

**City of Ellsworth  
Chapter 56  
Unified Development Ordinance**

**Article 4  
Shoreland Zoning**

*Adopted June 15, 2009 – Effective July 1, 2009*

*Amended August 17, 2009*

*Amended April 19, 2010*

Attest:

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City Clerk  
Heidi-Noel Grindle

**Table of Contents:**

401 Shoreland Zoning Purposes and Applicability .....3

402 Authority, Administration and Legal Provisions .....4

403 Shoreland Zoning Administration .....5

404 Shoreland Zoning Appeals .....8

405 Shoreland Zoning Enforcement.....11

406 Non-conformance in the Shoreland Zone.....12

407 Shoreland Zoning Districts and the Land Use Map.....17

408 Establishment of Shoreland Zoning Districts .....19

TABLE 408.8 - LAND USES IN THE SHORELAND ZONE ..... 21

409 Land Use Standards in the Shoreland Zone.....24

TABLE 409.2 Minimum Lot Area and Shore Frontage Within the Shoreland Zone (SZ)..... 24

TABLE 409.3 Structure and Lot Standards Within the Shoreland Zone ..... 25

410 Performance Standards in the Shoreland Zone.....29

    410.1 Piers, docks, wharves, bridges.... extending over or below the normal high-water line...

    410.2 Campgrounds

    410.3 Campsites, Individual Private

    410.4 Commercial and Industrial Uses

    410.5 Parking lots

    410.6 Accessways

    410.7 Signs

    410.8 Stormwater Runoff

    410.9 Septic Waste Disposal

    410.10 Essential Services

    410.11 Mineral exploration and extraction

    410.12 Agricultural, Activities

    410.13 Timber Harvesting

    410.13-1 Timber Harvesting Statewide Standards

    410.14 Clearing or removal of vegetation for activities other than timber harvesting

    410.15 Erosion and sedimentation control

    410.16 Soils

    410.17 Water Quality

    410.18 Archaeological Site

    410.19 Phosphorus Control

411 Shoreland Zoning Definitions. ....45

## City of Ellsworth Chapter 56 Unified Development Ordinance

### **401 Shoreland Zoning Purposes and Applicability**

401.1 **Purposes.** The purposes of this Article are to:

- A. Further the maintenance of safe and healthful conditions;
- B. Prevent and control water pollution;
- C. Protect fish spawning grounds, aquatic life, bird and other wildlife habitat;
- D. Protect buildings and lands from flooding and accelerated erosion;
- E. Protect archaeological and historic resources;
- F. Protect commercial fishing and maritime industries;
- G. Protect freshwater and coastal wetlands;
- H. Control building sites, placement of structures and land uses;
- I. Conserve shore cover, and visual and actual points of access to inland and coastal waters;
- J. Conserve natural beauty and open space; and
- K. Anticipate and respond to the impacts of development in shoreland areas.

401.2 **Authority.**

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

401.3 **Applicability.**

- A. Within the City of Ellsworth, this Article applies to all land areas within 250 feet, horizontal distance, of:
  - i. The normal high-water line of any great pond or river;
  - ii. The upland edge of a coastal wetland, including all areas affected by tidal action; or
  - iii. The upland edge of a freshwater wetland; and
- B. This Article also applies to all land areas within 75 feet, horizontal distance, of the normal high-water line of a stream as defined and/or as identified on the Official Land Use Map for the City of Ellsworth.
- C. This Article 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.

## **402 Authority, Administration and Legal Provisions**

### **402.1 Effective Date.**

A. This Article and future amendments, which are adopted by the Ellsworth City Council on May 17, 2009, shall not be effective unless approved by the Commissioner of the Department of Environmental Protection (DEP). A certified copy of the Article, or Amendment, attested and signed by the City Clerk, shall be forwarded to the Maine DEP Commissioner for approval. If the Commissioner fails to act on this Article or Amendment, within 45 days of the DEP Commissioner's receipt of the Article, or Amendment, it shall be automatically approved.

Any application for a permit submitted to the City of Ellsworth within the above mentioned 45-day period shall be governed by the terms of this Article, or Article Amendment, if the Article, or Article Amendment, is approved by the Commissioner.

B. **Section 410.13.** Section 410.13 is repealed on the statutory date established under 38 M.R.S.A. section 438-B(5), at which time 410.13-1 shall become effective. Until such time as Section 410.13 is repealed, 410.13-1 is not in effect.

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NOTE: The statutory date established under 38 M.R.S.A. section 438-B(5) is the effective date of statewide timber harvesting standards. That date is "the first day of January of the 2<sup>nd</sup> year following the year in which the Commissioner of Conservation determines that at least 252 of the 336 municipalities identified by the Commissioner of Conservation as the municipalities with the highest acreage of timber harvesting activity on an annual basis for the period 1992-2003 have either accepted the state-wide standards or have adopted an ordinance identical to the statewide standards." 38 M.R.S.A. section 438-B(5) further provides that "the Commissioner of Conservation shall notify the Secretary of State in writing and advise the Secretary of the effective date of the statewide standards."

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### **402.2 Availability.**

A certified copy of this Article shall be filed with the City Clerk and shall be accessible to any member of the public. This Article shall also be posted on the City of Ellsworth web site. Copies shall be made available to the public at reasonable cost at the expense of the person making the request. Notice of availability of this Article shall be posted.

### **402.3 Severability.**

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

### **402.4 Conflicts with Other Ordinances.**

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

402.5 **Amendments.** Refer to and use City of Ellsworth Code of Ordinance, Chapter 19 – Land Use Ordinance, Article VIII Amendments Procedures. In addition to the procedures set forth in Chapter 19, copies of amendments, attested and signed by the Ellsworth City Clerk, shall be submitted to the DEP Commissioner of the Department of Environmental Protection following

adoption by the Ellsworth City Council and shall not be effective unless approved by the DEP Commissioner. If the DEP Commissioner fails to act on any amendment within 45 days of his/her receipt of the amendment, the amendment is automatically approved. Any application for a permit submitted to the City of Ellsworth within the 45 day period shall be governed by the terms of the amendment, if such amendment is approved by the Commissioner.

### **403 Shoreland Zoning Administration**

403.1 **Administration.** This Article shall be administered in general by the Planning Board or the Code Enforcement Officer, referred herein as *the Administrator* and described below:

- A. **The Code Enforcement Officer (CEO)** shall administer projects requiring CEO or LPI approval per Table 408.8 - Land Uses in the Shoreland Zone. A CEO shall be appointed or reappointed annually by July 1st.
- B. **The Planning Board (PB)** shall administer projects requiring PB approval per Table 408.8 - Land Uses in the Shoreland Zone. The PB shall operate in accordance with the provisions of Ellsworth Code of Ordinances Chapter 18 and State law.

The City Planner and its designee(s) represent the Planning Board and are responsible to provide guidance to the applicant whose project requires Planning Board Review.

- C. **Board of Appeals (BOA).** The BOA operates in accordance with the provisions of Ellsworth Code of Ordinances Chapter 38 and 30-A M.R.S.A. section 2691.

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

Any permit required by this Article shall be in addition to any other permit required by other law or ordinance.

- A. **Culverts Exemption.** A permit is not required for the replacement of an existing private accessway culvert if the conditions listed below are met. However, the CEO shall be notified before the replacement of any culvert. The CEO will notify the Water Dept. of any projects in the Branch Lake watershed:
  - i. The replacement culvert is not more than 25% longer than the culvert being replaced;
  - ii. The replacement culvert is not longer than 75 feet; and
  - iii. Adequate erosion control measures are taken to prevent sedimentation of the water, and the crossing does not block fish passage in the watercourse. See 409.18 for standards.
- B. **Archaeological Excavation Exemption.** A permit is not required for an archaeological excavation as long as it is conducted by an archaeologist listed on the State Historic Preservation Officer's level 1 or level 2 approved lists, and unreasonable erosion and sedimentation is prevented by means of adequate and timely temporary and permanent stabilization measures.

403.3 **Permit Application Requirements.**

- A. **Application Form.** Every applicant for a permit shall submit a written application on a form provided by the City of Ellsworth, with a scaled site plan, to the Administrator per Table 408.8 - Land Uses in the Shoreland Zone.
- B. **Right, Title and Interest.** 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.
- C. **Date.** All applications shall be dated, and the Code Enforcement Officer or Planning Board, as appropriate, shall note upon each application the date and time of its receipt.
- D. **Sewage Disposal Provisions.** 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.

403.4 **Procedure for Administering Permits.**

**Application Receipt.** Within 35 days of the date of receiving a written application, the Administrator or designee shall notify the applicant in writing either that the application is a complete application; or if the application is incomplete, shall specify additional material that is needed to make the application complete.

