer's report certifying that the road meets or exceeds the subdivision plan and Ordinance requirements.
  - (3) Upon receipt of the engineer's certification and the inspection report from the Code Enforcement Officer and the Road Commissioner, the Selectmen may consider presenting to the Town meeting a warrant for public acceptance of the road.

#### P. Recreational Access Standards

1. Outdoor recreational access is an important feature of Palemna's rural heritage and all subdivision proposals consisting of more than 4 lots shall provide for the continued enhancement and development of a variety of outdoor recreation opportunities. Since new subdivisions and the associated housing and other development they foster can compete with existing open space, scenic and other attributes of rural communities, it shall be the responsibility of each new subdivision to provide for outdoor recreation. A recreation plan designed to serve the subdivision residents shall be developed according to the requirements listed below.
2. Since subdivision proposals vary in size, density, design and location a variety of options shall be offered for the development of the recreation plan. The subdivision proposal shall be deemed to meet the requirement for providing recreation if they conform to one of the following :

A minimum of 10% of the land within the subdivision is dedicated for open space. Suitable easements and/or deed restrictions shall be proposed to preserve the land from development. The land shall include the areas described in Section 8, sub-section B.1.b, & . . . . .

- b. A parcel of land consisting of at least . . . . . acres and having a minimum of 200 feet of shore frontage on a great pond is dedicated for recreation. The parcel shall be suitable for at least one of the following boat access or swimming. Trails, rights-of-way or other similar easements shall be provided so that residents can access the parcel.
- c. A multi-purpose trail system which can be reasonably accessed by each proposed subdivision lot is constructed. The trail should be designed to accommodate walkers, cross-country skiing and snowmobiles. Whenever possible, the trail should provide a link to existing trails and snowmobile routes.
- d. An active recreation area consisting of at least two of the following:
  - Playground for small children
  - Baseball field
  - Tennis court (minimum of 2 courts)
  - Basketball court (full size court)
  - Multi-purpose field
- e. Combination of recreational options. The applicant may propose to offer a combination of recreational sites consisting of a portion of some of the options listed above. The Planning Board shall review this combination option to ensure that the intent of these section is met.  
*Example:*  
*An applicant may propose to construct a playground and dedicate 5% of land for passive recreation.*

3. Land for the recreational sites may be offered to the Town for public acceptance or may be owned in common by the subdivision lot owners. The applicant may also propose to dedicate the recreation areas to a third party that is incorporated for the purpose of maintaining land for conservation and preservation use.

All land proposed for recreation purposes shall be protected by a suitable deed restriction that prohibits development and preserves the land for future inhabitants.

All recreational areas to be owned in common shall include a maintenance plan and mandatory association agreement in each of the subdivision lot deeds.

The Planning Board shall review all proposed ownership arrangements to ensure that the long-term maintenance and preservation of the recreational sites is provided.

## 0. Agricultural and Forest Resources

- 1. Whenever a proposed subdivision is located adjacent to an active farm, pasture field, a woodlot listed under Tree Growth or a productive forest site, suitable provisions shall be incorporated in the subdivision proposal to *minimize* future conflicts between residential sites and agriculture, forestry operations.
- 2. Provisions to reduce conflicts between residential and activities of a working rural landscape shall be proposed based upon the size, density and site conditions of the particular subdivision. Some possible options include:

- a. A mandatory structure set-back of 100 feet from the farm or forest site.
- b. A vegetative buffer along property lines.
- c. Location of homes < 1/2 way from the farm or forest.
- d. A disclosure notice, included in the deed for each lot, to inform the new landowner that agricultural and forest activities generate noise, dust and odors.

R. Rural Design and Landscape Standards for Public Scenery

1. Each subdivision proposal shall include a landscape or scenic preservation plan which shows how the lots, buildings, structures and roads preserve the existing rural character of the community. The plan shall incorporate the following standards into the overall development of the subdivision:
  - a. Building sites shall be oriented with respect to scenic vistas, natural landscape features, topography, and natural drainage areas.
  - b. Road and lot layout shall be adapted to the existing topography.
  - c. Existing trails shall be preserved.
  - d. Existing vegetation along front, side and rear lot property lines shall be preserved.
  - e. Lots shall be designed so as to enhance the privacy and rural atmosphere of the development.
  - f. Trees located along the roads shall be preserved to the greatest extent possible in order to maintain a rural landscape corridor.
  - g. Existing vegetation along all streams, ponds, wetlands shall be preserved.
  - h. Prime farmland soils as identified in the comprehensive plan shall be preserved to the greatest extent possible.

