

# Town of Freeport, Maine

## Chapter 65

### Shoreland Zoning

#### **DRAFT**

**Proposed Ordinance for discussion at the 04-06-22 Planning Board Public Hearing. Since this is an entirely new document, all new text is shown as underlined. This document was recommended to the Town Council for adoption at the 04/06/22 Public Hearing, with amendments made at the meeting noted in yellow.**

*Note: This will be a new stand-alone Shoreland Zoning Ordinance. Shoreland Zoning provisions are proposed to be removed from the existing Zoning Ordinance and put into this new document. As previously discussed by the Planning Board, the proposed language will be updated to comply with the Mandatory Shoreland Zoning Act, 38 M.R.S.A. sections 435-44 (last adopted in 2015)*

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# **ARTICLE I**

## **TITLE, PURPOSE AND DEFINITIONS**

### **Section 101. Title**

This Ordinance shall be known and may be cited as the “Shoreland Zoning Ordinance of the Town of Freeport, Maine”.

### **Section 102. Purpose**

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, bird and wildlife habitat; to protect buildings and lands from flooding and accelerated erosion; to protect archeological and historic resources; to protect commercial fishing and maritime industries; to protect freshwater and coastal wetlands; to control building sites, placement of structures and land uses; to conserve shore cover, and visual as well as actual points of access to inland and coastal waters; to conserve natural beauty and open space; and to anticipate and respond to the impacts of development in shoreland areas.

### **Section 103. Authority**

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

### **Section 104. Applicability**

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

- normal high-water line of any great pond or river,
- upland edge of a coastal wetland, including all areas affected by tidal action, or
- upland edge of a freshwater wetland,
- and all land areas within 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.

The Shoreland Zones include Resource Protection 1, Shoreland Area, Stream Protection, and Marine Waterfront as defined in Section 304.

### **Section 105. Availability**

This Ordinance is on file in the Town Clerk’s Office at the Freeport Town Hall. Copies will be made available to the public upon request and upon payment of the Town’s reasonable expense of reproducing the Ordinance.

## **Section 106. Word Usage**

In this Ordinance, if not inconsistent with the context, the singular may be taken for the plural and the plural for the singular; “person” may include an association, a partnership, a corporation, or other entity; the present tense includes the future; the word “building” includes the word “structure”; the word “lot” includes the word “plot”; and the word “shall” is mandatory and not directory.

## **Section 107. Definitions**

The definitions listed in this Section 107 are an integral part of this Shoreland Zoning Ordinance. Where the definitions include regulations, restrictions, limitations or prohibitions, the definitions shall constitute enforceable requirements of this Ordinance. Diagrams and illustrations are not governing provisions, and are included only as aids in understanding the written regulations. In cases where a term is not defined, the term shall have their meaning per the Freeport Zoning Ordinance and if not defined there, the term shall have its customary dictionary meaning.

**Accessory Use or Structure:** A use or structure customarily incidental and subordinate to the principal use or structure and located on the same lot. Where an accessory structure, including but not limited to a deck or garage, is attached in a substantial manner by a wall to a principal structure, it shall be considered a part of said principal structure. Accessory structures shall conform to the space standards of each district.

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

**Agriculture:** 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:** Structures and land-based activities required by the growing or propagation of harvestable freshwater, estuarine, or marine plant or animal species.

**Basement:** Any portion of a structure with a floor-to-ceiling height of six (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.

**Campgrounds:** A campground includes 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.

**Coastal Wetland:** All tidal and subtidal lands all lands with vegetation present that is tolerant of salt water and occurs primarily in a salt water or estuarine habitat; and any swamp, marsh, bog, beach, flat or other contiguous low land that is subject to tidal action during the highest tide level for the year in which an activity is proposed as identified in tide tables published by the National Ocean Service.

**Commercial use:** the use of lands, buildings, or structures, other than a "home occupation," 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 four and a half (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:** "Disability" has the same meaning as a physical or mental disability under Title 5, Section 4553-A of the Maine Revised Statutes

**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.

**Dwelling:** A fixed structure containing one or more dwelling units.

Dwelling, One-Family: A dwelling designed for or occupied exclusively by one family;

Dwelling, Two-Family: A dwelling designed for or occupied exclusively by two families living independently that are similar in size but in no way shall one unit be less than 40% in size than the other unit unless the land area per dwelling unit can be met for

each unit; for the purposes of this Ordinance a group of one or two family dwellings on commonly owned land shall not be considered a multiple family dwelling.

Dwelling, Multiple Family: A dwelling or group of dwellings in one structure containing separate living units for three or more families.

**Dwelling Unit - residential:** A room or group of rooms designed and equipped exclusively for use as permanent, seasonal, or temporary living quarters for only one (1) family at a time, and containing living, sleeping, toilet, and cooking facilities. The term shall include prefabricated or modular housing, mobile homes, and rental units that contain cooking, sleeping, and toilet facilities regardless of the time-period rented. This does not include hotels, motels, rooming houses, or temporary trailers. A recreational vehicles with its tires on the ground and registered with the State Division of Motor Vehicles is not considered a residential dwelling unit.

**Emergency operations:** Operations conducted for the public health, safety or general welfare to protect human beings, property, and livestock from the threat of death, 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 engaged in a business that causes the disturbance of soil, including grading, filling and removal, or in a business in which the disturbance of soil results from an activity that the individual or firm is retained to perform.

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

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

**Family:** One or more individuals occupying a dwelling unit and living as a single household in a domestic relationship as distinguished from a group occupying a boarding house, lodging house, club, fraternity, hotel or similar structure.

**Flood Plain:** Low lying, generally flat area consisting of either a.) that portion of a river valley which is built of sediments during the present stream regimen, and which is covered with water when the river or its tributaries overflow their banks at flood stages; or b.) that portion of land abutting tidal waters which is built of sediments during the present regimen of tidal water and which is covered with water when tidal water overflows its banks at flood stages. The land area is subject to the 100-year flood.

**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.

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

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

**Freshwater Wetland:** Freshwater swamps, marshes, bogs or similar areas, excluding forested wetlands, which are shown on the official Town of Freeport Zoning Map and are:

1. Ten or more contiguous acres or 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.

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

**Functionally water-dependent uses:** Those uses that require, for their primary purpose, location on submerged lands or that require direct access to, or location in, coastal or inland waters and that cannot be located away from these waters. The uses include, but are not limited to, commercial and recreational fishing and boating facilities, finfish and shellfish processing, fish-related storage and retail and wholesale fish marketing facilities, waterfront dock and port facilities, shipyards and 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 cannot reasonably be located or operated at an inland site, and uses that primarily provide general public access to coastal or inland waters. Recreational boat storage buildings are not considered to be a functionally water-dependent use.

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



**Groundwater:** All of the water found beneath the surface of the ground. For purposes of aquifer protection, this term refers to the slowly moving sub-surface water present in the aquifers and recharge areas.

**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.

**Hotel/Motel:** A facility which is not a bed and breakfast inn or and Inn as defined herein, which offers transient lodging accommodations to the general public and may provide additional services such as restaurants, meeting rooms and/or recreational facilities.

**Impervious Surface:** Structures and other man-made improvements to land and materials covering the land with low-permeability material such as asphalt or concrete. Common impervious areas include, but are not limited to, roads, rooftops, walkways, patios, driveways, parking lots or storage areas, concrete or asphalt paving, or other surfaces which similarly impede the natural infiltration of stormwater.

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

**Individual private campsite:** An area of land which is not associated with a campground, outdoor recreation and/or outdoor recreation school, and does not meet the definition of rustic campsite, 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.

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

**Lot:** A parcel of land having distinct and defined boundaries and described in a deed, plan or similar legal document. Lands on opposite sides of a public way shall be considered separate lots.

**Lot Area:** The total horizontal area within the lot lines excluding any street rights-of-way. In the Shoreland Zone, 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 shall be excluded from the calculation of the lot area.

**Lot Coverage:** That portion of the lot that is covered by buildings, structures and/or impervious surfaces and all other non-vegetated surfaces. 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 when calculating lot coverage for lots of record on March 24, 1990, and in continuous existence since that date.

**Lot, Oversized:** a lot with total area more than twice the minimum size required in the district in which the majority of the area of the lot is located.

**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. A marina shall be subject to the performance standards of Section 508.C of the Town of Freeport Zoning Ordinance.

**Market value:** A 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.

**Municipal Facility:** A facility which is open to the public and which is owned and operated under the direct supervision of the Town of Freeport or the public school entity serving the Town of Freeport

**Native:** Indigenous to the local forests.

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

**Non-Conforming Building or Structure:** A building or structure lawfully existing at the effective date of adoption or amendment of this Ordinance which does not conform to the requirements of the district in which it is located.

**Non-Conforming Lot:** A lot lawfully existing at the effective date of adoption or amendment of this Ordinance which does not conform to the requirements of the district in which it is located.

**Non-Conforming Use:** A use of land, buildings or structures lawfully existing at the effective date of adoption or amendment of this Ordinance which does not conform to the requirements of the district in which it is located.

**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 (non-tidal waters):** 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.

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

**Permitted Use:** A use specifically allowed in a zoning district.

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

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

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**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:** The primary use to which the premises are devoted, and the main purpose for which the premises exist.