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

**Planning Board Applications.** Applications that require Planning Board Review per this Article shall follow the general procedures in the City of Ellsworth Land Use Ordinance and/or UDO Section 208.

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

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

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

- (5) Will conserve shore cover, visual and 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;
- (8) Will avoid problems associated with floodplain development and use; and
- (9) Is in conformance with the provisions of Section 409, Land Use Standards and Section 410 Performance Standards in the Shoreland Zone.

Conditions in Writing. If a permit is either denied or approved with conditions, the reasons as well as conditions shall be stated in writing.

Other Provisions May Apply. 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 Ordinance, or regulation or statute administered by the City of Ellsworth.

403.5 **Special Resource Protection Zoning Districts (RP) Exceptions.** In addition to the criteria specified in Section 403.4 above, excepting structure shoreline setback requirements, the Planning Board may approve a permit for a single family residential structure in a Resource Protection Zoning District (RP) provided that the applicant demonstrates that all of the following conditions are met:

- (1) There is no location on the property, other than a location within the RP, where the structure can be built.
- (2) The lot on which the structure is proposed is undeveloped and was established and recorded in the Hancock County Registry of Deeds before the adoption of the RP encompassing the lot.
- (3) All proposed buildings, sewage disposal systems and other improvements are:
  - (a) Located on natural ground slopes of less than 20%; and
  - (b) Located outside the floodway of the 100-year floodplain along rivers and artificially formed great ponds along rivers and outside the velocity zone in areas subject to tides, based on detailed flood insurance studies and as delineated on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate Maps for the City of Ellsworth; all buildings, including basements, are elevated at least one foot above the 100-year floodplain elevation; and the development is otherwise in compliance with any applicable Ellsworth Floodplain Ordinance.

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

- (4) The total ground-floor area, including cantilevered or similar overhanging extensions, of all principal and accessory structures is limited to a maximum of 1,500 square feet. This limitation shall not be altered by variance.
- (5) All structures, except functionally water-dependent structures, are set back from the normal high-water line of a water body, tributary stream or upland edge of a wetland to the greatest practical extent, but not less than 100 feet, horizontal distance. In determining the greatest

practical extent, the Planning Board shall consider the depth of the lot, the slope of the land, the potential for soil erosion, the type and amount of vegetation to be removed, the proposed building site's elevation in regard to the floodplain, and its proximity to moderate-value and high-value wetlands.

- 403.6 **Expiration of Permit.** Permits shall expire one year from the date of issuance if a substantial start is not made in construction or in the use of the property during that period. If a substantial start is made within one year of the issuance of the permit, the applicant shall have one additional year to complete the project, at which time the permit shall expire.
- 403.7 **Installation of Public Utility Service.** A public utility, water district, sanitary district or any utility company of any kind may not install services to any new structure located in the shoreland zone unless written authorization attesting to the validity and currency of all City permits required under this Article, any other Ordinance, or any previous Ordinance of the City of Ellsworth has been issued by the CEO or other written arrangements have been made between City of Ellsworth officials and the utility.

## **404 Shoreland Zoning Appeals**

- 404.1 **The Board of Appeals (BOA):** The BOA shall have the following powers and duties:
- A. **Administrative Appeals:** To hear and decide administrative appeals, on an appellate basis, where it is alleged by an aggrieved party that there is an error in any order, requirement, decision, or determination made by, or failure to act by, the Planning Board in the administration of this Article; and to hear and decide administrative appeals on a de novo basis where it is alleged by an aggrieved party that there is an error in any order, requirement, decision or determination made by, or failure to act by, the Code Enforcement Officer in his/her review of and action on a permit application under this Article. Any order, requirement, decision or determination made, or failure to act, in the enforcement of this Article is not appealable to the BOA.
  - B. **Variance Appeals:** To authorize variances upon appeal, within the limitations set forth in this Article.
- 404.2 **Variance Appeals.** Variances may be granted only under the following conditions:
- A. Variances may be granted only from dimensional requirements including, but not limited to, lot width, structure height, percent of lot coverage, and setback requirements.
  - B. Variances shall not be granted for establishment of any uses otherwise prohibited by this Article.
  - C. The Board shall not grant a variance unless it finds that:
    - (i) The proposed structure or use would meet the provisions of Sections 409 and 410 except for the specific provision which has created the non-conformity and from which relief is sought; and
    - (ii) The strict application of the terms of this Article would result in undue hardship. The term "undue hardship" shall mean:
      - a. That the land in question cannot yield a reasonable return unless a variance is granted;
      - b. That the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;
      - c. That the granting of a variance will not alter the essential character of the locality; and
      - d. That the hardship is not the result of action taken by the applicant or a prior owner.

- D. Notwithstanding Section 404.2 C(ii) above, the BOA 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 BOA 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 BOA 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.
- E. The BOA shall limit any variances granted as strictly as possible in order to ensure conformance with the purposes and provisions of this Article to the greatest extent possible, and in doing so may impose such conditions to a variance as it deems necessary. The party receiving the variance shall comply with any conditions imposed.
- F. A copy of each variance request, including the application and all supporting information supplied by the applicant, shall be forwarded by the CEO to the Commissioner of the Department of Environmental Protection at least 20 days prior to action by the BOA. Any comments received from the Commissioner prior to the action by the BOA shall be made part of the record and shall be taken into consideration by the BOA.

#### 404.3 **Administrative Appeals**

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

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

#### 404.4 **Appeal Procedure**

##### A. **Making an Appeal:**

- (i) An administrative or variance appeal may be taken to the Board of Appeals by an aggrieved party from any decision of the Code Enforcement Officer or the Planning Board, except for enforcement-related matters as described in Section 404.1(A) above. Such an appeal shall be taken within 30 days of the date of the official, written decision appealed from, and not otherwise, except that the Board, upon a showing of good cause, may waive the 30-day requirement.
- (ii) Applications for appeals shall be made by filing with the Board of Appeals a written notice of appeal which includes:

- a. A concise written statement indicating what relief is requested and why the appeal or variance should be granted.
  - b. A sketch drawn to scale showing lot lines, location of existing buildings and structures and other physical features of the lot pertinent to the relief sought.
- (iii) Upon receiving an application for an administrative appeal or a variance, the Code Enforcement Officer or City Planner on behalf of the Planning Board, as appropriate, shall transmit to the Board of Appeals all of the papers constituting the record of the decision appealed from.
- (iv) The Board of Appeals shall hold a public hearing on an administrative appeal or a request for a variance within 35 days of its receipt of a complete written application, unless this time period is extended by the parties.

**B. Decision by Board of Appeals**

- (i) A majority of the full voting membership of the Board shall constitute a quorum for the purpose of deciding an appeal.
- (ii) The person filing the appeal shall have the burden of proof.
- (iii) The Board shall decide all administrative appeals and variance appeals within 35 days after the close of the hearing, and shall issue a written decision on all appeals.
- (iv) The Board of Appeals shall state the reasons and basis for its decision, including a statement of the facts found and conclusions reached by the Board. The Board shall cause written notice of its decision to be mailed or hand-delivered to the applicant and to the Department of Environmental Protection within 7 days of the Board's decision. Copies of written decisions of the Board of Appeals shall be given to the Planning Board, Code Enforcement Officer, and the City Council.

**404.5 Appeal to Superior Court.**

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

**404.6 Reconsideration of Appeals.**

In accordance with 30-A M.R.S.A. section 2691(3)(F), the Board of Appeals may reconsider any decision within 45 days of its prior decision. A request to the Board to reconsider a decision must be filed within 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 45 days of the date of the vote on the original decision.

Reconsideration of a decision shall require a positive vote of the majority of the Board members originally voting on the decision, and proper notification to the landowner, petitioner, Planning Board, Code Enforcement Officer, and other parties of interest, including abutters and those who testified at the original hearing(s). The Board may conduct additional hearings and receive additional evidence and testimony.

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

## **405 Shoreland Zoning Enforcement**

405.1 **Nuisances.** Any violation of this Article shall be deemed to be a nuisance.

405.2 **Code Enforcement Officer (CEO).** The CEO shall have the following powers and duties:

- A. **Enforcement.** It shall be the duty of the CEO to enforce the provisions of this Article.
- B. **On-Site Inspections.** The CEO shall conduct on-site inspections to ensure compliance with all applicable laws and conditions attached to permit approvals. The CEO shall also investigate all complaints of alleged violations of this Article.
- C. **Notice of Violation** If the CEO shall find that any provision of this Article is being violated, he/she shall notify in writing the person responsible for such violation, indicating the nature of the violation and ordering the action necessary to correct it, including discontinuance of illegal use of land, buildings or structures, or work being done, removal of illegal buildings or structures, and abatement of nuisance conditions. A copy of such notices shall be submitted to the City Manager and City Council and be maintained as a permanent record.
- D. **Records Kept.** The CEO shall keep a complete record of all essential transactions of the office, including applications submitted, permits granted or denied, variances granted or denied, revocation actions, revocation of permits, appeals, court actions, violations investigated, violations found, and fees collected. On a biennial basis, a summary of this record shall be submitted to the Director of the Bureau of Land and Water Quality within the Department of Environmental Protection.