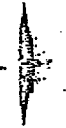
SECTION 9. ENFORCEMENT

- A. It shall be the responsibility of the Code Enforcement Officer to enforce the provisions of this Ordinance.
- B. No plan of a division of land within the Town which would constitute a subdivision shall be recorded in the Registry of Deeds until a final plan has been approved by the Planning Board in accordance with this Ordinance.
- C. A person shall not convey, offer to convey any land in a subdivision which has not been approved by the planning Board and recorded in the Registry of Deeds.
- D. A person shall not sell, lease, offer or otherwise convey any land in an approved subdivision which is not shown on the plan as a separate lot.
- E. No public utility, water district, sanitary district, or any utility company of any kind shall serve any lot in a subdivision for which a final plan has not been approved by the Planning Board.
- F. Development of a subdivision without Planning Board approval shall be a violation of law. Development includes grading or construction of roads, grading of land, or lots, or construction of buildings, which require a plan approved as provided in this Ordinance and recorded in the Registry of Deeds.

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- G. No lot in a subdivision may be sold, leased or otherwise conveyed before the road upon which the lot fronts is completed in accordance with this Ordinance up to the said lot.
- H. Violations of the above provisions of this section are a nuisance and shall be subject to penalty in accordance with the provisions of Title 30-A, M.R.S.A ss' 41s2 as amended.

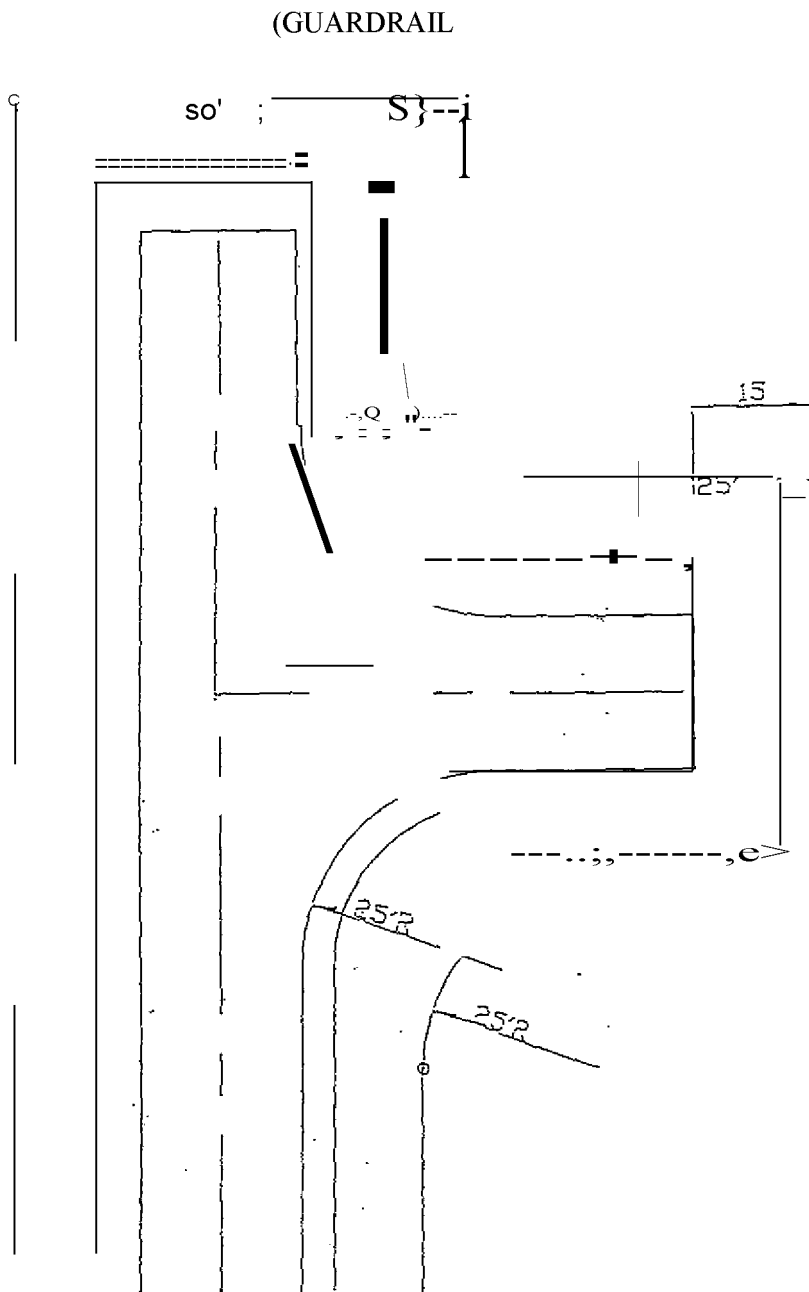




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APPENDIX A

TYPICAL ' " SHAPED TURN, AROUND D'.ETAJL



## TYPICAL CUL-DE-SAC DETAIL.

The Cul-De-Sac turnaround shall be consti-ticted with the following requirements for-radii:

- Property Line: 50 feet
- Outer Edge of Pavement: 40 feet
- Inner Edge of Pavement: 20 feet

The center of the Cul-be-Sac shall be reserved for existihg or propos(id) vegetation.