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

<u>Fryeburg</u>	<u>Hadley</u>	<u>Limerick</u>
<u>Lovewell</u>	<u>Medomak</u>	<u>Ondawa</u>
<u>Alluvial</u>	<u>Cornish</u>	<u>Charles</u>
<u>Podunk</u>	<u>Rumney</u>	<u>Saco</u>
<u>Suncook</u>	<u>Sunday</u>	<u>Winooski</u>

**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.

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

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

**Road:** A route or track consisting of a bed of exposed mineral soil, gravel, asphalt, or other surfacing material constructed for or created by the repeated passage of motorized vehicles, excluding a driveway as defined. This definition does not apply for road frontage purposes (see definition of road, Section 104, Freeport Zoning Ordinance).

**Salt Marsh:** Areas of coastal wetlands (most often along coastal bays) that support salt tolerant species, and where at average high tide during the growing season, the soil is irregularly inundated by tidal waters. The predominant species is salt march cordgrass (*Spartina alterniflora*). More open areas often support widgeon grass, eelgrass, and Sago pondweed.

**Salt Meadow:** Areas of a coastal wetland that support salt tolerant plant species bordering the landward side of salt marshes or open coastal water, where the soil is saturated during the growing season but which is rarely inundated by tidal water. Indigenous plant species include salt meadow cordgrass (*Spartina patens*) and black rush; common three-square occurs in fresher areas.

**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:** A line that is a required minimum distance from the road right-of-way line or any other lot line that establishes the area within which principal and accessory buildings or structures must be erected or placed.

*Front Setback:* Setback between the front lot line and front line of a building extended to the side lot lines of the lot. The depth of the front setback shall be measured from the front lot line to the front line of the building.

*Side Setback:* Setback between the side lot line and side line of a building extended to the front and rear lot lines of the lot. The depth of the side setback shall be measured from the side lot line to the side line of a building. A combined side setback is the total of both side setbacks.

*Rear Setback:* Setback between the rear lot line and the rear line of a building extended to the side lot lines of the lot. The depth of the rear setback shall be measured from the rear lot line to the rear line of the building.

*Shore Setback:* the nearest horizontal distance from the normal high-water line of a water body or tributary stream, or upland edge of a wetland, or the top of a coastal bluff that has been identified as being “highly unstable” or “unstable” (per Section 306.B.2 of this Ordinance) to the nearest part of a structure, road, parking space or other regulated structure or area.

**Ship Chandlery:** A retail store specializing in the sale of marine related products.

**Shoreland Zone:** The area shown on the official Town of Freeport Zoning Map which includes the land area located within two hundred and fifty (250) feet, horizontal distance, of the normal high-water line of any river; within two hundred and fifty (250) feet, horizontal distance, of the upland edge of a coastal wetland, including all areas affected by tidal action; within two hundred and fifty (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 or coastal wetland.

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

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

**Structure:** A structure is anything temporarily or permanently located, built, constructed or erected for the support, shelter or enclosure of persons, animals, goods or property of any kind or anything constructed or erected on or in the ground. The term includes structures temporarily or permanently located, such as decks, patios, and satellite dishes. Structure does not include fences; poles and wiring and other aerial equipment normally associated with service drops, including guy wires and guy anchors; subsurface waste water disposal systems as defined in

Title 30-A, section 4201, subsection 5; geothermal heat exchange wells as defined in Title 32, section 4700-E, subsection 3-C; or wells or water wells as defined in Title 32, section 4700-E, subsection 8.

**Substantial start:** Completion of thirty (30) percent of a permitted structure or use measured as a percentage of estimated total cost.

**Subsurface Wastewater 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 wastewater disposal system, or any municipal or quasi-municipal sewer or wastewater treatment system.

**Subsurface Wastewater Disposal System, Replacement:** A system intended to replace: 1) an existing system which is either malfunctioning or being upgraded with no significant change of design flow or use of the structure, or 2) any existing overboard wastewater discharge.

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

**Tidal waters:** all waters affected by tidal action during the highest annual high tide.

**Timber harvesting** - the cutting and removal of timber for the primary purpose of selling or processing forest products. "Timber harvesting" does not include the cutting or removal of vegetation within the Shoreland Zone when associated with any other land use activities. The cutting or removal of trees in the Shoreland Zone on a lot that has less than two (2) acres within the shoreland zone shall not be considered timber harvesting. Such cutting or removal of trees shall be regulated pursuant to Section 306.N, *Clearing of Vegetation for Activities Other Than Timber Harvesting*.

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

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

**Upland Edge of a wetland:** The boundary between upland and wetland. For the purposes of a coastal wetland, this boundary is the line formed by the landward limits of the salt tolerant vegetation and/or highest annual tide level, including all areas affected by tidal action. 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.

**Variance:** A departure from the requirements of this Ordinance as authorized by the Board of Appeals only where strict application of the Ordinance would cause undue hardship to the applicant and/or the applicant's property. In addition, the Codes Enforcement Officer may issue a disability structures permit, pursuant to Section 601.G.2.b(2) of the Zoning Ordinance and Title 30-A, Section 4353-A of the Maine Revised Statutes.

**Vegetation:** All live trees, shrubs, ground cover, and other plants including without limitation, trees both over and under four (4) inches in diameter measured at four and a half (4 ½) feet above ground level.

**Velocity zone:** An area of special flood hazard extending from offshore to the inland limit of the primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources.

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

**Water Body:** Any river or stream.

**Water crossing:** Any project extending from one bank to the opposite bank of a river, 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 or coastal wetland, excluding forested wetland.

**Wetlands Associated with Rivers:** Wetlands contiguous with or adjacent to a river and, which during normal high water, are connected by surface water to the river

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



## ARTICLE II

### GENERAL USE REGULATIONS

#### Section 201. General Restrictions

- A. No building or land shall hereafter be used or occupied, no new lot shall be created, and no building or part thereof shall be erected, moved or structurally altered, as defined in the current building code adopted by the Town of Freeport, except in conformity with the regulations herein specified for the district within which it is located and in conformity with the regulations contained within the definitions set forth in Section 107 of this Ordinance
- B. The use of any building, structure or land shall comply with the performance standards of this Ordinance. The Codes Enforcement Officer, when reviewing an application for any permit required by law, shall determine that a use complies with all performance standards applicable.
- C. When part of a lot is in a Resource Protection District RPI, that area in the Resource Protection I District shall be counted toward the required minimum lot area of the other District only if all other applicable space standards can be satisfied within that part of the lot which is in the other district.
- D. Notwithstanding any other provision of this Ordinance, an Oversized Lot that is partially located in a RR-1, RR-2, or V-2 Zoning District and partially located in a district within the Shoreland Zone, but that does not have sufficient shore frontage or lot width under Section 306.A.1, may be divided into two or more lots provided that the following conditions are met with respect to each lot created by the division:
  - 1. The majority of the area of the lot is located in the RR-1, RR-2 or V-2 Zoning District outside a district located within the Shoreland Zone;
  - 2. The portion of the lot located in a district within the Shoreland Zone is not used for a residential dwelling unit, for a use requiring a permit from the Project Review Board or the Codes Enforcement Officer, or for any principal or accessory building;
  - 3. The lot meets the minimum road frontage, minimum lot width, and minimum lot area requirements for the RR-1, RR-2 or V-2 Zoning District;
  - 4. The driveway and utilities on the lot are not located within the minimum shore setback;
  - 5. The driveway and utilities on the lot are not located within the portion of the lot in a district within the Shoreland Zone unless the Project Review Board makes a determination that there is no other reasonable alternative for access to the lot from a public way; and

6. Notwithstanding the provisions of 1 M.R.S. section 302, the division of the Oversized Lot is or was accomplished on or after January 1, 1990, by deed, plan or other similar legal document recorded in the Cumberland County Registry of Deeds. The lots, once so created, are not required to be held in separate ownership.

E.. No part of a yard or other open space around any building required for the purpose of complying with the provisions of this Ordinance shall be included as a part of a yard or other open space similarly required for another building, and no lot shall be changed in area after the enactment of this Ordinance so as to reduce the dimensions of any lot below the minimum herein required; except that a single lot of record containing more than one principal structure that was in existence prior to February 20, 1976 and used as dwelling units may be divided so that each structure is contained on a separate lot, if the following conditions are met:

1. The principal structures were in existence and functioning as a year round dwelling unit prior to February 20, 1976 and there are no records in the Town's possession indicating that the structures were unlawful when originally constructed.
2. Each structure is a year round dwelling. As used in this section, the term "year round dwelling" means a structure that is (i) constructed on a permanent foundation; (ii) capable as being used as a permanent residence for one or more persons; (iii) serviced by utilities (including but not limited to, heating, water supply, sewage treatment, electricity and cooking facilities) which are functional during the full calendar year.
3. Each new lot complies individually to the fullest extent possible with the dimensional requirements of this Ordinance.
4. Each lot is serviced by public sewer or a subsurface wastewater disposal system in accordance with Maine law. Each lot is served by public water or a well.
5. A plot plan, drawn to scale, showing the dimensions of the new lots and the locations of structures is submitted to the Codes Enforcement Officer.
6. The Codes Enforcement Officer determines that the division of land complies with all of the requirements of this section and approves the plot plan.