405.3 **Legal Actions.**

When the above action does not result in the correction or abatement of the violation or nuisance condition, the Ellsworth City Council, upon notice from the Code Enforcement Officer, are hereby directed to institute any and all actions and proceedings, either legal or equitable, including seeking injunctions of violations and the imposition of fines, that may be appropriate or necessary to enforce the provisions of this Article in the name of the City of Ellsworth.

The City Council, or their authorized agent, are hereby authorized to enter into administrative consent agreements for the purpose of eliminating violations of this Article and recovering fines without Court action. Such agreements shall not allow an illegal structure or use to continue unless there is clear and convincing evidence that the illegal structure or use was constructed or conducted as a direct result of erroneous advice given by an authorized Ellsworth official and there is no evidence that the owner acted in bad faith, or unless the removal of the structure or use will result in a threat or hazard to public health and safety or will result in substantial environmental damage.

405.4 **Fines.**

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

## **406 Non-conformance in the Shoreland Zone.**

406.1 **Purpose.** It is the intent of this Article to promote land use conformities, except that non-conforming conditions that existed before the effective date of this Article or amendments thereto shall be allowed to continue, subject to the requirements set forth in Section 406. Except as otherwise provided in this Article, a non-conforming condition shall not be permitted to become more non-conforming.

### 406.2 **Non-conformance, General.**

- (1) **Transfer of Ownership.** Non-conforming structures, lots, and uses may be transferred, and the new owner may continue the non-conforming use or continue to use the non-conforming structure or lot, subject to the provisions of this Article.
- (2) **Repair and Maintenance.** This Article 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 City building and safety codes may require.

### 406.3 **Non-conforming Structures**

- (1) **Expansions.** A non-conforming structure may be added to or expanded after obtaining a permit from the same permitting authority as that for a new structure, if such addition or expansion does not increase the non-conformity of the structure, and is in accordance with subparagraphs (a), and (b) below.
  - (a) Legally existing non-conforming principal and accessory structures that do not meet the shoreline setback requirements may be expanded or altered as follows, as long as all other applicable standards contained in this Article are met.
    - i. Expansion of any portion of a structure within 25 feet, horizontal distance, 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 shoreline setback requirement.
    - ii. 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 shoreline setback requirement.
    - iii. For structures located less than 75 feet, horizontal distance, from the normal high-water line of a water body, tributary stream, or upland edge of a wetland, the maximum combined total floor area for all portions of those structures within that 75-foot distance is 1,000 square feet, and the maximum height of any portion of a structure that is within 75 feet, horizontal distance, of a water body, tributary stream or upland edge of a wetland is 20 feet or the height of the existing structure, whichever is greater.

- iv. For structures located less than 100 feet, horizontal distance, from the normal high-water line of a great pond or a river flowing to a great pond, the maximum combined total floor area for all portions of those structures within that 100-foot distance is 1,500 square feet, and the maximum height of any portion of a structure that is within 100 feet, horizontal distance, of a great pond is 25 feet or the height of the existing structure, whichever is greater, except that any portion of those structures located less than 75 feet, horizontal distance from the normal high-water line of a water body, tributary stream, or the upland edge of a wetland must meet the floor area and height limits of division (iii).

For the purposes of Section 406.3(1)(a), a basement is not counted toward floor area.

- (b) Whenever a new, enlarged, or replacement foundation is constructed under a non-conforming structure, the structure and new foundation must be placed such that the shoreline setback requirement is met to the greatest practical extent as determined by the Code Enforcement Officer, basing his/her decision on the criteria specified in Section 406.3(2) Relocation, below. If the completed foundation does not extend beyond the exterior dimensions of the structure and the foundation does not cause the structure to be elevated by more than 3 additional feet, as measured from the uphill side of the structure, it shall not be considered to be an expansion of the structure.
- (1-A) Special expansion allowance. Existing principal and accessory structures that exceed the floor area or height limits set in Section 406.3(1)(a)(iii) and Section 406.3(1)(a)(iv) above, may not be expanded, except that the limits may be exceeded by not more than 500 square feet provided that all of the following requirements are met.
- (a) The principal structure is set back at least 50 feet, horizontal distance, from the normal high-water line of a water body, tributary stream or upland edge of a wetland.
  - (b) A well-distributed stand of trees and other natural vegetation as defined in Section 410.14(2)(b), extends at least 50 feet, horizontal distance, in depth as measured from the normal high-water line or upland edge for the entire width of the property.

If a well-distributed stand of trees and other vegetation meeting the requirements of Section 410.14(2)(b) is not present, the 500 square foot special expansion allowance may be permitted only in conjunction with a written plan, including a scaled site drawing, by the property owner, and approved by the Planning Board or the Code Enforcement Officer, to reestablish a buffer of trees, shrubs, and other ground cover within 50 feet, horizontal distance, of the shoreline or tributary stream.

- (c) Adjacent to great ponds and rivers flowing to great ponds, except for the allowable footpath, there exist complete natural ground cover, consisting of forest duff, shrubs and other woody and herbaceous vegetation within 50 feet, horizontal distance, of the normal high-water line. Where natural ground cover is lacking the area must be supplemented with leaf or bark mulch and plantings of native shrubs, and other woody and herbaceous vegetation in quantities sufficient to retard erosion and provide for effective infiltration of stormwater.
- (d) A written plan by the property owner, including a scaled site drawing, is approved by the Planning Board and is developed, implemented, and maintained to address the following mitigation measures for the property within the shoreland zone.

- (i) Unstabilized areas resulting in soil erosion must be mulched, seeded, or otherwise stabilized and maintained to prevent further erosion and sedimentation to water bodies, tributary streams, and wetlands.
- (ii) Roofs and associated drainage systems, driveways, parking areas, and other nonvegetated surfaces must be designed or modified, as necessary, to prevent concentrated flow of storm water runoff from reaching a water body, tributary stream or wetland. Where possible, runoff must be directed through a vegetated area or infiltrated into the soil through the use of a dry well, stone apron, or similar device.

(1-B) Planting requirements. Any planting or revegetation required as a condition to the Special Expansion Allowance must be in accordance with a written plan drafted by a qualified professional, be implemented at the time of construction, and be designed to meet the rating scores contained in paragraph (b) and the ground cover requirements of paragraph (c) when the vegetation matures within the 50-foot strip. At a minimum, the plan must provide for the establishment of a well-distributed planting of saplings spaced so that there is at least one sapling per 80 square feet of newly established buffer. Planted saplings may be no less than 3 feet tall for coniferous species and no less than six feet tall for deciduous species. The planting plan must include a mix of at least three native tree species found growing in adjacent areas, with no one species making up more than 50% of the number of saplings planted unless otherwise approved by the Planning Board or the Code Enforcement Officer, based on adjacent stand comparison. All aspects of the implemented plan must be maintained by the applicant and future owners.

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

In determining whether the building relocation meets the shoreline setback to the greatest practical extent, the CEO shall consider the size of the lot, the slope of the land, the potential for soil erosion, the location of other structures on the property and on adjacent properties, the location of the septic system and other on-site soils suitable for septic systems, and the type and amount of vegetation to be removed to accomplish the relocation. When it is necessary to remove vegetation within the shoreline setback area in order to relocate a structure, the CEO may require replanting of native vegetation to compensate for the destroyed vegetation. In addition, the area from which the relocated structure was removed must be replanted with vegetation. Replanting shall be required as follows:

- (a) Trees removed in order to relocate a structure must be replanted with at least one native tree, 3 feet in height, for every tree removed. If more than 5 trees are planted, no one species of tree shall make up more than 50% of the number of trees planted. Replaced trees must be planted no further from the water or wetland than the trees that were removed.