APPENDIX B

ROAD CONSTRUCTION STANDARDS TABLE i

	Collector Road	Local Road	Rural Road
Right-of-way width	60 ft	50 ft	50 ft
Travel way width	22 ft	20 ft	18 ft
Shoulder width	4 ft	3 ft	3 ft
Minimum grade (centerline)	.5%	.5%	.5%
Maximum grade (centerline)	5%	8%	10%
Minimum center-line radius w/o superelevation	280 ft	280 ft	175 ft
Minimum center-line radius with superelevation	175 ft	175 ft	100 ft
Roadway crown	1/4 inch per foot	1/4 inch per foot	1/4 inch per foot
Minimum angle of road intersection	90 degree	60 degree	60 degree
Maximum centerline grade within 75 ft of intersection	3%	3%	3%
Culverts	minimum 18 inch dia.	minimum 15 inch dia.	minimum 15 inch dia.
Minimum fill slope	3/1	3/1	3/1
Shoulder grade	1/4 inch per foot	1/4 inch per foot	1/4 inch per foot

TABLE 2.

ROAD CONSTRUCTION MATERIALS MINIMUM REQUIREMENTS

		Collector Road	Local Road	Rural Road
<b>Aggregate Base</b> Total Inches		24 inches	18 inches	15 inches
	Subbase course	18 inches	15 inches	12 inches
	<b>13</b> course	6 inches	4 inches	3 inches
Surface Course for a Gravel Road	...	4 inches	3 inches	3 inches
<b>Surface Course for a Bituminous Flexible Surface (Total inches)</b>		<b>3 inches</b>	<b>3 inches</b>	<b>3 inches</b>
		<b>Base course</b>	<b>1 3/4</b>	<b>1 1/4</b>
		<b>Surface course</b>	<b>1 1/4</b>	<b>1 1/4</b>

GRAVEL SUBBASE MATERIALS SPECIFICATIONS:

The gravel subbase course shall be composed of durable particles free from vegetable matter, lumps or balls of clay and other deleterious matter. The gradation of the part that passes a 3 inch square sieve shall meet the grading requirements below. The maximum stone size shall be 6 inches.

SIEVE DESIGNATION	PERCENTAGE BY WEIGHT PASSING SQUARE SIEVE
1/4 INCH	100%
No. 40	10-30%
No. 200	0-10%

**GRAVEL BASE COURSE SPECIFICATIONS:**

The base course shall be crushed gravel hard durable particles free from vegetable matter, lumps and balls of clay. The gradation of the part that passes a 3 inch square sieve shall meet the grading requirements below.

SIEVE DESIGNATION	PERCENTAGE BY WEIGHT PASSING SQUARE SIEVE
3 INCH	45-70%
1/4 INCH	30-55%
No. 40	0-20%
No. 200	<b>0-5%</b>

**SURFACE GRAVEL SPECIFICATIONS:**

**Surface gravel for use on gravel roads shall have no stone larger than 2 inches in size and shall meet the grading requirements below.**

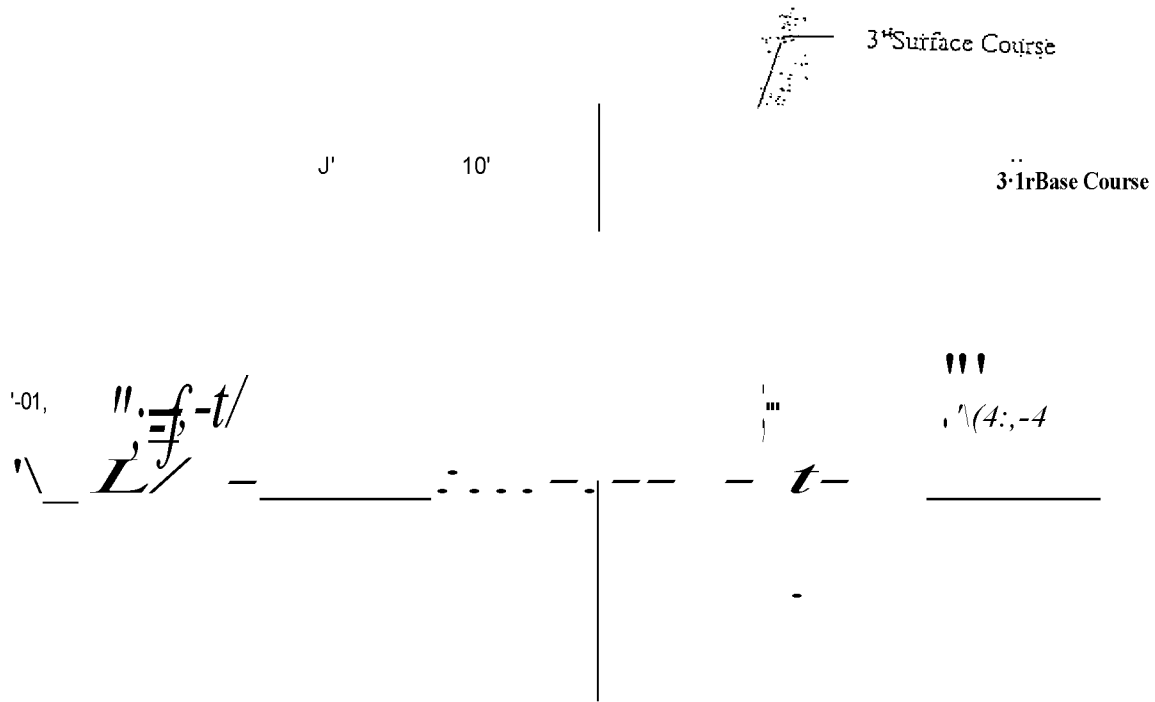
SIEVE DESIGNATION	PERCENTAGE BY WEIGHT PASSING SQUARE SIEVE
2 INCH	95-100%
1/4 INCH	<b>30-65%</b>
No. 200	<b>7-12%</b>