## **Section 202. Non-Conformance**

**A. Continuance of Non-Conformance:** The lawful use of any building, structure, or land which is made nonconforming by reason of the enactment of this Ordinance, or which shall be made non-conforming by reason of a subsequent amendment, may be continued, subject to the provisions in this section. Except as otherwise provided in this Ordinance, a non-conforming condition shall not be permitted to become more non-conforming.

1. **Transfer of Ownership.** Non-conforming structures, lots, and uses may be transferred, and the new owner may continue the non-conforming use or continue to use the non-conforming structure or lot, subject to the provisions of this Ordinance.

2. **Repair and Maintenance.** This Ordinance allows, without a permit, the normal upkeep and maintenance of non-conforming uses and structures including repairs or renovations that do not involve expansion of the non-conforming use or structure, and such other changes in a non-conforming use or structure as federal, state, or local building and safety codes may require.

## **B. Non-Conforming Uses**

1. **Expansions:** Expansions of non-conforming uses are prohibited, except that non-conforming residential uses may, after obtaining a permit from the Project Review Board, be expanded within existing residential structures or within expansions of such structures allowed in Section 202.C.1 below.
2. **Change of Use:** An existing non-conforming use may be changed to another non-conforming use provided that the proposed use has no greater adverse impact on the subject and adjacent properties and resources, including water dependent uses in the Marine Waterfront district, than the former use, as determined by the Project Review Board. The determination of no greater adverse impact shall be made according to criteria listed in Section 404. A seasonal use (as defined by the Maine Subsurface Wastewater Disposal Rules) shall not be converted to a year-round use;
3. **Abandonment:** A non-conforming use of a building, structure or land shall be considered abandoned if, in the case of a building or structure, it remains vacant for a period of twelve (12) months, and in the case of an activity, it ceases for a period of twelve (12) months. Subsequent use shall conform to the regulations specified in this Ordinance for the district in which it is located. except that the Project Review 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 resumptions 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.
4. **Use Begun Prior to Ordinance:** Nothing herein contained shall require any change in plans, construction or structure, the construction of which shall have been diligently prosecuted previous to the date of enactment of this Ordinance, provided complete plans for such a use, building or structure shall have been timely filed with and accepted by the Codes Enforcement Officer;

## **C. Non-Conforming Structures**

1. **Expansion:** A building or structure which is non-conforming with respect to the space requirements of this Ordinance may not be expanded, enlarged or increased unless such expanded or enlarged portion complies with the space requirements of this Ordinance.

All new principal and accessory structures, excluding functionally water-dependent uses, must meet the water body, tributary stream, or wetland setback requirements contained in Section 306.B.1. A non-conforming building or structure may be added to or expanded after obtaining a permit from the Codes Enforcement Officer, if such expansion does not increase the non-conformity of the structure and is in accordance with subparagraphs (a) and (b) below:

- a. Expansion of any portion of a structure within twenty-five (25) feet of the normal high-water line of a water body, tributary stream, or upland edge of a wetland is prohibited, even if the expansion will not increase nonconformity with the water body, tributary stream or wetland setback requirement. Expansion of an accessory structure that is located closer to the normal high-water line of a water body, tributary stream, or upland edge of a wetland than the principal structure is prohibited, even if the expansion will not increase nonconformity with the water body, tributary stream, or wetland setback requirement.
- b. Notwithstanding paragraph (a), above, if a legally existing nonconforming principal structure is entirely located less than twenty-five (25) feet from the normal high-water line of a water body, tributary stream, or upland edge of a wetland, that structure may be expanded as follows, as long as all other applicable municipal land use standards are met and the expansion is not prohibited by Section 202.C.1.
  - i. The maximum total footprint for the principal structure may not be expanded to a size greater than eight hundred (800) square feet or thirty (30%) percent larger than the footprint that existed on January 1, 1989, whichever is greater. The maximum height of the principal structure may not be made greater than fifteen (15) feet or the height of the existing structure within twenty-five (25) feet from the normal high-water line of a water body, tributary stream, or upland edge of a wetland, whichever is greater.
- c. All other legally existing nonconforming principal and accessory structures that do not meet the water body, tributary stream, or wetland setback requirements may be expanded or altered as follows, as long as other applicable municipal land use standards are met and the expansion is not prohibited by Section 202.C.1 or Section 202.C.1.a, above.
  - i. For structures located less than seventy-five (75) feet from the normal high-water line of a water body, tributary stream, or upland edge of a wetland, the maximum combined total footprint for all structures may not be expanded to a size greater than one thousand (1,000) square feet or thirty (30%) percent larger than the footprint that existed on January 1, 1989, whichever is greater. The maximum height of any structure may not be made greater than twenty (20) feet or the height of the existing structure within seventy-five (75) feet from the normal high-water line of a water body, tributary stream, or upland edge of a wetland , whichever is greater.
  - ii. In addition to the limitations in subparagraph (i), for structures that are legally nonconforming due to their location within the Resource Protection 1 District when located at less than two hundred and fifty (250) feet from the normal high-water line of a water body or the upland edge of a wetland, the maximum combined total footprint for all structures may

not be expanded to a size greater than one thousand five hundred (1,500) square feet or thirty percent (30%) larger than the footprint that existed at the time the Resource Protection 1 District was established on the lot, whichever is greater. The maximum height of any structure may not be made greater than twenty-five (25) feet or the height of the existing structure, whichever is greater, except that any portion of those structures located less than seventy-five (75) feet from the normal high-water line of a water body, tributary stream, or upland edge of a wetland must meet the footprint and height limits in Section 202.C.1.b.i and Section 202.C.1.c.i, above.

d. An approved plan for expansion of a nonconforming structure must be recorded by the applicant with the registry of deeds, within ninety (90) days of approval. The recorded plan must show the existing and proposed footprint of the non-conforming structure, the existing and proposed structure height, the footprint of any other structures on the parcel, the shoreland zone boundary and evidence of approval by the municipal review authority.

2. Foundations: Whenever a new, enlarged, or replacement foundation is constructed under a non-conforming building or structure, the building or structure and new foundation must be placed such that the setback requirement is met to the greatest extent practical extent as determined by the Codes Enforcement Officer, basing its decision on the criteria specified in Section 202.C.5, Relocation, below.

3. Reconstruction or Replacement:

Any non-conforming structure which is located less than the required setback from a water body, tributary stream, or wetland and which is removed by **fifty percent (50%) or less of the market value**, or damaged or destroyed by fifty percent (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 or thereafter conform with the space requirements of this Ordinance unless a variance from such requirement is granted by the Board of Appeals.

If a non-conforming building or structure is removed, or destroyed or damaged by **fifty percent (50%) or more of market value** regardless of the cause, the building or structure may be reconstructed or replaced provided that a permit is obtained within eighteen (18) months of said damage, destruction, or removal, and provided compliance with all setback requirements is met to the greatest practical extent as determined by the Codes Enforcement Officer in accordance with the purposes of this Ordinance. In no case shall a building or structure be reconstructed or restored so as to increase its non-conformity. If the reconstructed or replacement structure is less than the required setback it shall not be any larger than the original structure, except as allowed in Section 202.C.1 Expansions, above, as determined by the non-conforming footprint and height of the reconstructed or replaced structure at its new location. If the total footprint of the original structure can be relocated or reconstructed beyond the required setback area, no portion of the relocated or reconstructed

structure shall be replaced or constructed at less than the required setback for the 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 202.C.5 below.

In determining whether the building or structure reconstruction or restoration meets the shore setback to the greatest practical extent, the Codes Enforcement Officer shall consider, in addition to the criteria in Section 202.C.5, below, the physical condition and type of the existing foundation, if any.

4. Use of Non-Conforming Building: Notwithstanding any space and bulk requirements of the Freeport Zoning Ordinance, a non-conforming building or structure may be used for any use allowed in the zoning district or shoreland zoning district where it is located, unless the definition of such use contained in Section 107 of this Ordinance or the district regulations contain specific dimensional requirements peculiar to the use which cannot be met in the existing structure or on the existing lot.

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

In determining whether the building or structure relocation meets the setback to the greatest practical extent, the Codes Enforcement Officer shall consider the size of the lot, the slope of the land, the potential for soil erosion, the location of other buildings and 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 required setback in order to relocate a structure, the Codes Enforcement Officer shall require replanting of native vegetation to compensate for the destroyed vegetation in accordance with Section 306.Q. In addition, the area from which the relocated structure was removed must be replanted with vegetation. Replanting shall be required as follows:

- a. Trees removed in order to relocate a structure must be replanted with at least one native tree, three (3) feet in height, for every tree removed. If more than five (5) trees are planted, no one species of tree shall make up more than fifty percent (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 be similar in nature to the native vegetation and/or ground cover that was disturbed, destroyed or removed.

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

- 6. Construction Begun Prior to Ordinance: Nothing herein contained shall require any change in plans, construction or structure, the construction of which shall have been diligently prosecuted previous to the date of enactment of this Ordinance provided complete plans for such a building or structure shall have been timely filed with and accepted by the Codes Enforcement Officer.
- 7. Residential Dwelling: Any existing residential dwelling and accessory buildings which, at the effective date of adoption or amendment of this Ordinance, becomes non-conforming because of failure to satisfy either the use standards or the space standards of the district in which it is located, may be extended or expanded or reconstructed provided that said extension, expansion or reconstruction is in compliance with all provisions of this Ordinance.