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

- (b) Where feasible, when a structure is relocated on a parcel the original location of the structure shall be replanted with vegetation which may consist of grasses, shrubs, trees, or a combination thereof.
- (3) Reconstruction or Replacement. Any non-conforming structure which is located less than the required shoreline setback from a water body, tributary stream, or wetland and which is removed, or damaged or destroyed, regardless of the cause, by more than 50% of the market value of the structure before such damage, destruction or removal, may be reconstructed or replaced provided that a permit is obtained within 18 months of the date of said damage, destruction, or removal, and provided that such reconstruction or replacement is in compliance with the shoreline setback requirement to the greatest practical extent as determined by the Code Enforcement Officer in accordance with the purposes of this Article. In no case shall a structure be reconstructed or replaced so as to increase its non-conformity. If the reconstructed or replacement structure is less than the required shoreline setback it shall not be any larger than the original structure, except as allowed pursuant to Section 406.3(1) above, as determined by the non-conforming floor area and volume of the reconstructed or replaced structure at its new location. If the total amount of floor area and volume of the original structure can be relocated or reconstructed beyond the required shoreline setback area, no portion of the relocated or reconstructed structure shall be replaced or constructed at less than the shoreline setback requirement for a new structure. When it is necessary to remove vegetation in order to replace or reconstruct a structure, vegetation may be replanted in accordance with Section 406.3(2) above.

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

In determining whether the building reconstruction or replacement meets the shoreline setback to the greatest practical extent the CEO shall consider, in addition to the criteria in Section 406.3(2) above, the physical condition and type of foundation present, if any.

- (4) Change of Use of a Non-conforming Structure. The use of a non-conforming structure may not be changed to another use unless the Planning Board, after receiving a written application, determines that the new use will have no greater adverse impact on the water body, tributary stream, or wetland, or on the subject or adjacent properties and resources than the existing use.

In determining that no greater adverse impact will occur, the Planning Board shall require written documentation from the applicant, regarding the probable effects on public health and safety, erosion and sedimentation, water quality, fish and wildlife habitat, vegetative cover, visual and actual points of public access to waters, natural beauty, floodplain

management, archaeological and historic resources, and commercial fishing and maritime activities, and other functionally water-dependent uses.

#### 406.4 **Non-conforming Uses.**

- (1) **Expansions.** Expansions of non-conforming uses are prohibited, except that non-conforming residential uses may, after obtaining a permit from the Planning Board, be expanded within existing residential structures or within expansions of such structures as allowed in Section 406.3(1) above.
- (2) **Resumption Prohibited.** A lot, building or structure in or on which a non-conforming use is discontinued for a period exceeding one year, or which is superseded by a conforming use, may not again be devoted to a non-conforming use except that the Planning Board may, for good cause shown by the applicant, grant up to a one year extension to that time period. This provision shall not apply to the resumption of a use of a residential structure provided that the structure has been used or maintained for residential purposes during the preceding 5 year period.
- (3) **Change of Use.** An existing non-conforming use may be changed to another non-conforming use provided that the proposed use has no greater adverse impact on the subject and adjacent properties and resources, including water dependent uses, than the former use, as determined by the Planning Board. The determination of no greater adverse impact shall be made according to criteria listed in Section 406.3(4) above.

#### 406.5 **Non-conforming Lots**

- (1) **Non-conforming Lots:** A non-conforming lot of record as of the effective date of this Article 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 Article 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 Article, if all or part of the lots do not meet the dimensional requirements of this Article, and if a principal use or structure exists on each lot, the non-conforming lots may be conveyed separately or together, provided that the State Minimum Lot Size Law (12 M.R.S.A. sections 4807-A through 4807-D) and the State of Maine Subsurface Wastewater Disposal Rules are complied with.

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

- (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 Article, if any of these lots do not individually meet the dimensional requirements of this

Article or subsequent amendments, and if one or more of the lots are vacant or contain no principal structure the lots shall be combined to the extent necessary to meet the dimensional requirements.

This provision shall not apply to 2 or more contiguous lots, at least one of which is non-conforming, owned by the same person or persons on December 12, 1992 and recorded in the registry of deeds if the lot is served by a public sewer or can accommodate a subsurface sewage disposal system in conformance with the State of Maine Subsurface Wastewater Disposal Rules; and

- (a) Each lot contains at least 100 feet of shore frontage and at least 20,000 square feet of lot area; or
- (b) Any lots that do not meet the frontage and lot size requirements of Section 406.5(3)(a) are reconfigured or combined so that each new lot contains at least 100 feet of shore frontage and 20,000 square feet of lot area.

## **407 Shoreland Zoning Districts and the Land Use Map**

407.1 **Official Land Use Map.** The areas to which this Article is applicable are hereby divided into the following districts as shown on the Official Land Use Map which is made a part of this Article:

- A. Resource Protection (RP)
- B. Drinkingwater Protection (DP)
- C. Stream Protection (SP)
- D. Limited Residential (LR)
- E. Limited Commercial (LC)
- F. General Development (GD)

407.2 **Scale of Map.** The Official Land Use Map shall be available at a scale of not less than one inch equals 2000 feet (1" = 2000'). Zoning district boundaries shall be clearly delineated and a legend indicating the symbols for each district shall be placed on the map.

407.3 **Certification of Official Land Use Map.** A one inch equals 2000 feet (1" = 2000') copy of the Official Land Use Map shall be certified by the attested signature of the Ellsworth City Clerk and shall be located in the Code Enforcement Office and in the City Planner's Office.

407.4 **Changes to the Official Land Use Map.** If amendments, in accordance with this Article, are made in the boundaries of the Shoreland Zone or other shoreland zoning matter portrayed on the Official Land Use Map, such changes shall be made on the Official Land Use Map within 30 days after the amendment has been approved by the Commissioner of the Department of Environmental Protection.

407.5 **Interpretation of Shoreland Zoning District Boundaries.** Unless otherwise set forth on the Official Land Use Map, district boundary lines are property lines, the centerlines of accessways, and the boundaries of the shoreland area as defined herein. Where uncertainty exists as to the exact location of district boundary lines, the Board of Appeals shall be the final authority as to location, except, when applicable, a landowner complies with Section 407.6 Verification of Habitat Value.

407.6 **Verification of IF&W Determination of Waterfowl and Wading Bird Habitat Value.**

- (1) Following the review of existing Maine Department of Inland Fisheries and Wildlife (IF&W) data and/or new documentation submitted to the IF&W regarding a moderate or high value habitat, the IF&W may modify the rating or boundary of the habitat. A landowner submitting documentation will receive a written determination from either the IF&W or the Maine Department of Environmental Protection (DEP). Upon determination that the habitat rating or boundary has changed, the landowner may then proceed to request an amendment to the Land Use Map by contacting the City Planner. Determination of habitat rating or boundary may be done by any of the following methods:
  - (a) **Desktop Review.** A re-examination by the DEP of the aerial photography and other GIS data available may be sufficient documentation for determination. Should DEP find evidence that the habitat rating or boundary should be change, DEP will submit documentation to IF&W for determination.
  - (b) **Field Verification by Department of Environmental Protection (DEP).** A landowner may submit to the DEP evidence that the wetland rating or boundary is incorrect, such as photographs showing that the wetland is either not a wetland as defined by this Article or is an altered wetland. Should the evidence be convincing that the rating or boundary may be incorrect, the DEP may then conduct a field visit using the criteria in Section 407.6(1)(d). Following a field visit, DEP will write an advisory opinion regarding the presence or absence of a wetland with a moderate or high value to the IF&W for determination
  - (c) **Field Verification by a professional.** A landowner may submit documentation regarding the presence of absence of a wetland with a moderate or high value to the IF&W for determination. Such Documentation must be completed by an individual who has experience and training in either wetland ecology or wildlife ecology and therefore has qualifications sufficient to identify and document a moderate or high value habitat based on the criteria in Section 407.6(1)(d).
  - (d) **Moderate and high value habitat criteria.** A moderate or high value inland habitat is an inland wetland complex, and a 250-foot wide zone surrounding the wetland complex, that through a combination of dominant wetland type, wetland diversity, wetland size, wetland type interspersion, and percent open water, meets the IF&W guidelines or is an inland wetland complex that has documented outstanding use of waterfowl or wading birds. Determination of moderate or high value habitat is based on the following:
    - i. Dominant wetland type is rated by the assigned score for the wetland type of greatest area in the wetland. Wetland type is determined using the classification system published by IF&W based on McCall, 1972, for waterfowl and wading bird habitat rating. A score for the value to waterfowl and wading birds is assigned to each type using the IF&W rating procedure; and/or
    - ii. Wetland diversity is rated by assigning the wetland to one of the diversity categories based on the number of wetland types present in the wetland using the IF&W rating procedure; and/or
    - iii. Wetland size is rated by assigning the wetland to one of three size categories based on the total area of the wetland using the IF&W rating procedure: and/or
    - iv. Wetland type interspersion is rated by assigning the wetland to one of three interspersion categories using the Golet (1974) system, as modified for Maine in the IF&W rating procedure; and/or
    - v. Percent open water is rated by assigning the wetland one of four categories, based on the percent of the wetland in open water using the IF&W rating procedure.