**BITUMINOUS PAVEMENT SPECIFICATIONS:**

**The minimum standards for the base layer of pavement shall be MDOT specifications for plant mix grade "B" with an aggregate size of no more than 3/4 inch maximum. The minimum standard for the surface layer of the pavement shall meet MDOT specifications for plant mix grade "C" or "D" with an aggregate size of no more than 1/2 inch maximum.**

TYPICAL ROAD CROSS SECTION

TOWN OF PALERMO  
LOCAL ROAD CROSS SECTION



1S" Subbase Course



**Town of Palermo**  
**WIRELESS TELECOMMUNICATIONS FACILITIES ORDINANCE**  
**CONTENTS**

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<b>Section 16</b>	<b>Effective</b>

**Section 1. Title**

This Ordinance shall be known and cited as the Town of Palermo "Wireless Telecommunications Facilities Ordinance" (hereinafter referred to as "this ordinance").

**Section 2. Authority**

This ordinance is adopted pursuant to the enabling provisions of Article VIII, Part 2, Section 1 of the Maine Constitution; the provisions of Title 30-A M.R.S.A. Section 3001 (Home Rule), and the provisions of the Planning and Land Use Regulation Act, Title 30-A M.R.S.A. Section 4312 *et seq.*

**Section 3. Purpose**

The purpose of this ordinance is to provide a process and a set of standards for the construction of wireless telecommunications facilities in order to:

- Ensure that Palermo can continue to fairly and responsibly protect the public health, safety and welfare;
- Encourage the collocation of wireless telecommunications facilities, thus helping to minimize adverse visual impacts on the community;
- Further the goals and policies of the comprehensive plan, while promoting orderly development of the town with minimal impacts on existing uses; and
- Protect the scenic and visual character of the community.



#### **Section 4. Applicability**

This ordinance applies to all construction and expansion of wireless telecommunications facilities, except as provided in section 4.1.

##### **Section 4.1 Exemptions**

The following are exempt from the provisions of this ordinance:

- A. Emergency Wireless Telecommunications Facility.** Wireless communication facilities for emergency communications by public officials.
- B. Amateur (Ham) Radio Stations.** Amateur (Ham) radio stations licensed by the Federal Communications Commission (FCC).
- C. Parabolic Antenna.** Parabolic Antennas less than seven (7) feet in diameter, that are an accessory use of the property.
- D. Maintenance or Repair.** Maintenance, repair or reconstruction of a wireless telecommunications facility and related equipment provided that there is no change in the height or any other dimension of the facility.
- E. Antennas as Accessory Uses.** An antenna that is an accessory use to a residential dwelling unit.

#### **Section 5. Review and Approval Authority**

##### **5.1 Approval Required**

No person shall construct or expand a wireless telecommunication facility without approval of the Planning Board.

##### **5.2 Approval Authority**

In accordance with Section 5.1 above, the Planning Board shall review applications for wireless telecommunications facilities, and make written findings on whether the proposed facility complies with this Ordinance.

#### **Section 6. Approval Process**

##### **Section 6.1 Pre-Application Conference**

All persons seeking approval of the Planning Board under this ordinance shall meet with the Planning Board no less than 30 days before filing an application. At this meeting, the Planning Board shall explain the ordinance provisions, as well as application forms and submissions that will be required under this ordinance.

##### **Section 6.2 Application**

All persons seeking approval of the Planning Board under this ordinance shall submit an application as provided below.