#### **D. Non-Conforming Lots of Record:**

- 1. **Non-conforming Lots:** A non-conforming lot of record as of the effective date of this Ordinance or amendment thereto may be built upon, without the need for a variance, provided that such lot is in separate ownership and not contiguous with any other lot in the same ownership, and that all provisions of this Ordinance except lot area, lot width and shore frontage can be met. Variances relating to setback or other requirements not involving lot area, lot width or shore frontage shall be obtained by action of the Board of Appeals.
- 2. **Contiguous Built Lots:** If two or more contiguous lots or parcels are in a single or joint ownership of record at the time of adoption of this Ordinance, if all or part of the lots do not meet the dimensional requirements of this Ordinance, and if a principal use or structure exists on each lot, the non-conforming lots may be conveyed separately or together, provided that the State Minimum Lot Size Law (12 M.R.S.A. sections 4807-A through 4807-D) and the State of Maine Subsurface Wastewater Disposal Rules are complied with.
- 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.

## **Section 203. Changes and Amendments**

This Ordinance may be amended using the same ordinance amendment process detailed in Section 203 of the Town of Freeport Zoning Ordinance.

In addition, 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.



## ARTICLE III

### ESTABLISHMENT OF ZONING DISTRICTS

#### **Section 301. Shoreland Zoning Districts**

For purposes of this Ordinance the Town of Freeport is hereby divided into the following shoreland zoning districts and as shown on the Town of Freeport, Official Zoning Map:

Resource Protection District I

Stream Protection

Shoreland Area

Marine Waterfront District

#### **Section 302. Zoning Map**

The Zoning Districts and Shoreland Zone of the Town are shown on a map entitled “Town of Freeport, Official Zoning Map”, digital copy adopted February 26, 2013, and as amended (INSERT DATE OF ADOPTION), by the Freeport Town Council and attested by the Town Clerk, which accompanies and which, with all explanatory matter thereon, is part of the Town of Freeport Zoning Ordinance.

Field verification of any distance indicated on the map from the normal high-water line of the water body or the upland edge of the wetland or the 100-year flood plains when associated with rivers and adjacent to tidal waters in the Shoreland Zone is required to determine the actual boundary of the zone.

Regardless of the existence of other printed copies of the Zoning Map which from time to time may be made or published, the Official Zoning Map filed in the municipal office of the Town shall be the final authority as to the current zoning status of the land and water areas, buildings and other structures in the Town.

Before the Planning Board recommends changes to the Zoning Map, the Planning Board shall notify, by mail, those property owners who would be affected by such a change, as required by the Rules of Order of the Freeport Planning Board, the Town of Freeport Zoning Ordinance and any applicable State laws.

If amendments are made to the Freeport Zoning Map, that effect the Shoreland Zone, 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.

### **Section 303. Zoning District Boundaries**

A. Where uncertainty exists with respect to the boundary of any district as shown on the Town of Freeport Zoning Map, the following rules shall apply:

- (1) Where district boundaries are so indicated as to approximately follow lot lines, such lot lines shall be construed to be such district boundaries;
- (2) Where district boundaries are indicated as approximately following the center lines of roads, streets, highways, streams, rivers or other public/semi-public rights of way, such center lines shall be construed to be such boundaries;
- (3) Where uncertainty exists in determining the precise location of any district boundary line, the Board of Appeals shall interpret the intent and purpose of the zoning map.

### **Section 304. Establishment of Districts**

A. Resource Protection 1 (RP-1)– The Resource Protection1 District includes areas in which development would adversely affect water quality, productive habitat, or biological ecosystems. The space and bulk standards of the adjacent district apply in this District. This district includes 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 Shoreland Area and/or Marine Waterfront Districts need not be included within the Resource Protection District:

1. Floodplains as defined by the one-hundred (100)-year floodplain as designated on the Federal Emergency Management Agency’s (FEMA) Flood Insurance Rate Maps or Flood Hazard Boundary Maps (dated January 17, 1985), or the flood of record, or in the absence of these, by soil types identified as recent floodplain soils. This district is limited to one-hundred (100) year floodplains adjacent to tidal waters.
2. Areas of two or more contiguous acres with sustained slopes of twenty percent (20%) or greater.
3. Areas of two (2) or more contiguous acres supporting wetland vegetation and hydric soils, which are not part of a freshwater or coastal wetland as defined, and which is not surficially connected to a water body during the period of normal high water.
4. Areas shown on the Town of Freeport, Official Zoning Map pertaining to source water protection for drinking water supply.

B. Shoreland Area – The Shoreland Area (SA) is an overlay district. It includes the land area located within two hundred and fifty (250) feet, horizontal distance, of the normal high-water line of any river; within two hundred and fifty (250) feet, horizontal distance, of the upland edge of a coastal wetland, including all areas affected by tidal action; within two hundred and fifty (250) feet of the upland edge of a freshwater wetland; excluding those areas in Marine Waterfront, Resource Protection 1 or Stream Protection. There may be permitted uses listed in the underlying zoning district(s) and uses listed in Section 305. Table of Land Uses in the Shoreland Zone; where there is a conflict between the two, Section 305. Table of Land Uses in the Shoreland Zone shall govern.

C. Stream Protection – The Stream Protection(SP) District includes all land areas within seventy-five (75) feet, horizontal distance, of the normal high water line of a stream as defined in this Ordinance, exclusive of those areas within two hundred and fifty (250) feet, horizontal distance, of the upland edge of a freshwater or coastal wetland. Where a stream and another shoreland zone intersect, that land area shall be regulated under the terms of the other shoreland zone.

D. Marine Waterfront – The Marine Waterfront (MW) District includes areas where the existing predominant pattern of development is functionally water dependent uses. The intent of this district is to recognize and preserve the marine heritage of Freeport and to permit services essential to fishing and boating. There is no minimum lot area, lot frontage, or shore setback requirements in this area, the setback requirements from the front, side, and rear property lines shall be fifteen (15) feet.

## **Section 305. Table of Land Uses In the Shoreland Zone**

<b><u>Key to Table 1</u></b>	
<u>Yes</u>	<u>Allowed (no permit required but the use must comply with all applicable land use standards.)</u>
<u>No</u>	<u>Prohibited</u>
<u>PRB</u>	<u>Allowed with permit issued by the Project Review Board</u>
<u>CWC</u>	<u>Allowed with permit issued by the Coastal Waters Commission</u>
<u>CEO</u>	<u>Allowed with permit issued by the Codes Enforcement Officer</u>
<u>LPI</u>	<u>Allowed with permit issued by the Local Plumbing Inspector</u>
<b><u>Abbreviations</u></b>	
<u>SP</u>	<u>Stream Protection</u>
<u>RP-1</u>	<u>Resource Protection 1</u>
<u>MW</u>	<u>Marine Waterfront</u>
<u>SA</u>	<u>Shoreland Area</u>

**TABLE 1. LAND USES IN THE SHORELAND ZONE**

<b><u>Land uses</u></b>	<b><u>Districts</u></b>			
	<u>SP</u>	<u>RP-1</u>	<u>MW</u>	<u>SA</u>
1. <u>Non-intensive recreational uses not requiring structures such as hunting, fishing and hiking</u>	<u>yes</u>	<u>yes</u>	<u>yes</u>	<u>yes</u>
2. <u>Motorized vehicular traffic on existing roads and trails</u>	<u>yes</u>	<u>yes</u>	<u>yes</u>	<u>yes</u>
3. <u>Clearing or removal of vegetation for activities other than timber harvesting</u>	<u>CEO</u>	<u>CEO</u> <sup>1</sup>	<u>yes</u>	<u>yes</u>
4. <u>Fire prevention activities</u>	<u>yes</u>	<u>yes</u>	<u>yes</u>	<u>yes</u>
5. <u>Wildlife management practices</u>	<u>yes</u>	<u>yes</u>	<u>yes</u>	<u>yes</u>
6. <u>Soil and water conservation practices</u>	<u>yes</u>	<u>yes</u>	<u>yes</u>	<u>yes</u>
7. <u>Mineral exploration</u>	<u>no</u>	<u>yes</u> <sup>2</sup>	<u>yes</u> <sup>2</sup>	<u>yes</u> <sup>2</sup>
8. <u>Mineral extraction</u>	<u>no</u>	<u>no</u>	<u>no</u>	<u>no</u>
9. <u>Surveying and resource analysis</u>	<u>yes</u>	<u>yes</u>	<u>yes</u>	<u>yes</u>
10. <u>Emergency operations</u>	<u>yes</u>	<u>yes</u>	<u>yes</u>	<u>yes</u>
11. <u>Agriculture</u>	<u>CEO</u>	<u>CEO</u>	<u>yes</u>	<u>yes</u>