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NOTE: The following are literature citations as referenced above:

McCall, C.A. 1972. Manual for Maine wetlands inventory. Maine Department of Inland Fisheries and Game, Augusta, Maine. 38pp.

Golet, F.C., and J.S. Larson. 1974. Classification of freshwater wetlands in the glaciated northeast. Resource Publication 116. U.S. Dept. of the Interior, Washington, D.C. 56pp.

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## **408 Establishment of Shoreland Zoning Districts**

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

- (1) **Rated Wetlands.** Areas within 250 feet, horizontal distance, of the upland edge of freshwater wetlands, salt marshes and salt meadows, and wetlands associated with great ponds and rivers, which are rated "moderate" or "high" value waterfowl and wading bird habitat, including nesting and feeding areas, by the Maine Department of Inland Fisheries and Wildlife (IF&W) that are depicted on a Geographic Information System (GIS) data layer maintained by either IF&W or the DEP as of January 1, 1973 for Coastal Wetlands and as of December 31, 2008 for Freshwater Wetlands. For the purposes of this paragraph "wetlands associated with great ponds and rivers" shall mean areas characterized by non-forested wetland vegetation and hydric soils that are contiguous with a great pond or river, and have a surface elevation at or below the water level of the great pond or river during the period of normal high water. "Wetlands associated with great ponds or rivers" are considered to be part of that great pond or river.
- (2) **Floodplains** along rivers and floodplains along artificially formed great ponds along rivers, defined by the 100-year floodplain as designated on the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps or Flood Hazard Boundary Maps for the City of Ellsworth, or the flood of record, or in the absence of these, by soil types identified as recent floodplain soils. This district shall also include 100-year floodplains adjacent to tidal waters as shown on FEMA's Flood Insurance Rate Maps or Flood Hazard Boundary Maps.
- (3) **Steep Slopes.** Areas of 2 or more contiguous acres with sustained slopes of 20% or greater.
- (4) **Hydric Soils.** Areas of 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 are not surficially connected to a water body during the period of normal high water.
- (5) **Erodable Areas.** Land areas along rivers subject to severe bank erosion, undercutting, or river bed movement, and lands adjacent to tidal waters which are subject to severe erosion or mass movement, such as steep coastal bluffs.
- (6) **Significant Natural Areas.** Areas designated by federal or state government or the City of Ellsworth as natural areas of significance to be protected from development; and
- (7) **Other significant areas** which should be included in this district to fulfill the purposes of this Article, such as, but not limited to, existing public access areas and certain significant

archaeological and historic sites deserving of long-term protection as determined by the City of Ellsworth after consultation with the Maine Historic Preservation Commission.

- 408.2 **The Drinkingwater Protection District (DP)** includes all areas that lie within the Shoreland Zone of the watershed of Branch Lake that are not zoned Resource Protection. The DP zoning district has lot size, frontage and other environmental standards designed to protect Ellsworth's public drinking water supply. For regulation of surface water activities on Branch Lake, refer to the Ellsworth Code of Ordinances Chapter 55 Public Water Supply Protection Ordinance.
- 408.3 **The Stream Protection District (SP)** includes all land areas within 75 feet, horizontal distance, of the normal high-water line of a stream, exclusive of those areas within 250 feet, horizontal distance, of the normal high-water line of a great pond, or river, or within 250 feet, horizontal distance, of the upland edge of a freshwater or coastal wetland. Where a stream and its associated shoreland area are located within 250 feet, horizontal distance, of the above water bodies or wetlands, that land area shall be regulated under the terms of the shoreland district associated with that water body or wetland.
- In addition to streams as defined, all perennial and intermittent streams within the watershed of Branch Lake have a 75-foot shoreland zone and are designated Stream Protection District as shown on the Official Land Use Map.
- 408.4 **The Limited Residential District (LR)** includes those areas suitable for residential and recreational development. It includes areas other than those in the Resource Protection District, or Stream Protection District, and areas which are used less intensively than those in the General Development District and Limited Commercial District.
- 408.5 **The Limited Commercial District (LC)** includes areas of mixed, light commercial and residential uses exclusive of the Stream Protection District, which should not be developed as intensely as the General Development District. This district includes areas of two or more contiguous acres in size devoted to a mix of residential and low intensity business and commercial uses.
- 408.6 **The General Development District (GD)** includes the following types of existing, intensively developed areas:
- (1) Areas of two or more contiguous acres devoted to commercial, industrial or intensive recreational activities, or a mix of such activities, including but not limited to the following:
    - (a) Areas devoted to manufacturing, fabricating or other industrial activities;
    - (b) Areas devoted to wholesaling, warehousing, retail trade and service activities, or other commercial activities; and
    - (c) Areas devoted to intensive recreational development consistent with the Ellsworth Waterfront Master Plan and Waterfront Redevelopment Plan.
  - (2) Areas otherwise discernible as having patterns of intensive commercial, industrial or recreational uses.
- 408.7 **The Shoreland Zoning Table of Land Uses.** All land use activities, as indicated in Table 408.8 Land Uses in the Shoreland Zone, shall conform with all of the applicable land use standards in Sections 409 and 410. The district designation for a particular site shall be determined from the Official Land Use Map.

**Key to Table 408.8 Land Uses in the Shoreland Zone:**

- Yes** - Allowed (no permit required but the use must comply with all applicable land use standards.)
- No** - Prohibited.
- PB** - Allowed with Planning Board approval, followed by CEO permit if applicable.
- CEO** - Allowed with permit issued by the Code Enforcement Officer.
- LPI** - Allowed with permit issued by the City Plumbing Inspector.

**District Abbreviations on Table 408.8 – Land Uses in the Shoreland Zone:**

- RP** - Resource Protection
- DP** - Drinkingwater Protection
- SP** - Stream Protection
- GD** - General Development
- LC** - Limited Commercial
- LR** - Limited Residential

| TABLE 408.8<br>LAND USES IN THE SHORELAND ZONE  | More <span style="font-size: small;">RESTRICTIVE</span> less<br> |     |     |     |     |     |
|---|--|-----|-----|-----|-----|-----|
|   | DISTRICT   |     |     |     |     |     |
|   | RP   | DP  | SP  | LR  | LC  | GD  |
| <b>SUMMARY OF DIMENSIONAL REQUIREMENTS</b>  |  |     |     |     |     |     |
| Depth of Shoreland Zone (in feet)   | 250  | 250 | 75  | 250 | 250 | 250 |
| LAND USE CATEGORY   | DISTRICT   |     |     |     |     |     |
|   | RP   | DP  | SP  | LR  | LC  | GD  |
| 1. Non-intensive recreational uses w/o structures such as hunting, fishing and hiking   | YES  | YES | YES | YES | YES | YES |
| 2. Motorized vehicular traffic on existing accessways/trails  | YES  | YES | YES | YES | YES | YES |
| 3. Forest management activities except for timber harvesting & land mgmt. roads   | YES  | YES | YES | YES | YES | YES |
| 4. Timber harvesting  | CEO  | YES | YES | YES | YES | YES |
| 5. Clearing or removal of vegetation for activities other than timber harvesting<br><i><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.</i> | CEO <sup>1</sup>   | CEO | CEO | CEO | CEO | CEO |
| 6. Fire prevention activities   | YES  | YES | YES | YES | YES | YES |
| 7. Wildlife management practices  | YES  | YES | YES | YES | YES | YES |
| 8. Soil and water conservation practices  | YES  | YES | YES | YES | YES | YES |
| 9. Mineral exploration  | NO   | NO  | NO  | CEO | CEO | CEO |
| 10. Mineral extraction (including sand and gravel extract.)   | NO   | NO  | NO  | PB  | PB  | PB  |
| 11. Surveying and resource analysis   | YES  | YES | YES | YES | YES | YES |
| 12. Emergency operations  | YES  | YES | YES | YES | YES | YES |
| 13. Agricultural, Activities (as defined)   | PB   | NO  | CEO | CEO | NO  | NO  |
| 14. Agricultural, Gardening   | CEO  | CEO | CEO | CEO | CEO | CEO |
| 15. Agricultural, Feed Lot  | NO   | NO  | NO  | NO  | NO  | NO  |
| 16. Agricultural Processing, Major  | NO   | NO  | NO  | NO  | NO  | NO  |
| 17. Agricultural Processing, Minor  | NO   | NO  | NO  | NO  | PB  | PB  |