- A. Right, Title and Interest.** Documentation of the applicant's right, title, or interest in the property on which the facility is to be sited, including name and address of the property owner and the applicant.
- B. Fee Regulations.** A copy of the FCC license for the facility, or a signed statement from the owner or operator of the facility attesting that the facility complies with current FCC regulations.
- C. Topographical Map.** A USGS 7.5 minute topographical map showing the location of all structures and wireless telecommunications facilities above 150 feet in height above ground level, except antennas located on roof tops, within a five (5) mile radius of the proposed facility, unless this information has been previously made available to the municipality. This requirement may be met by submitting current information (within thirty days of the date the application is filed) from the FCC Tower Registration Database.
- D. A Site Plan:**
  - 1. Prepared and certified by a professional engineer registered in Maine indicating the location, type, and height of the proposed facility, antenna capacity, on-site and abutting off-site land uses, means of access, setbacks from property lines, and all applicable American National Standards Institute (ANSI) technical and structural codes;
  - 2. Certification by the applicant that the proposed facility complies with all FCC standards for radio emissions is required; and
  - 3. A boundary survey for the project performed by a land surveyor licensed by the State of Maine.
- E. A Scenic Assessment,** consisting of the following:

1. Elevation drawings of the proposed facility, and any other proposed structures, showing height above ground level;
  2. A landscaping plan indicating the proposed placement of the facility on the site; location of existing structures, trees, and other significant site features; the type and location of plants proposed to screen the facility; the method of fencing, the color of the structure, and the proposed lighting method.
  3. Photo simulations of the proposed facility taken from perspectives determined by the Planning Board, or their designee, during the pre-application conference. Each photo must be labeled with the line of sight, elevation, and with the date taken imprinted on the photograph. The photos must show the color of the facility and method of screening.
  4. A narrative discussing:
    - a. The extent to which the proposed facility would be visible from or within a designated scenic resource,
    - b. The tree line elevation of vegetation within 100 feet of the facility, and
    - c. The distance to the proposed facility from the designated scenic resource's noted viewpoints.
- F. Telecommunications Network.** A written description of how the proposed facility fits into the applicant's telecommunications network. This submission requirement does not require disclosure of confidential business information.
- G. Existing Structures.** Evidence demonstrating that no existing building, site, or structure can accommodate the applicant's proposed facility, the evidence for which may consist of any one or more of the following:
1. Evidence that no existing facilities are located within the targeted market coverage area as required to meet the applicant's engineering requirements,
  2. Evidence that existing facilities do not have sufficient height or cannot be increased in height at a reasonable cost to meet the applicant's engineering requirements,
  3. Evidence that existing facilities do not have sufficient structural strength to support applicant's proposed antenna and related equipment. Specifically:
    - a. Planned, necessary equipment would exceed the structural capacity of the existing facility, considering the existing and planned use of those facilities, and these existing facilities cannot be reinforced to accommodate the new equipment.
    - b. The applicant's proposed antenna or equipment would cause electromagnetic interference with the antenna on the existing towers or structures, or the antenna or equipment on the existing facility would cause interference with the applicant's proposed antenna.
    - c. Existing or approved facilities do not have space on which planned equipment can be placed so it can function effectively.
  4. For facilities existing prior to the effective date of this ordinance, the fees, costs, or contractual provisions required by the owner in order to share or adapt an existing facility are unreasonable. Costs exceeding the pro rata share of a new facility development are presumed to be unreasonable. This evidence shall also be satisfactory for a tower built after the passage of this ordinance;
  5. Evidence that the applicant has made diligent good faith efforts to negotiate collocation on an existing facility, building, or structure, and has been denied access;
- H. National Register of Historic Places.** Identification of districts, sites, buildings, structures or objects, significant in American history, architecture, archaeology, engineering or culture, that are listed, or eligible for listing, in the National Register of Historic Places (see 16 U.S.C. 470w(5); 36 CFR 60 and 800).
- I. Collocation.** A signed statement stating that the owner of the wireless telecommunications facility and his or her successors and assigns agree to:
1. Respond in a timely, comprehensive manner to a request for information from a potential collocation applicant, in exchange for a reasonable fee not in excess of the actual cost of preparing a response;
  2. Negotiate in good faith for shared use of the wireless telecommunications facility by third parties;

3. Allow shared use of the wireless telecommunications facility if an applicant agrees in writing to pay reasonable charges for collocation;
  4. Require no more than a reasonable charge for shared use, based on community rates and generally accepted accounting principles. This charge may include but is not limited to a pro rata share of the cost of site selection, planning project administration, land costs, site design, construction, financing, return on equity, depreciation, and all of the costs of adapting the tower or equipment to accommodate a shared user without causing electromagnetic interference. The amortization of the above costs by the facility owner shall be accomplished at a reasonable rate, over the useful life span of the facility.
- J. Financial Surety.** At the time of approval, the applicant for a new tower shall submit to the Town a bond or other financial surety, to be approved by the Town Selectmen, in the amount of 150% of the estimated demolition cost of the tower and the removal of all accessory facilities. Such cost to be determined by an Independent Registered Professional Engineer in the State of Maine and the amount shall be acceptable to the Town. The bond or other financial surety shall be in effect for as long as the tower is in place.
- K. Newspaper Notification.** Evidence that a notice of the application has been published in a local newspaper of general circulation in the community.

**Section 6.3 Submission Waiver.** The Planning Board may waive any of the submission requirements based upon a written request of the applicant submitted at the time of application. A waiver of any submission requirement may be granted only if the Planning Board finds in writing that due to special circumstances of the application, the information is not required to determine compliance with the standards of this Ordinance.