<u>12. Aquaculture</u>	<u>PRB</u>	<u>PRB</u>	<u>PRB</u>	<u>PRB</u>
<u>13. Principal structures and uses</u>				
a. One and two family residential, including driveways	<u>no</u>	<u>no</u> <sup>6</sup>	<u>no</u>	<u>CEO</u>
b. Multi-unit residential	<u>no</u>	<u>no</u>	<u>no</u>	<u>PRB</u> <sup>8</sup>
c. Commercial	<u>no</u>	<u>no</u>	<u>PRB</u> <sup>3</sup>	<u>PRB</u> <sup>8</sup>
d. Industrial	<u>no</u>	<u>no</u>	<u>PRB</u> <sup>3</sup>	<u>no</u>
e. Governmental and institutional	<u>no</u>	<u>no</u>	<u>no</u>	<u>PRB</u> <sup>8</sup>
f. Small non-residential facilities for educational, scientific, or nature interpretation purposes	<u>no</u>	<u>no</u>	<u>no</u>	<u>PRB</u> <sup>8</sup>
<u>14. Structures accessory to allowed uses</u>	<u>PRB</u>	<u>PRB</u>	<u>CEO</u>	<u>CEO</u>
<u>15. Piers, docks, wharfs, bridges and other structures and uses extending over or below the normal high-water line or within a wetland</u>				
a. Temporary (tidal)	<u>CWC</u>	<u>CWC</u>	<u>CWC</u>	<u>CWC</u>
b. Permanent (tidal)	<u>CWC</u>	<u>CWC</u>	<u>CWC</u> <sup>3</sup>	<u>CWC</u>
c. Temporary (non-tidal)	<u>CEO</u>	<u>CEO</u>	<u>CEO</u>	<u>CEO</u>
d. Permanent (non-tidal)	<u>PRB</u>	<u>PRB</u>	<u>PRB</u> <sup>3</sup>	<u>PRB</u>
<u>16. Shoreline stabilization</u>	<u>PRB</u>	<u>PRB</u>	<u>PRB</u>	<u>PRB</u>
<u>17. Conversions of seasonal residences to year-round residences</u>	<u>no</u>	<u>no</u>	<u>no</u>	<u>LPI</u>
<u>18. Home occupations</u>	<u>PRB</u>	<u>PRB</u>	<u>PRB</u>	<u>CEO</u>
<u>19. Essential services</u>	<u>CEO</u> <sup>4</sup>	<u>CEO</u> <sup>4</sup>	<u>CEO</u>	<u>CEO</u>
a. Roadside distribution lines (34.5kV and lower)	<u>CEO</u> <sup>4</sup>	<u>CEO</u> <sup>4</sup>	<u>yes</u> <sup>7</sup>	<u>yes</u> <sup>7</sup>
b. Non-roadside or cross-country distribution lines involving ten poles or less in the shoreland zone	<u>PRB</u> <sup>4</sup>	<u>PRB</u> <sup>4</sup>	<u>PRB</u>	<u>PRB</u>
c. Non-roadside or cross-country distribution lines involving eleven or more poles in the shoreland zone	<u>PRB</u> <sup>4</sup>	<u>PRB</u> <sup>4</sup>	<u>PRB</u>	<u>PRB</u>
d. Other essential services	<u>PRB</u> <sup>4</sup>	<u>PRB</u> <sup>4</sup>	<u>PRB</u>	<u>PRB</u>
<u>20. Service drops, as defined, to allowed uses</u>	<u>yes</u>	<u>yes</u>	<u>yes</u>	<u>yes</u>
<u>21. Private sewage disposal systems for allowed uses</u>	<u>LPI</u>	<u>LPI</u>	<u>LPI</u>	<u>LPI</u>
<u>22. Public and private recreational areas involving minimal structural development</u>	<u>PRB</u>	<u>PRB</u>	<u>PRB</u> <sup>3</sup>	<u>CEO</u>
<u>23. Individual, private campsites</u>	<u>CEO</u>	<u>CEO</u>	<u>CEO</u>	<u>CEO</u>
<u>24. Campgrounds</u>	<u>no</u>	<u>no</u>	<u>no</u>	<u>PRB</u>
<u>25. Road construction</u>	<u>no</u>	<u>no</u> <sup>5</sup>	<u>PRB</u> <sup>3</sup>	<u>CEO</u>
<u>26. Parking facilities associated with permitted uses</u>	<u>no</u>	<u>no</u>	<u>PRB</u> <sup>3</sup>	<u>PRB</u>
<u>27. Marina, boat yard, ship chandlery, commercial fishery, municipal wharf</u>	<u>no</u>	<u>no</u>	<u>PRB</u>	<u>no</u>
<u>28. Filling and earth moving of &lt;10 cubic yards</u>	<u>no</u>	<u>yes</u> <sup>9</sup>	<u>yes</u> <sup>9</sup>	<u>yes</u> <sup>9</sup>
<u>29. Filling and earth moving of &gt;10 cubic yards</u>	<u>no</u>	<u>PRB</u>	<u>CEO</u>	<u>CEO</u>
<u>30. Signs</u>	<u>CEO</u>	<u>CEO</u>	<u>CEO</u>	<u>CEO</u>

- 
- <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> Functionally water-dependent uses and uses accessory to such water dependent uses only.
- <sup>4</sup> See further restrictions in Section 306.K.2.
- <sup>5</sup> Except as provided in Section 306.G.3
- <sup>6</sup> Single family residential structures may be allowed by special exception only according to the provisions of Section 407. Special Exceptions. Two-family residential structures are prohibited.
- <sup>7</sup> Permit not required but must file a written “notice of intent to construct” with Codes Enforcement Officer.
- <sup>8</sup> In the Shoreland Area, uses are only permitted as allowed in the underlying zoning district(s).
- <sup>9</sup> Requires notification to the Codes Enforcement Officer per Section 306.R.1.

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.
- 

## **Section 306. Land Use Standards**

Notwithstanding the standards of the underlying zoning district(s), all land use activities within the Shoreland Zone, shall also conform with the following provisions if applicable:

### **A. Space Standards:**

- |                                   |                |             |
|-----------------------------------|----------------|-------------|
| 1. Residential per dwelling unit; | Minimum        | Minimum     |
|                                   | shore frontage | lot area    |
| a. Adjacent to tidal areas -      | 150 feet       | 30,000 s.f. |
| b. Adjacent to non-tidal areas -  | 200 feet       | 40,000 s.f. |
2. All non-residential uses subject to review by the Project Review Board or the Codes Enforcement Officer;
- |                                  |          |             |
|----------------------------------|----------|-------------|
| a. Adjacent to tidal areas -     | 200 feet | 40,000 s.f. |
| b. Adjacent to non-tidal areas - | 300 feet | 60,000 s.f. |
3. Land below the normal high water line of a water body or upland edge of a wetland and land beneath roads serving two (2) lots shall not be included toward calculating minimum lot area.
4. Lots located on opposite sides of a public 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.
5. 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.
6. Setback requirements from property lines other than from the resource being protected shall be those required in the underlying district unless otherwise listed in Section 304 above.
7. If more than one residential dwelling unit, principal governmental, institutional, commercial or industrial structure or use, or combination thereof, is constructed or

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

## **B. Principal and Accessory Structures**

1. All new principal and accessory structures shall be setback at least seventy-five (75) feet, horizontal distance, from the normal high-water line of a waterbody, tributary stream or the upland edge of a wetland. In the Resource Protection 1 District, the setback requirement shall be two hundred and fifty (250) feet, horizontal distance, except for structures, roads, parking spaces or other regulated objects specifically allowed in that district in which case the setback requirements specified above shall apply. This setback does not apply to piers, docks, and retaining walls necessary for the control of shoreline erosion, nor to other functionally water-dependent uses.
2. For principal and accessory structures, water and wetland setback measurements shall be taken from the top of a coastal bluff that has been identified on Coastal Bluff maps as being “highly unstable” or “unstable” by the Maine Geological Survey pursuant to its “Classification of Coastal Bluffs” and published on the most recent Coastal Bluff map (Freeport Quadrangle, Maine and/or Yarmouth Quadrangle, Maine). If the applicant and the permitting official(s) are in disagreement as to the specific location of a “highly unstable” or “unstable” bluff, or where the top of the bluff is located, the applicant may at his or her expense, employ a Maine Registered Professional Engineer, a Maine Certified Soil Scientist, a Maine State Geologist, or other qualified individual to make a determination. If agreement is still not reached, the applicant may appeal the matter to the Board of Appeals.
3. With the exception of the Marine Waterfront District, non-vegetated surfaces shall not exceed a total of twenty (20) percent of the portion of the lot located within the shoreland zone. This limitation does not apply to public boat launching facilities regardless of the district in which the facility is located.

In the Marine Waterfront District, non-vegetated surfaces shall not exceed a total of seventy (70) percent of the portion of the lot located within the shoreland zone.

For the purposes of calculating lot coverage, non-vegetated surfaces include, but are not limited to the following: structures, driveways, parking areas, and other areas from which vegetation has been removed. Naturally occurring ledge and rock outcroppings are not counted as non-vegetated surfaces when calculating lot coverage for lots of record on March 24, 1990, and in continuous existence since that date.
4. Principal or accessory structures and expansions of existing structures which are permitted in the Marine Waterfront District, Resource Protection 1, Stream Protection, and Shoreland Area, shall not exceed thirty-five (35) feet in height. This provision shall not apply to structures such as transmission lines, windmills, antennas, and similar structures having no floor area.
5. Notwithstanding the requirements stated above, stairways or similar structures may be allowed with a permit from the Codes 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 high water line of a water body or the 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 the applicant demonstrates that no other reasonable access alternative exists on the property.