| TABLE 408.8 (continued)  | DISTRICT        |                         |                 |                 |                  |                  |
|--|-----------------|-------------------------|-----------------|-----------------|------------------|------------------|
|  | RP              | DP                      | SP              | LR              | LC               | GD               |
| <b>18. Processing, Fish Wholesale</b>  | NO              | NO                      | NO              | NO              | PB               | PB               |
| <b>19. Principal structures and uses</b>   |                 |                         |                 |                 |                  |                  |
| <b>19.1. One &amp; two family residential and driveways</b>  | PB <sup>2</sup> | CEO<br>/PB <sup>3</sup> | PB <sup>4</sup> | CEO             | NO               | NO               |
| <i><sup>2</sup> Single family structures may be allowed by special exception only according to the provisions of Section 403.5, Special RP Exceptions. Two-family residential structures are prohibited.</i> |                 |                         |                 |                 |                  |                  |
| <i><sup>3</sup> New structures with a footprint greater than 3,000 s. f. must be approved by the Planning Board.</i>   |                 |                         |                 |                 |                  |                  |
| <i><sup>4</sup> Provided that a variance from the shoreline setback requirement is obtained from the Board of Appeals.</i>   |                 |                         |                 |                 |                  |                  |
| <b>19.2. Multi-unit residential</b>  | NO              | NO                      | NO              | PB              | NO               | PB               |
| <b>19.3. Commercial</b>  | NO <sup>5</sup> | NO <sup>5</sup>         | NO              | NO <sup>5</sup> | CEO <sup>6</sup> | CEO <sup>6</sup> |
| <i><sup>5</sup> Except for commercial uses otherwise listed in this Table, such as, but not limited to, marinas and campgrounds, that are allowed in the respective district.</i>                            |                 |                         |                 |                 |                  |                  |
| <i><sup>6</sup> Allowed commercial uses are limited to the ones allowed in land use zoning districts for adjacent upland with the exception of the uses, as listed and described in 410.4.</i>               |                 |                         |                 |                 |                  |                  |
| <b>19.4 Industrial</b>   | NO              | NO                      | NO              | NO              | NO               | CEO <sup>7</sup> |
| <i><sup>7</sup> Allowed industrial uses are limited to the ones allowed in land use zoning districts for adjacent upland with the exception of the uses, as listed and described in 410.4.</i>               |                 |                         |                 |                 |                  |                  |
| <b>19.5 Special Uses, except as otherwise prohibited by this article</b>   | PB              | PB                      | PB              | PB              | PB               | PB               |
| <b>19.6 Government and Institutional</b>   | NO              | PB                      | NO              | PB              | PB               | PB               |
| <b>19.7. Small non-residential facilities for educational, scientific, or nature interpretation</b>  | PB              | PB                      | PB <sup>4</sup> | CEO             | CEO              | CEO              |
| <i><sup>4</sup> Provided that a variance from the shoreline setback requirement is obtained from the Board of Appeals.</i>   |                 |                         |                 |                 |                  |                  |
| <b>20. Structures accessory to allowed uses</b>  | PB <sup>2</sup> | CEO<br>/PB <sup>3</sup> | PB <sup>4</sup> | CEO             | CEO              | CEO              |
| <i><sup>2</sup> Single family structures may be allowed by special exception only according to the provisions of Section 403.5, Special RP Exceptions. Two-family residential structures are prohibited.</i> |                 |                         |                 |                 |                  |                  |
| <i><sup>3</sup> New structures with a footprint greater than 3,000 s. f. must be approved by the Planning Board.</i>   |                 |                         |                 |                 |                  |                  |
| <i><sup>4</sup> Provided that a variance from the shoreline setback requirement is obtained from the Board of Appeals.</i>   |                 |                         |                 |                 |                  |                  |
| <b>21. Piers, docks, wharfs, bridges, boat launching facilities and other structures and uses extending over or below the normal high-water line or within a wetland</b>                                     |                 |                         |                 |                 |                  |                  |
| <b>21.1. Temporary</b>   | CEO             | CEO                     | CEO             | CEO             | CEO              | CEO              |
| <b>21.2. Permanent, private - <sup>8</sup> See 410.1</b>   | PB <sup>8</sup> | PB <sup>8</sup>         | PB <sup>8</sup> | PB <sup>8</sup> | PB <sup>8</sup>  | PB <sup>8</sup>  |
| <b>21.3. Permanent, commercial - <sup>8</sup> See 410.1</b>  | NO              | NO                      | PB <sup>8</sup> | PB <sup>8</sup> | PB <sup>8</sup>  | PB <sup>8</sup>  |
| <b>21.4. Permanent, public facility - <sup>8</sup> See 410.1</b>   | NO              | PB <sup>8</sup>         | PB <sup>8</sup> | PB <sup>8</sup> | PB <sup>8</sup>  | PB <sup>8</sup>  |
| <b>22. Conversions of seasonal residences to year-round</b>  | LPI             | LPI                     | LPI             | LPI             | LPI              | LPI              |
| <b>23. Home occupations</b>  | PB              | PB                      | PB              | PB              | CEO              | CEO              |
| <b>24. Private sewage disposal systems for allowed uses</b>  | LPI             | LPI                     | LPI             | LPI             | LPI              | LPI              |

| TABLE 408.8 (continued)  | DISTRICT                                |                   |                  |                   |                   |                   |
|--|---|-------------------|------------------|-------------------|-------------------|-------------------|
| LAND USE CATEGORY  | RP                                      | DP                | SP               | LR                | LC                | GD                |
| <b>25. Essential services</b>  |   |                   |                  |                   |                   |                   |
| <b>25.1. Distribution</b>  | CEO <sup>9</sup>                        | YES <sup>10</sup> | CEO <sup>9</sup> | YES <sup>10</sup> | YES <sup>10</sup> | YES <sup>10</sup> |
| <b>25.2. Transmission</b>  | PB <sup>9</sup>                         | PB                | PB <sup>9</sup>  | PB                | PB                | PB                |
| <b>25.3. Facilities</b>  | PB <sup>9</sup>                         | NO                | PB <sup>9</sup>  | PB                | PB                | PB                |
| <i><sup>9</sup>Except buildings which shall not be permitted in the RP or SP unless a variance from shoreline setback is granted. See further restrictions in Section 410.10.</i>        |   |                   |                  |                   |                   |                   |
| <i><sup>10</sup>Permit not required but must file a written "Notice of Intent to Construct" with CEO.</i>  |   |                   |                  |                   |                   |                   |
| <b>26. Service drops, as defined, to allowed uses</b>  | YES                                     | YES               | YES              | YES               | YES               | YES               |
| <b>27. Public and private recreational areas involving minimal structural development</b>  | PB                                      | PB                | PB               | PB                | CEO               | CEO               |
| <b>28. Campgrounds</b>   | NO                                      | NO                | NO               | PB                | NO                | NO                |
| <b>29. Campsite, private individual.</b> See 410.3   | PB                                      | PB                | CEO              | CEO               | NO                | NO                |
| <b>30. Accessway, 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</b> |   |                   |                  |                   |                   |                   |
| <b>30.1. Construction of an accessway of more than 500 ft.</b>   | NO <sup>11</sup>                        | PB                | PB               | PB                | PB                | PB                |
| <i><sup>11</sup>Except as provided in Section 410.6.</i>   |   |                   |                  |                   |                   |                   |
| <b>30.2. Construction of an accessway of less than 500 ft.</b>   | PB                                      | CEO               | PB               | CEO               | CEO               | CEO               |
| <b>31. Land management roads</b>   | PB                                      | YES               | YES              | YES               | YES               | YES               |
| <b>32. Parking Lot</b>   | NO                                      | PB                | PB               | PB                | PB                | PB                |
| <b>33. Marinas</b>   | NO                                      | NO                | NO               | PB                | NO                | PB                |
| <b>34. Filling and earth moving of &lt;10 cubic yards</b>  | CEO                                     | CEO               | CEO              | YES               | YES               | YES               |
| <b>35. Filling and earth moving of &gt;10 cubic yards</b>  | PB                                      | CEO               | PB               | CEO               | CEO               | CEO               |
| <b>36. Creation of more than 20,000 s. f. of shoreland lot coverage area (in the aggregate) on one lot.</b>  | PB                                      | PB                | PB               | CEO               | CEO               | CEO               |
| <b>37. Signs</b>   | CEO                                     | CEO               | CEO              | CEO               | CEO               | CEO               |
| <b>38. Uses similar to uses requiring a CEO permit</b>   | CEO                                     | CEO               | CEO              | CEO               | CEO               | CEO               |
| <b>39. Uses similar to uses requiring a PB permit</b>  | PB                                      | PB                | PB               | PB                | PB                | PB                |
| <b>40. Uses similar to allowed uses</b>  | CEO to determine level of review needed |                   |                  |                   |                   |                   |

**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 a natural resource including but not limited to freshwater or coastal wetland, great pond, river, stream or tributary stream 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.