#### **Section 6.4 Fees**

- A. Planning Board Application Fee.** An application for Planning Board approval shall include payment of an application fee in accordance with a fee schedule established and adopted by the Board of Selectman. The application shall not be considered complete until this fee is paid. An applicant is entitled to a refund of the application portion of fee if the application is withdrawn within fifteen (15) days of date of filing, less all expenses incurred by the Town of Palermo to review the application.
- B. Planning Board Review Fee.** An applicant for approval shall pay all reasonable and customary fees incurred by the Town of Palermo that are necessary to review the application. The review fee shall be paid in full prior to the start of construction. That portion of the review fee not used shall be returned to the applicant within fourteen (14) days of the Planning Board's decision.

#### **Section 6.5 Notice of Complete Application**

Upon receipt of an application, the Planning Board shall provide the applicant with a dated receipt. The Planning Board shall review the application and determine if the application meets the submission requirements. The Planning Board shall review any requests for a waiver from the submission requirements and shall act on these requests prior to determining the completeness of the application.

If the application is complete, the Planning Board shall notify the applicant in writing of this determination and require the applicant to provide a sufficient number of copies of the application to the Planning Board, Code Enforcement Office, and Fire Department.

If the application is incomplete, the Planning Board shall notify the applicant in writing, specifying the additional materials or information required to complete the application.

If the application is deemed to be complete, the applicant shall notify all abutters to the site as shown on the Assessor's records, by first-class mail certified, return receipt, that an application has been accepted. This notice shall contain a brief description of the proposed activity and the name of the applicant, give the location of a copy of the application available for inspection, and provide the date, time, and place of the Planning Board meeting at which the application will be considered. Failure on the part of any abutter to receive such notice shall not be grounds for delay of any consideration of the application nor denial of the project.

## **Section 6.6 Public Hearing**

A public hearing shall be held within 30 days of the notice of the complete application.

## **Section 6.7 Approval**

Within ninety (90) days of receiving a complete application for approval the Planning Board shall approve, approve with conditions, or deny the application in writing, together with the findings on which that decision is based. However, if the Planning Board has a waiting list of applications that would prevent the Planning Board from making a decision within the required ninety (90) day time period, then a decision on the application shall be issued within sixty (60) days of the public hearing, if necessary, or within 60 days of the completed Planning Board review. This time period may be extended upon agreement between the applicant and the Planning Board.

## **Section 7. Standards of Review**

To obtain approval from the Planning Board, an application must comply with the standards in this section.

### **Section 7.1 Planning Board Approval Standards**

- A. Collocation.** A new wireless telecommunications provider must collocate on an existing wireless telecommunications facility.
- B. Location**
  - 1. New wireless telecommunications facilities may be permitted only in the general development area as shown in the 1991 Town of Palermo Comprehensive Plan.
  - 2. New wireless telecommunications facilities *shall be located* within 1000 feet of the centerline of Route Three.
  - 3. New wireless telecommunications facilities shall *not* be located within one half mile of the Palermo Consolidated School property lines.
  - 4. New wireless telecommunications facilities shall *not* be located within a 1000 feet of any residence. Unless the property owner waives the 1000 feet buffer zone from his / her residence. This waiver must be recorded in the Waldo County Registry of Deeds.
- C. Design for Collocation.** A new wireless telecommunications facility and related equipment must be designed and constructed to accommodate expansion for future collocation of at least three additional wireless telecommunications facilities or providers.
- D. Height.** A new wireless telecommunications facility must be no more than 195 feet in height.
- E. Setbacks.** A new or expanded wireless telecommunications facility must or be set back one hundred five percent (105%) of its height from all property lines. The setback may be satisfied by including the areas outside the property boundaries if secured by an easement. No part of the structure, including anchors, guide wires, overhead lines, masts, etc. shall be located in the required setback.
- F. Landscaping.** A new wireless telecommunications facility and related equipment must be screened with plants from view by abutting properties, to the maximum extent practicable. Existing plants and natural landforms on the site shall also be preserved to the maximum extent practicable.
- G. Fencing.** A new wireless telecommunications facility must be fenced to discourage trespass on the facility and to discourage climbing on any structure by trespassers.
- H. Lighting.** Towers shall not be artificially lighted, unless required by the FAA or other applicable authority. If lighting is required, the Planning Board may review the available lighting alternatives and approve the design that would best cause the least disturbance in the surrounding area. The tower compound may use lighting for security reasons, which is compatible with the surrounding neighborhood.
- I. Color and Materials.** A new wireless telecommunications 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, muted colors, earth tones, and subdued hues shall be used.
- J. Structural Standards.** A new wireless telecommunications facility must comply with the current Electronic Industries Association/ Telecommunications Industries Association (EIA/TIA) 222

Revision Standard entitled "Structural Standards for Steel Antenna Towers and Antenna Supporting Structures."