6. 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 one hundred (100) year flood, the flood of record, or in the absence of these, the flood as defined by soil types identified as recent flood-plain soils. In those municipalities that participate in the National Flood Insurance Program and have adopted the April 2005 version, or later version, of the Floodplain Management Ordinance, accessory structures may be placed in accordance with the standards of that ordinance and need not meet the elevation requirements of this paragraph.
7. The setback requirements from all other property lines are as outlined in the underlying zoning district and as outlined in Section 304.D above except that piers, docks, wharfs, a shoreline access stairways, and other similar structures do not need to meet lot line setbacks.
8. 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 twenty-five (25) feet, horizontal distance, from the normal high-water line of a water body, tributary stream, or upland edge of a wetland;
  - c. The site where the retaining wall will be constructed is legally existing lawn or is a site eroding from lack of naturally occurring vegetation, and which cannot be stabilized with vegetative plantings;
  - d. The total height of the wall(s), in the aggregate, are no more than 24 inches;
  - e. Retaining walls are located outside of the one-hundred (100) year floodplain on rivers, streams, coastal wetlands, and tributary streams, as designated on the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps or Flood Hazard Boundary Maps, or the flood of record, or in the absence of these, by soil types identified as recent flood plain soils.
  - f. The area behind the wall is revegetated with grass, shrubs, trees, or a combination thereof, and no further structural development will occur within the setback area, including patios and decks; and

- g. A vegetated buffer area is established within twenty-five (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 fifteen (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 306.N.2.a. may traverse the buffer;

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

See regulations in Chapter 31, Town of Freeport Coastal Waters Ordinance

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

**E. Individual Private Campsites.**

Individual private campsites not associated with campgrounds, outdoor recreation and/or outdoor recreation school, are allowed provided the following conditions are met:



1. One campsite per lot existing on the effective date of this Ordinance, or thirty thousand (30,000) square feet of lot area within the shoreland zone, whichever is less, may be permitted.
2. When an individual private campsite is proposed on a lot that contains another principal use and/or structure, the lot must contain the minimum lot dimensional requirements for the principal structure and/or use, and the individual private campsite separately.
3. Campsite placement on any lot, including the area intended for a recreational vehicle or tent platform, shall be set back one hundred (100) feet, horizontal distance, from the normal high-water line of a great pond classified GPA or river flowing to a great pond classified GPA, and seventy-five (75) feet, horizontal distance, from the normal high-water line of other water bodies, tributary streams, or the upland edge of a wetland.
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. 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, except that in the Marine Waterfront District, parking areas shall be set back at least twenty-five (25) feet horizontal distance from the shoreline or tributary stream. The setback requirement for parking areas serving public boat launching facilities in other Districts may be reduced to no less than fifty (50) feet from the normal high-water line or upland edge of a wetland if the Project Review Board finds that no other reasonable alternative exists.
2. Parking areas shall be adequately sized for the proposed use and shall be designed to prevent 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: 9 feet wide by 18 ½ feet long, for boat trailers add an additional 20 feet.
- b. Internal travel aisles: 20 feet

## **G. Roads and driveways**

New public roads shall meet the requirements of the Chapter 26 – Town of Freeport Street Acceptance Ordinance. Where the standards described below are more stringent, they shall be required. The following standards shall apply to the construction of roads and/or driveways and drainage systems, culverts and other related features.

1. Roads and driveways shall be set back at least seventy-five (75) feet 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 Project Review Board. If no 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 greater than twenty (20) percent the road and/or driveway shall be increased by ten (10) feet, horizontal distance, for each five (5) percent increase in slope above twenty (20) percent.

This section 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 operational necessity, excluding temporary docks for recreational uses. Roads and driveways providing access to permitted structures within the setback area shall comply fully with the requirements of this Section except for that portion of the road or driveway necessary for direct access to the structure.

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 roads and driveways are prohibited in the Resource Protection 1 District except that the Project Review Board may grant a permit to construct a road or driveway to provide access to a permitted use in the district upon a finding that no reasonable alternative route or location is available outside the district. When a road or driveway is permitted in the Resource Protection 1 District the road shall be set back as far as practicable from the normal high-water line of a water body, tributary stream, or upland edge of a wetland.
4. Road 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 306.R below.

5. Road and driveway grades shall be no greater than ten (10) percent except for segments of less than two hundred (200) feet.
6. 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 a vegetated buffer strip at least fifty (50) feet, plus two times a number equal to the percentage of 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 shall be diffused or spread out to promote infiltration of the runoff and to minimize channelized flow of the drainage through the buffer strip.
7. Ditch relief (cross drainage) culverts, drainage dips and water turnouts shall be installed in a manner effective in directing drainage onto a vegetated buffer strip 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. 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.
  - d. 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.
8. 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.

## **H. Signs:**

Notwithstanding the standards of Town of Freeport Chapter 23 Sign Ordinance, the following provisions shall govern the use of signs in Resource Protection 1, Stream Protection, and Shoreland Areas:

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 Shoreland Area, 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.

## **I. 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 storm waters.
2. Storm water runoff control systems shall be maintained as necessary to ensure proper functioning.

## **J. Septic Waste Disposal**

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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.

## **K. Essential Services**

1. Where feasible, the installation of public utility service shall be limited to existing public and private 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.

## **L. Mineral Exploration**

Mineral exploration to determine the nature or extent of mineral resources shall be accomplished by hand sampling, test boring, or other methods which create minimal disturbance 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.

## **M. 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 seventy-five (75) feet horizontal distance of water bodies, tributary streams, or wetlands within the Shoreland Zone. 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 Project Review Board and approved by the Town Engineer using the Department of Environmental Protection's Best Management Practices, except that manure may be spread on any home garden less than ten thousand (10,000) square feet outside of the seventy-five (75) foot shore setback area. Non-conformance with the provisions of said plan shall be considered to be a violation of this Ordinance.
4. There shall be no new tilling of soil within seventy-five (75) feet, horizontal distance of water bodies, and coastal wetlands nor within twenty-five (25) feet, horizontal distance, of tributary streams and freshwater wetlands within the Shoreland Zone. Operations in existence on July 2, 1992, and not in conformance with this provision may be maintained.

5. After July 2, 1992, newly established livestock grazing areas shall not be permitted within seventy-five (75) feet, horizontal distance of all water bodies, nor within twenty-five (25) feet, horizontal distance, of tributary streams and wetlands within the Shoreland Zone. Livestock grazing associated with presently existing 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.

#### **N. Clearing of Vegetation for Activities Other than Timber Harvesting**

1. In a Resource Protection 1 District the cutting or removal of vegetation shall be limited to that which is necessary for uses expressly authorized in that district, except to remove hazard trees as described in Section 306.O
2. Except in areas as described in Section 306.N.1, above, within the strip of land extending seventy-five (75) feet , horizontal distance, from the normal high water line of a water body, tributary stream, or the upland edge of a wetland, a buffer strip of vegetation shall be preserved as follows:
  - a. There shall be no cleared opening greater than two hundred and fifty (250) square feet in the forest canopy (or other existing woody vegetation if a forested canopy is not present) as measured from the outer limits of the tree or shrub crown; however, a single footpath not to exceed six (6) feet in width as measured between tree trunks and/or shrub stems is allowed for accessing the shoreline provided that a cleared line of sight to the water through the buffer strip is not created.
  - b. Selective cutting of trees within the buffer strip is allowed provided that a well distributed stand of trees and other natural vegetation is maintained. For the purposes of this section a “well-distributed stand of trees” adjacent to water bodies, tributary streams, and wetlands, is defined as maintaining a minimum rating score of 16 points in each 25-foot by 50-foot rectangular (1250 sq. ft.) area as determined on plans prepared in accordance with the following rating system:

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

The following shall govern in applying this point system:

- i. The twenty five (25) foot by fifty (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 this Ordinance;
- v. Where conditions permit, no more than fifty percent (50%) of the points on any twenty five (25) foot by fifty (50) foot rectangular area may consist of trees greater than twelve (12) inches in diameter.

For the purposes of this section, “other natural vegetation” is defined as retaining existing vegetation under three (3) feet in height and other ground cover and retaining at least five (5) saplings less than two (2) inches in diameter at four and one-half (4 ½) feet above ground level for each twenty-five (25)-foot by 50-foot rectangular (1250 sq. ft.) area. If five (5) saplings do not exist, no woody stems less than two (2) inches in diameter can be removed until five (5) saplings have been recruited into the plot.

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

- c. Pruning of tree branches on the bottom one-third (1/3) of the tree is permitted.
- d. In order to protect water quality and wildlife habitat, existing vegetation under three (3) feet in height and other ground cover, including leaf litter and the forest duff layer, shall not be cut covered, or removed, except to provide for a footpath or other permitted use as described in Section 306.N.2 and 2.a, above.
- e. 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 306.N.2.

- f. In order to maintain a buffer strip of vegetation, when the removal of storm-damaged, dead or hazard trees results in the creation of cleared openings, these openings shall be replanted with native tree species in accordance with Section 306.O, below, unless existing new tree growth is present.

3. Outside of the seventy-five (75) foot shore setback:

- a. At distances greater than seventy-five (75) feet, horizontal distance, from the normal high-water line of all water bodies, 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 four and one-half (4 ½) feet above ground level. Tree removal in conjunction with the development of permitted uses shall be included in the forty (40) percent calculation. For the purposes of these standards volume may be considered to be equivalent to basal area.