**409 Land Use Standards in the Shoreland Zone (SZ)**

All land use activities within the SZ shall conform to the following provisions, where applicable.

- 409.1 **General Land Use Requirements.** No building, structure or land shall hereafter be used or occupied, and no building or structure or part thereof shall hereafter be erected, constructed, expanded, moved, or altered and no new lot shall be created, except in conformity with all of the regulations herein specified for the district in which it is located, unless a variance is granted.
- 409.2 **Minimum Lot Standards:** All land use activities within the shoreland zone shall conform with the following provisions when applicable:

**TABLE 409.2 Minimum Lot Area and Shore Frontage within the Shoreland Zone (SZ)**

| <b>Residential Uses in SZ Adjacent to:</b>   | <b>Min. Lot Area (sq. ft.)</b>   | <b>Min. Shore Frontage (ft.)</b> |
|--|--|----------------------------------|
| Tidal Areas in the GD Zoning District  | 10,000 per dwelling unit   | 100 per dwelling unit            |
| Tidal Areas in the LR Zoning District  | 40,000 per dwelling unit   | 150 per dwelling unit            |
| Non-Tidal Areas except DP, SP & RP Districts   | 40,000 per dwelling unit   | 200 per dwelling unit            |
| <b>Governmental, Institutional, Commercial or Industrial Uses in SZ Adjacent to:</b> | <b>Min. Lot Area (sq. ft.)</b>   | <b>Min. Shore Frontage (ft.)</b> |
| Tidal Areas in the GD Zoning District  | 10,000 per principal structure   | 100 per principal structure      |
| Tidal Areas in the LR Zoning District  | 40,000 per principal structure   | 200 per principal structure      |
| Non-tidal areas except DP, SP & RP District  | 60,000 per principal structure   | 300 per principal structure      |
| <b>Public or Private Recreational Facilities:</b>                                    | <b>Min. Lot Area (sq. ft.)</b>   | <b>Min. Shore Frontage (ft.)</b> |
| All SZ Areas except the DP & RP Zoning District                                      | 40,000 per principal structure   | 200 per principal structure      |
| <b>All Uses in:</b>  | <b>Min. Lot Area (sq. ft.)</b>   | <b>Min. Shore Frontage (ft.)</b> |
| All Areas of DP Zoning District  | 90,000/unit or princ. structure  | 300/unit or princ. structure     |
| All Areas of SP* & RP* Zoning District   | Apply lot and structure requirements of the most restrictive adjacent zoning district. |                                  |

\*Structure permitting in RP and SP is very limited. See provisions in Sections 408, 409 and 410.

- A. **Minimum Lot Area.** Land below the normal high-water line of a water body or upland edge of a wetland and land beneath accessways serving more than 2 lots shall not be included toward calculating minimum lot area.
- B. **Lots Split by Accessways.** Lots located on opposite sides of a public or private accessway shall be considered each a separate tract or parcel of land unless such accessway was established by the owner of land on both sides thereof after September 22, 1971.
- C. **The Minimum Width** of any portion of any lot within 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.
- D. **Multiple Uses.** 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.

409.3 **Structure Standards:**

- A. General Structure Setback. All new principal and accessory structures shall be constructed according to the requirements specified in Table 409.3 Structure and Lot Standards within the Shoreland Zone below.
- B. Resource Protection District Shoreline Setback requirements shall be 250 feet, horizontal distance from the shoreline, except for structures, accessways, or other regulated objects specifically allowed in that district in which case the setback requirements specified in Table 409.3 Structure and Lot Standards within the Shoreland Zone below shall apply.

**TABLE 409.3 Structure and Lot Standards within the Shoreland Zone**

| STANDARD:   | Shoreland Zoning Districts<br>Dimensions in feet |     |     |     |     |     |
|---|--|-----|-----|-----|-----|-----|
|   | RP*  | DP  | SP* | LR  | LC  | GD  |
| Minimum structure shoreline setback from the normal high-water line of great ponds and rivers, as defined.  | 100*   | 100 | n/a | 100 | 100 | 25  |
| Minimum structure shoreline setback from fresh water bodies (other than above) tributary streams, tidal water bodies or the upland edge of a wetland, as defined. | 75*  | 75  | 75* | 75  | 75  | 25  |
| Minimum structure setback from the edge of a right-of-way.  | 20*  | 20  | 20* | 20  | 20  | 20  |
| Minimum structure setback from a property line, as defined.   | 25*  | 25  | 25* | 15  | 10  | 10  |
| Minimum lot frontage along the edge of a right-of-way   | 200  | 200 | 200 | 150 | 200 | 100 |
| Maximum height of a structure, as defined.  | 35*  | 35  | 35* | 35  | 35  | 45  |
| Maximum shoreland lot coverage as defined below.  | 20%  | 20% | 20% | 20% | 20% | 70% |

\*Structure permitting in RP and SP is very limited. See provisions in Sections 408, 409, and 410.

- C. Structure Shoreline Setback Exceptions. The shoreline setback provision shall not apply to structures of functionally water-dependent uses, as defined.
- D. Structure Shoreline Setbacks near Coastal Bluffs. For principal structures, shoreline 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 a copy of which is available in the Ellsworth Code Office. 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.
- E. Structure Height. Principal or accessory structures and expansions of existing structures shall not exceed the heights listed in Table 409.3 Structure and Lot Standards within the Shoreland Zone. This provision shall not apply to structures such as transmission towers, windmills, antennas, and similar structures having no floor area.

- F. Floodplain Elevation. The lowest floor elevation or openings of all buildings and structures, including basements, shall be elevated at least one foot above the elevation of the 100 year flood, the flood of record, or in the absence of these, the flood as defined by soil types identified as recent floodplain soils. However, accessory structures, as defined, may be placed in accordance with the standards of the Ellsworth Floodplain Management Ordinance even if they do not meet the elevation requirements of this paragraph.
- G. Shoreland Lot Coverage: The total footprint area of all structures, parking lots and other non-vegetated surfaces, within the shoreland zone shall not exceed the requirements specified in Table 409.3 Structure and Lot Standards within the Shoreland Zone above for the lot or for a portion thereof that is located within the shoreland zone, including land area previously developed.
- H. Retaining Walls that are not necessary for erosion control shall meet the structure shoreline 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 is at least 25 feet, horizontal distance, from the normal high-water line of a water body, tributary stream, or upland edge of a wetland;
  - (c) The site where the retaining wall will be constructed is legally existing lawn or is a site eroding from lack of naturally occurring vegetation, and which cannot be stabilized with vegetative plantings;
  - (d) The total height of the wall(s), in the aggregate, is no more than 24 inches;
  - (e) Retaining walls are located outside of the 100-year floodplain on rivers, streams, coastal wetlands, and tributary streams, as designated on the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps or Flood Hazard Boundary Maps for the City of Ellsworth, or the flood of record, or in the absence of these, by soil types identified as recent floodplain soils.
  - (f) The area behind the wall is revegetated with grass, shrubs, trees, or a combination thereof, and no further structural development will occur within the shoreline setback area, including patios and decks; and
  - (g) A vegetated buffer area is established within 25 feet, horizontal distance, of the normal high-water line of a water body, tributary stream, or upland edge of a wetland when a natural buffer area does not exist. The buffer area must meet the following characteristics:

- i. The buffer must include shrubs and other woody and herbaceous vegetation. Where natural ground cover is lacking the area must be supplemented with leaf or bark mulch;
  - ii. Vegetation plantings must be in quantities sufficient to retard erosion and provide for effective infiltration of stormwater runoff;
  - iii. Only native species may be used to establish the buffer area;
  - iv. A minimum buffer width of 15 feet, horizontal distance, is required, measured perpendicularly to the normal high-water line or upland edge of a wetland;
  - v. A footpath not to exceed the standards in Section 410.14(2)(a) may traverse the buffer;
- I. Shoreline Access. Notwithstanding the requirements stated above, stairways or similar structures may be allowed with a permit from the Code Enforcement Officer, to provide shoreline access in areas of steep slopes or unstable soils provided: that the structure is limited to a maximum of four (4) feet in width; that the structure does not extend below or over the normal high-water line of a water body or upland edge of a wetland, (unless permitted by the Department of Environmental Protection pursuant to the Natural Resources Protection Act, 38 M.R.S.A. section 480-C); and that the applicant demonstrates that no reasonable access alternative exists on the property.