- K. Visual Impact.** The proposed wireless telecommunications facility will have no unreasonable adverse impact upon designated scenic resources within the Town, as identified either in the 1991 Town of Palermo Comprehensive Plan, or by a State or federal agency. In determining the potential unreasonable adverse impact of the proposed facility upon the designated scenic resources, the Planning Board shall consider the following factors:
1. The extent to which the proposed wireless telecommunications facility is visible above tree line, from the viewpoint(s) of the impacted designated scenic resource;
  2. The type, number, height, and proximity of existing structures and features, and background features within the same line of sight as the proposed facility;
  3. The extent to which the proposed wireless telecommunications facility would be visible from the viewpoint(s);
  4. The amount of vegetative screening;
  5. The distance of the proposed facility from the viewpoint and the facility's location within the designated scenic resource; and
  6. The presence of reasonable alternatives that allow the facility to function consistently with its purpose.
- L. Noise.** Noise levels shall not exceed 55 dBA Sound Pressure Level (SPL) on adjacent properties. Operation of a back up power generator in the event of power failure or the testing of a back up generator between 8:00AM and 9:00PM are exempt from this standard. No testing of back up power generators shall occur between the hours of 9:00PM and 8:00AM.
- M. Historic & Archaeological Properties.** The proposed facility will have no unreasonable adverse impact upon a historic district, site or structure, which is currently listed on or eligible for listing on the National Register of Historic Places.

#### **7.2 Standard Conditions of Approval**

The following standard conditions of approval shall be a part of any approval or conditional approval issued by the Planning Board. Where necessary to ensure that an approved project meets the criteria of this ordinance, the Planning Board can impose additional conditions of approval. Reference to the conditions of approval shall be clearly noted on the final approved site plan, and shall include:

- A. Collocation.** The owner of the wireless telecommunications facility and his or her successors and assigns agree to:
1. Respond in a timely, comprehensive manner to a request for information from a potential collocation applicant, in exchange for a reasonable fee not in excess of the actual cost of preparing a response;
  2. Negotiate in good faith for shared use of the wireless telecommunications facility by third parties;
  3. Allow shared use of the wireless telecommunications facility if an applicant agrees in writing to pay reasonable charges for collocation.
  4. Require no more than a reasonable charge for shared use of the wireless telecommunications facility, based on community rates and generally accepted accounting principles. This charge may include, but is not limited to, a pro rata share of the cost of site selection, planning project administration, land costs, site design, construction and maintenance, financing, return on equity, depreciation, and all of the costs of adapting the tower or equipment to accommodate a shared user without causing electromagnetic interference. The amortization of the above costs by the facility owner shall be accomplished at a reasonable rate, over the life span of the useful life of the wireless telecommunications facility.
- B. Certify Compliance.** Upon request by the Town of Palermo, the applicant shall certify compliance with all applicable FCC radio frequency emissions regulations.

#### **Section 8. Amendment to an Approved Application**

Any changes to an approved application must be approved by the Planning Board.

### **Section 9. Abandonment**

A wireless telecommunications facility that is not operated for a continuous period of twelve (12) months shall be considered abandoned. The CEO shall notify the owner of an abandoned facility in writing and order the removal of the facility within ninety (90) days of receipt of the written notice. The owner of the facility shall have thirty (30) days from the receipt of the notice to demonstrate to the CEO that the facility has not been abandoned.

If the Owner fails to show that the facility is in active operation, the owner shall have sixty (60) days to remove the facility. If the facility is not removed within this time period, the Town of Palermo may remove the facility at the owner's expense. The owner of the facility shall pay all site reclamation costs deemed necessary and reasonable to return the site to its pre-construction condition, including the removal of roads, and reestablishment of vegetation.

If a surety has been given to the municipality for removal of the facility, the owner of the facility may apply to the Planning Board for release of the surety when the facility and related equipment are removed to the satisfaction of the Planning Board.

### **Section 10. Appeals**

Any person aggrieved by a decision of the CEO or the Planning Board under this ordinance may appeal the decision to the Board of Appeals. Written notice of an appeal must be filed with the Board of Appeals within thirty (30) days of the decision. The notice of appeal shall clearly state the reasons for the appeal.

### **Section 11. Administration and Enforcement**

The CEO shall enforce this ordinance. If the CEO finds that any provision of this ordinance has been violated, the CEO shall notify in writing the person responsible for such violation, indicating the nature of the violation, and ordering the action necessary to correct it. The CEO shall order correction of the violation and may take any other legal action to ensure compliance with this ordinance.

The Board of Selectmen, or their authorized agent, are 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 a violation of this ordinance to continue unless: there is clear and convincing evidence that the violation occurred as a direct result of erroneous advice given by an authorized municipal official upon which the applicant reasonably relied to its detriment and there is no evidence that the owner acted in bad faith; the removal of the violation will result in a threat to public health and safety or substantial environmental damage.