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

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

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

- 1. Hazard trees in the shoreland zone may be removed without a permit after consultation with the Code Enforcement Officer if the following requirements are met:
  - a. Within the shoreline buffer, if the removal of a hazard tree results in a cleared opening in the tree canopy greater than two hundred and fifty (250) square feet, replacement with native tree species is required, unless there is new tree growth already present. New tree growth must be as near as practicable to where the hazard tree was removed and be at least two (2) inches in diameter, measured at four and one half (4.5) feet above the ground level. If new growth is not present, then replacement trees shall consist of native species and be at least four (4) feet in height, and be no less than two (2) inches in diameter. Stumps may not be removed.



- b. Outside of the shoreline buffer, when the removal of hazard trees exceeds forty (40) percent of the volume of trees four (4) inches or more in diameter, measured at four and one half (4.5) feet above ground level in any ten (10) year period, and/or results in cleared openings exceeding twenty-five (25) percent of the lot area within the shoreland zone, or ten thousand (10,000) square feet, whichever is greater, replacement with native tree species is required, unless there is new tree growth already present. New tree growth must be as near as practicable to where the hazard tree was removed and be at least two (2) inches in diameter, measured at four and one half (4.5) feet above the ground level. If new growth is not present, then replacement trees shall consist of native species and be at least two (2) inches in diameter, measured at four and one half (4.5) feet above the ground level.
  - c. The removal of standing dead trees, resulting from natural causes, is permissible without the need for replanting or a permit, as long as the removal does not result in the creation of new lawn areas, or other permanently cleared areas, and stumps are not removed. For the purposes of this provision dead trees are those trees that contain no foliage during the growing season.
  - d. The Code Enforcement Officer may require the property owner to submit an evaluation from a licensed forester or arborist before any hazard tree can be removed within the shoreland zone.
  - e. The Code Enforcement Officer may require more than a one-for-one replacement for hazard trees removed that exceed eight (8) inches in diameter measured at four and one half (4.5) feet above the ground level.
2. Storm-damaged trees in the shoreland zone may be removed without a permit after consultation with the Code Enforcement Officer if the following requirements are met:
- a. Within the shoreline buffer, when the removal of storm-damaged trees results in a cleared opening in the tree canopy greater than two hundred and fifty (250) square feet, replanting is not required, but the area shall be required to naturally revegetate, and the following requirements must be met:
    - i. The area from which a storm-damaged tree is removed does not result in new lawn areas, or other permanently cleared areas;
    - ii. Stumps from the storm-damaged trees may not be removed;
    - iii. Limbs damaged from a storm event may be pruned even if they extend beyond the bottom one-third (1/3) of the tree; and

- iv. If after one growing season, no natural regeneration or regrowth is present, replanting of native tree seedlings or saplings is required at a density of one seedling per every eighty (80) square feet of lost canopy.
- b. Outside of the shoreline buffer, if the removal of storm damaged trees exceeds forty percent (40%) of the volume of trees four (4) inches or more in diameter, measured at four and one half (4.5) feet above the ground level in any ten (10) year period, or results, in the aggregate, in cleared openings exceeding twenty-five percent (25%) of the lot area within the shoreland zone or ten thousand (10,000) square feet, whichever is greater, and no natural regeneration occurs within one growing season, then native tree seedlings or saplings shall be replanted on a one-for-one basis.

**P. Exemptions to Clearing and Vegetation Removal Requirements**

The following activities are exempt from the clearing and vegetation removal standards set forth in Section 306.N, provided that all other applicable requirements of this chapter are complied with, and the removal of vegetation is limited to that which is necessary:

1. The removal of vegetation that occurs at least once every two (2) years for the maintenance of legally existing areas that do not comply with the vegetation standards in this chapter, such as but not limited to cleared openings in the canopy or fields. Such areas shall not be enlarged, except as allowed by this section. If any of these areas, due to lack of removal of vegetation every two (2) years, reverts back to primarily woody vegetation, the requirements of Section 306.N apply;
2. The removal of vegetation from the location of allowed structures or allowed uses, when the shoreline setback requirements of Section 306.B are not applicable;
3. The removal of vegetation to install a replacement subsurface wastewater disposal system to serve a legally existing non-conforming structure, in compliance with the Maine Subsurface Wastewater Disposal Rules, when the replacement system cannot be designed to comply with shore setbacks;
4. The removal of vegetation from the location of public swimming areas associated with an allowed public recreational facility;
5. The removal of vegetation associated with allowed agricultural uses, provided best management practices are utilized, and provided all requirements of Section 306.N are complied with;
6. The removal of vegetation associated with brownfields or voluntary response action program (VRAP) projects provided that the removal of vegetation is necessary for remediation activities to clean-up contamination on a site in a general development district, commercial fisheries and maritime activities district or other equivalent zoning

district approved by the Commissioner that is part of a state or federal brownfields program or a voluntary response action program pursuant 38 M.R.S.A section 343-E, and that is located along:

- a. A coastal wetland; or
- b. A river that does not flow to a great pond classified as GPA pursuant to 38 M.R.S.A section 465-A.

7. The removal of non-native invasive vegetation species, provided the following minimum requirements are met:

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

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

## **Q.     Revegetation Requirements**

When revegetation is required in response to violations of the vegetation standards set forth in Section 306.N, to address the removal of non- native invasive species of vegetation, or as a mechanism to allow for development that may otherwise not be permissible due to the vegetation standards, including removal of vegetation in conjunction with a shoreline stabilization project, the revegetation must comply with the following requirements.

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

occur in the same area and at a density comparable to the pre-existing vegetation, in which case revegetation must occur along the same segment of shoreline and as close as possible to the area where vegetation was removed:

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

4. Revegetation activities must meet the following requirements for trees and saplings:

- a. All trees and saplings removed must be replaced with native noninvasive species;
- b. Replacement vegetation must at a minimum consist of saplings;
- c. If more than three (3) trees or saplings are planted, then at least three (3) different species shall be used;
- d. No one species shall make up fifty percent (50%) or more of the number of trees and saplings planted;
- e. If revegetation is required for a shoreline stabilization project, and it is not possible to plant trees and saplings in the same area where trees or saplings were removed, then trees or sapling must be planted in a location that effectively reestablishes the screening between the shoreline and structures; and
- f. A survival rate of at least eighty (80) percent of planted trees or saplings is required for a minimum five (5) years period.

5. Revegetation activities must meet the following requirements for woody vegetation and other vegetation under three (3) feet in height:

- a. All woody vegetation and vegetation under three (3) feet in height must be replaced with native noninvasive species of woody vegetation and vegetation under three (3) feet in height as applicable;
- b. Woody vegetation and vegetation under three (3) feet in height shall be planted in quantities and variety sufficient to prevent erosion and provide for effective infiltration of stormwater;
- c. If more than three (3) woody vegetation plants are to be planted, then at least three (3) different species shall be planted;
- d. No one species shall make up fifty percent (50%) or more of the number of planted woody vegetation plants; and
- e. Survival of planted woody vegetation and vegetation under three feet in height must be sufficient to remain in compliance with the standards contained within this chapter for minimum of five (5) years

6. Revegetation activities must meet the following requirements for ground vegetation and ground cover:

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

**R. Erosion and Sedimentation Control**

- 1. Notification of the Codes Enforcement Officer (CEO) shall be required for filling, earthmoving and excavation activities. If the CEO determines that unstable soil conditions may result from the activity, they shall require that erosion and sedimentation control measures be instituted and shall include, where applicable, the measures described below:
- 2. 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 Codes Enforcement Officer 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.
- 3. 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.
- 4. 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.
- 5. 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 to a depth of six (6) inches 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.

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

### **S. Water Quality**

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

### **T. Shoreline Stabilization**

Vegetation may be removed in excess of the standards in Section 306.N of this Ordinance in order to conduct shoreline stabilization of an eroding shoreline, provided that a permit is obtained from the Project Review Board. Construction equipment must access the shoreline by barge when feasible as determined by the Project Review Board.

(a) When necessary, the removal of trees and other vegetation to allow for construction equipment access to the stabilization site via land must be limited to no more than twelve (12) feet in width. When the stabilization project is complete the construction equipment accessway must be restored.

(b) Revegetation must occur in accordance with Section 306.Q

### **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. In addition, if an on-site investigation for a septic system is needed, a Maine Licensed Site Evaluator shall submit a required report. 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 design to counteract soil limitations where they exist.

**V. Archaeological Sites**

Any proposed land use activity involving structural development or soil disturbance on or adjacent to sites listed on, or eligible to be listed on, the National Register of Historic Places, as determined by the Codes Enforcement Officer, during the required review process, 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 Codes Enforcement Officer who shall consider comments received from the Commission prior to rendering a decision on the application.

## **ARTICLE IV**

### **ADMINISTRATIVE PROVISIONS**

#### **Section 401. Administering Bodies and Agents**

The Codes Enforcement Officer, Local Plumbing Inspector, Project Review Board and Coastal Waters Commission charged with administering this Ordinance, shall be the same Codes Enforcement Officer, Local Plumbing Inspector, Project Review Board and Coastal Waters Commission established by Chapter 2, Town of Freeport Administrative Code.