### **Section 12. Penalties**

Any person who owns or controls any building or property that violates this ordinance shall be fined in accordance with Title 30-A M.R.S.A. § 4452. Each day such violation continues after notification by the CEO shall constitute a separate offense.

### **Section 13. Conflict and Severability**

#### **Section 13.1 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 apply.

#### **Section 13.2 Severability**

The invalidity of any part of this ordinance shall not invalidate any other part of this ordinance.

### **Section 14. Definitions**

The terms used in this ordinance shall have the following meanings:

"Antenna" means any system of poles; panels, rods, reflecting discs or similar devices used for the transmission or reception of radio or 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 highest point is an antenna. Measurement of tower height shall include antenna, base pad, and other appurtenances and shall be measured from the finished 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.

**"Collocation"** means the use of a wireless telecommunications facility by more than one wireless telecommunications provider.

**"Expansion"** means 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 Communications Commission, or its lawful successor.

**"Height"** means the vertical measurement from a point on the ground at the mean finish grade adjoining the foundation as calculated by averaging the highest and lowest finished grade around the building or structure, to the highest point of the building or structure.

**"Historic or Archaeological Resources"** means resources that are:

Listed individually in the National Register of Historic Places or eligible for listing on the National Register;

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;

Individually listed on a state inventory of historic places in states with historic preservation programs approved by the Secretary of the Interior;

Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified by Secretary of the Interior through the Maine Historic Preservation Commission; or

Areas identified by a governmental agency such as the Maine Historic Preservation Commission as having significant value as an historic or archaeological resource and any areas identified in the municipality's comprehensive plan, which have been listed or are eligible to be listed on the National Register of Historic Places.

**"Historic District"** means a geographically definable area possessing a significant concentration, linkage or continuity of sites, buildings, structures or objects united by past events or aesthetically by plan or physical development and identified in the municipality's comprehensive plan, which is listed or is eligible to be listed on the National Register of Historic Places. Such historic districts may also comprise individual elements separated geographically, but linked by association or history.

**"Historic Landmark"** means any improvement, building or structure of particular historic or architectural significance to the Town relating to its heritage, cultural, social, economic or political history, or which exemplifies historic personages or important events in local, state or national history identified in the municipality's comprehensive plan, which have been listed or are eligible to be listed on the National Register of Historic Places.

**"Line of sight"** means the direct view of the object from the designated scenic resource.

**"Parabolic Antenna"** (also known as a satellite dish antenna) means an antenna which is bowl-shaped, designed for the reception and or transmission of radio frequency communication signals in a specific directional pattern.

**"Principal Use"** means the use other than one, which is wholly incidental or accessory to another use on the same premises.

**"Public Recreational Facility"** means a regionally or locally significant facility, as defined and identified either by State statute or in the municipality's adopted comprehensive plan, designed to serve the recreational needs of municipal property owners.

**"Designated Scenic Resource"** means that specific location, view, or corridor, as identified as a scenic resource in the municipally adopted comprehensive plan or by a State or federal agency, that consists of:

a three dimensional area extending out from a particular viewpoint on a public way or within a public recreational area, focusing on a single object, such as a mountain, resulting in a narrow corridor, or a group of objects, such a downtown skyline or mountain range, resulting in a panoramic view

corridor; or

Lateral terrain features such as valley sides or woodland as observed to either side of the observer, constraining the view into a narrow or particular field, as seen from a viewpoint on a public way or within a public recreational area.

"Targeted Market Coverage Area" means the area, which is targeted to be served by this proposed telecommunications facility.

"Unreasonable Adverse Impact" means that the proposed project would produce an end result which is:

excessively out-of-character with the designated scenic resources affected, including existing buildings structures and features within the designated scenic resource, and

Would significantly diminish the scenic value of the designated scenic resource.

"Viewpoint" means that location which is identified either in the municipally adopted comprehensive plan or by a federal or State agency, and which serves as the basis for the location and determination of a particular designated scenic resource.

"Wireless Telecommunications Facility" or "Facility" means 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 services, specialized mobile radio communications (SMR), common carrier wireless exchange access services, and personal communications service (PCS) or pager services.

#### **Section 15: Amendments**

An amendment to this ordinance may be initiated by the Planning Board, provided that a majority of the Board has so voted; by request of the Selectmen to the Planning Board; or by written petition to the Selectmen signed by 10% of the number of registered voters of the Town of Palermo who voted in the last gubernatorial election.

All proposed amendments shall be referred to the Planning Board for their recommendation. The Planning Board shall hold a public hearing on any proposed amendment within 21 days of its receipt and shall inform the Selectmen of their recommendation within 21 days of the public hearing. The amendment may be adopted by a majority vote of Town meeting or by secret ballot referendum.

#### **Section 16. Effective Date**

This ordinance becomes effective on March 10, 2001

Attest: a true copy of an ordinance entitled "Town of Palermo Wireless Telecommunications Facilities Ordinance" as certified to me by the municipal officers of Palermo on the seventh day of February 2001.

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Janet Potter

Town Clerk