#### **Section 402. Permits Required**

After July 2, 1992, no person shall, without first obtaining a permit, engage in any activity or use of land or structure requiring a permit in the Shoreland Zone 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.

- A. A permit is not required for the replacement of an existing road culvert as long as:
  - a. Not more than twenty-five percent (25%) longer than the culvert being replaced; and
  - b. Not longer than seventy-five (75) feet and
  - c. Provided that adequate erosion control measures are taken to prevent sedimentation of the water, and that the crossing does not block fish passage in the water course.
- B. 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.
- C. Any permit required by this Ordinance shall be in addition to any other permit required by other law or ordinance.

#### **Section 403. Permit Application**

- A. Every applicant for a permit, approval or determination required by the provisions of this Ordinance governing the Shoreland Zone shall submit a written application, including a scaled site plan, on a form provided by the Town and any reasonable and relevant information which shall enable the Coastal Waters Commission, Project Review Board or Codes Enforcement Officer to make the determinations. Applications shall be submitted to the Codes Enforcement Officer. The Coastal Waters Commission, Project Review Board or the Codes Enforcement Officer shall process applications for permits, approvals or determinations required by the provisions of this Ordinance governing the Shoreland Zone according to the procedures



described in Section 602.C.1 of the Town of Freeport Zoning Ordinance, but may modify those procedures as it deems appropriate to process the particular permit, approval or determination which is sought. 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.

- B. 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.
- C. When an excavation contractor will perform an activity that requires or results in more than one (1) cubic yard of soil disturbance, the person responsible for management of erosion and sedimentation control practices at the site must be certified in erosion control practices by the Maine Department of Environmental Protection. This person must be present at the site each day earthmoving activity occurs for a duration that is sufficient to ensure that proper erosion and sedimentation control practices are followed. This is required until erosion and sedimentation control measures have been installed, which will either stay in place permanently or stay in place until the area is sufficiently covered with vegetation necessary to prevent soil erosion. The name and certification number of the person who will oversee the activity causing or resulting in soil disturbance shall be included on the permit application. This requirement does not apply to a person or firm engaged in agriculture or timber harvesting if best management practices for erosion and sedimentation control are used; and municipal, state and federal employees engaged in projects associated with that employment.
- D. Photographic record required. The applicant shall provide the Codes Enforcement Officer with preconstruction photographs of the subject property, and, no later than twenty (20) days after completion of the development, shall provide the Codes Enforcement Officer with postconstruction photographs of the shoreline vegetation and development site.

## **Section 404. Administering Permits**

The Project Review Board, the Coastal Waters Commission, or the Codes Enforcement Officer shall approve an application for a permit, only upon finding that the use, activity or structure complies with all requirements of this Ordinance and that it meets the following criteria:

1. Will maintain safe and healthful conditions;
2. Will not result in water pollution, erosion, or sedimentation to surface waters;
3. Will adequately provide for the disposal of all wastewater;
4. Will not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat;

5. Will conserve shore cover and visual, as well as actual, points of access to inland and coastal waters;

6. Will protect archaeological and historic resources as designated in the comprehensive plan;

7. Will not adversely affect existing commercial fishing or maritime activities in a Marine Waterfront District;

8. Will avoid problems associated with floodplain development and use; and

9. Is in conformance with the provisions of Section 306, 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.

#### **Section 405. Special Exceptions**

In addition to the criteria specified in Section 404 above, excepting structure setback requirements, the Project Review Board may approve a permit for a single family residential structure in the Resource Protection 1 District provided that the applicant demonstrates that the following conditions are met:

- A. There is no location on the property, other than a location within the Resource Protection District, where the structure can be built.
- B. The lot on which the structure is proposed is undeveloped and was established and recorded in the Cumberland County Registry of Deeds before the adoption of the Resource Protection District.
- C. All proposed buildings, sewage disposal systems and other improvements are:
  - 1. located on natural ground slopes of less than twenty percent (20%), and
  - 2. located outside the floodway of the one hundred (100) year floodplain based on the elevation shown on the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps.
  - 3. The total footprint, including cantilevered or similar overhanging extensions, of all principal and accessory structures is limited to a maximum of one-thousand five hundred (1,500) square feet. This limitation shall not be altered by a variance.
  - 4. All structures, except functionally water dependent structures, are setback 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 seventy-five (75) feet, horizontal distance. In determining the greatest practical extent, the Project Review 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.

## **Section 406. Expiration of Permit**

Permits shall expire one (1) year from the date of issuance if substantial start is not made in construction or in the use of the property during that period. If substantial start is made within one (1) 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.

## **Section 407. Enforcement**

The Codes 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.

## **Section 408. Installation of Public Utility Service**

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

## **Section 409. Appeals**

A. Powers and Duties of the Board of Appeals. The powers and duties of the Board of Appeals shall follow the standards and processes of Section 601.G Board of Appeals of Chapter 21, Town of Freeport Zoning Ordinance.

B. Variance Appeals. Variances may be granted only under the following conditions:

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

2. Variances shall not be granted for establishment of any uses otherwise prohibited by this Ordinance.

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

a. The proposed structure or use would meet the provisions of Section 306 except for the specific provision which has created the non-conformity and from which relief is sought; and

b. The strict application of the terms of this Ordinance would result in undue hardship. The term "undue hardship" shall mean:

i.. That the land in question cannot yield a reasonable return unless a variance is granted;

- ii. That the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;
  - iii. That the granting of a variance will not alter the essential character of the locality; and
  - iv. That the hardship is not the result of action taken by the applicant or a prior owner.
4. Notwithstanding Section 409.B.3.b above, the Codes Enforcement Officer is authorized in by Section 601 of the Town of Freeport Zoning Ordinance and in accordance with 30-A MRSA §4353-A, may grant a variance to an owner of a residential dwelling for the purpose of making that dwelling accessible to a person with a disability who resides in or regularly uses the dwelling. The board shall restrict any variance granted under this subsection solely to the installation of equipment or the construction of structures necessary for access to or egress from the dwelling by the person with the disability. The board may impose conditions on the variance, including limiting the variance to the duration of the disability or to the time that the person with the disability lives in the dwelling. The term “structures necessary for access to or egress from the dwelling” shall include railing, wall or roof systems necessary for the safety or effectiveness of the structure.
5. 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.
6. 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.

#### C. Administrative Appeals

1. 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.
2. When the Board of Appeals hears a decision of the Project Review Board and/or Coastal Waters Commission, it shall hold an appellate hearing, and may reverse the decision of the Project Review Board and/or Coastal Waters Commission only upon finding that the decision was contrary to specific provisions of the Ordinance or contrary to the facts presented to the Project Review Board and/or Coastal Waters Commission. The Board of Appeals may only review the record of the proceedings before the Project Review Board and/or Coastal Waters Commission. The Board Appeals shall not receive or consider any evidence which was not presented to the Project Review Board and/or Coastal Waters

Commission, but the Board of Appeals may receive and consider written or oral arguments. If the Board of Appeals determines that the record of the Project Review Board and/or Coastal Waters Commission proceedings are inadequate, the Board of Appeals may remand the matter to the Project Review Board and/or Coastal Waters Commission for additional fact finding.

D. Appeal Procedure. The appeals procedure to the Board of Appeals shall follow the standards and processes of Section 601.G Board of Appeals of Chapter 21, Town of Freeport Zoning Ordinance.

E. 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.

F. 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, Project Review Board and/or Coastal Waters Commission, 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.

## **Section 410. Enforcement**

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

B. Code Enforcement Officer

1. It shall be the duty of the Codes Enforcement Officer to enforce the provisions of this Ordinance. If the Codes Enforcement Officer shall find that any provision of this Ordinance is being violated, they shall notify in writing the person responsible for such violation, indicating the nature of the violation and ordering the action necessary to correct it, including discontinuance of illegal use of land, buildings or structures, or work being done, removal of illegal buildings or structures, and abatement of nuisance conditions. A copy of such notices shall be submitted to the municipal officers and be maintained as a permanent record.
2. The Codes Enforcement Officer shall conduct on-site inspections to insure compliance with all applicable laws and conditions attached to permit approvals. The Codes Enforcement Officer shall also investigate all complaints of alleged violations of this Ordinance.

3. The Codes 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.

C. Legal Actions. When any violation of any provision of this Ordinance shall be found to exist, the Codes Enforcement Officer shall notify the Town Manager who shall then initiate any and all actions to be brought in the name of the Town. The Town Manager shall notify the Town Council before any formal action begins.

D. 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.

#### **Section 411. Validity and Severability**

Should any section or provision of this Ordinance be declared by the Courts to be invalid or unenforceable, such decision shall not invalidate or limit the enforcement of any other Section or provision of this Ordinance.

#### **Section 412. Conflict with Other Ordinances**

This Ordinance shall not repeal, annul, or in any way impair or remove the necessity of compliance with any other rule, 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.

#### **Section 413. Effective Date**

This Ordinance, which was adopted by the municipal legislative body on \_\_\_\_\_, shall not be effective unless approved by the Commissioner of the Department of Environmental Protection.

A certified copy of the Ordinance, or Ordinance Amendment, attested and signed by the Municipal Clerk, shall be forwarded to the Commissioner for approval following adoption by the Freeport Town Council. If the Commissioner fails to act on this Ordinance or Ordinance Amendment, within forty-five (45) days of their 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.