## **410 Performance Standards in the Shoreland Zone**

### **410.1 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.**

- (1) Access from shore shall be developed on soils appropriate for such use and constructed so as to control erosion.
- (2) The location shall not interfere with existing developed or natural beach areas.
- (3) The facility shall be located so as to minimize adverse effects on fisheries.
- (4) The facility shall be no larger in dimension than necessary to carry on the activity and be consistent with the surrounding character and uses of the area. A temporary pier, dock or wharf in non-tidal waters shall not be wider than 6 feet for non-commercial uses.
- (5) No new structure shall be built on, over or abutting a pier, wharf, dock or other structure extending below the normal high-water line of a water body or within a wetland unless the structure requires direct access to the water body or wetland as an operational necessity.
- (6) New permanent piers and docks on non-tidal waters shall not be permitted unless it is clearly demonstrated to the Planning Board that a temporary pier or dock is not feasible, and a permit has been obtained from the Department of Environmental Protection, pursuant to the Natural Resources Protection Act.
- (7) No existing structures built on, over or abutting a pier, dock, wharf or other structure extending below the normal high-water line of a water body or within a wetland shall be converted to residential dwelling units in any district.

- (8) Except in the General Development Districts, structures built on, over or abutting a pier, wharf, dock or other structure extending below the normal high-water line of a water body or within a wetland shall not exceed 20 feet in height above the pier, wharf, dock or other structure.
- (9) Boat launches and ramps shall only be permitted as permanent public or quasi-governmental facilities. All public and quasi-governmental trailer-able boat launching facilities providing access to Branch Lake shall comply with the following requirements:
  - (a) The facility shall be gated and locked during off-hours.
  - (b) The facility shall be supervised by an attendant during hours of operation.
  - (c) The facility shall be equipped with a boat wash-down facility for the sole purpose of washing down boats.
  - (d) The facility attendant shall conduct a boat inspection on all watercraft prior to entering Branch Lake.
  - (e) A boat inspection includes: a) a visual inspection of a boat, motor vehicle, trailer, marine engine, live well, bilge, bait bucket and all other related equipment to ensure that no aquatic invasive plants or animals are introduced into Branch Lake and b) a boat wash down.

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

- (1) Campgrounds shall contain a minimum of 5,000 square feet of land for each site, not including accessways and driveways. 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 100 feet, horizontal distance, from the normal high-water line of a great pond or a river flowing to a great pond, and 100 feet, horizontal distance, from the normal high-water line of other water bodies, tributary streams, or the upland edge of a wetland.

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

- A. One campsite per lot existing on the effective date of this Article, or one campsite per 30,000 square feet of lot area within the shoreland zone, whichever is less, may be permitted. A maximum of four campsites not to exceed a combined total of 20 individuals may be permitted on any one lot. If there is more than one campsite per lot each campsite shall have a minimum of 30,000 square feet.
- B. Campsite placement on any lot, including the area intended for a recreational vehicle or tent platform, shall be set back 100 feet, horizontal distance, from the normal high-water line of a great pond or river flowing to a great pond, and 75 feet, horizontal distance, from the normal high-water line of other water bodies, tributary streams, or the upland edge of a wetland.
- C. Only one recreational vehicle shall be allowed on a campsite. The recreational vehicle shall not be located on any type of permanent foundation except for a gravel pad, and no structure except a canopy shall be attached to the recreational vehicle.

- D. The clearing of vegetation for the siting of a recreational vehicle, tent or similar shelter in a Resource Protection District shall be limited to 1,000 square feet.
- E. A written sewage disposal plan describing the proposed method and location of sewage disposal shall be required for each campsite and shall be approved by the City Plumbing Inspector. Where disposal is off-site, written authorization from the receiving facility or land owner is required.
- F. When a recreational vehicle, tent or similar shelter is placed on-site for more than 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.

410.4 **Commercial and Industrial Uses.** The following new commercial and industrial uses, and similar uses, are prohibited within the shoreland zone adjacent to great ponds and rivers and streams which flow to great ponds:

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

410.5 **Parking Lots**

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

410.6 **Accessways.** See Ellsworth Code of Ordinances Chapter 56 Article 9 Street Design and Construction Standards and Article 10 Storm Water Management, Design and Construction Standards for standards that apply to the construction of accessways and drainage systems, culverts and other related features.

410.7 **Signs.** See Ellsworth Code of Ordinances Chapter 9 *Sign Ordinance* for standards to apply to the erection signs. Where a Shoreland Zone is not mentioned, provisions for the adjacent upland zone shall apply.

410.8 **Storm Water Runoff** See Ellsworth Code of Ordinances Chapter 56 Article 10 Storm Water Management, Design and Construction Standards for standards to apply all new construction and development to minimize storm water runoff from the site.

410.9 **Septic Waste Disposal**

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

- (1) clearing or removal of woody vegetation necessary to site a new system and any associated fill extensions, shall not extend closer than 75 feet, horizontal distance, from the normal high-water line of a water body or the upland edge of a wetland and
- (2) a holding tank is not allowed for a first-time residential use in the shoreland zone.

410.10 **Essential Services**

- (1) Where feasible, the installation of essential services shall be limited to existing public ways and existing service corridors.
- (2) The installation of essential services, other than road-side distribution lines, is not allowed in a Resource Protection or Stream Protection District, except to provide services to a permitted use within said district, or except where the applicant demonstrates that no reasonable alternative exists. Where allowed, such structures and facilities shall be located so as to minimize any adverse impacts on surrounding uses and resources, including visual impacts.
- (3) Damaged or destroyed public utility transmission and distribution lines, towers and related equipment may be replaced or reconstructed without a permit.
- (4) Essential services structures must meet the shoreline setback requirements in the shoreland zoning district in which they are located.

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

Mineral extraction may be permitted under the following conditions:

- (1) A reclamation plan shall be filed with, and approved, by the Planning Board before a permit is granted. Such plan shall describe in detail procedures to be undertaken to fulfill the requirements of Section 410.11(3) below.
- (2) No part of any extraction operation, including drainage and runoff control features, shall be permitted within one 100 feet, horizontal distance, of the normal high-water line of a great pond or a river, and within 75 feet, horizontal distance, of the normal high-water line of any other water body, tributary stream, or the upland edge of a wetland. Extraction operations shall not be permitted within 50 feet, horizontal distance, of any property line without written permission of the owner of such adjacent property.
- (3) Within 12 months following the completion of extraction operations at any extraction site, which operations shall be deemed complete when less than 100 cubic yards of materials are removed in any consecutive 12 month period, ground levels and grades shall be established in accordance with the following:
  - (a) All debris, stumps, and similar material shall be removed for disposal in an approved location, or shall be buried on-site. Only materials generated on-site may be buried or covered on-site.
  - (b) The final graded slope shall be two and one-half to one (2½: 1) slope or flatter.
  - (c) Top soil or loam shall be retained to cover all disturbed land areas, which shall be reseeded and stabilized with vegetation native to the area. Additional topsoil or loam shall be obtained from off-site sources if necessary to complete the stabilization project.
- (4) In keeping with the purposes of this Article, the Planning Board may impose such conditions as are necessary to minimize the adverse impacts associated with mineral extraction operations on surrounding uses and resources.

#### 410.12 **Agricultural, Activities**

- (1) All spreading of manure shall be accomplished in conformance with the *Manure Utilization Guidelines* (latest version) published by the Maine Department of Agriculture and the Nutrient Management Law (7 M.R.S.A. sections 4201-4209).
- (2) Manure shall not be stored or stockpiled within 100 feet, horizontal distance, of a great pond or a river, or within 75 feet horizontal distance, of other water bodies, tributary streams, or wetlands. All manure storage areas within the shoreland zone must be constructed or modified such that the facility produces no discharge of effluent or contaminated storm water.
- (3) Agricultural activities involving tillage of soil greater than 40,000 square feet in surface area, within the shoreland zone shall require a Conservation Plan as defined to be filed with the Planning Board. Non-conformance with the provisions of said plan shall be considered to be a violation of this Article.
- (4) There shall be no new tilling of soil within 100 feet, horizontal distance, of the normal high-water line of a great pond; within 75 feet, horizontal distance, from other water bodies and coastal wetlands; nor within 25 feet, horizontal distance, of tributary streams and freshwater wetlands. Operations in existence on the effective date of this Article and not in conformance with this provision may be maintained.

- (5) Newly established livestock grazing areas shall not be permitted within 100 feet, horizontal distance, of the normal high-water line of a great pond; within 75 feet, horizontal distance, of other water bodies and coastal wetlands; nor within 25 feet, horizontal distance, of tributary streams and freshwater wetlands. Livestock grazing associated with ongoing farm activities, and which are not in conformance with the above shoreline setback provisions may continue, provided that such grazing is conducted in accordance with a Conservation Plan as defined.

#### **410.13 Timber Harvesting**

- (1) In a Resource Protection District abutting a great pond, timber harvesting shall be limited to the following:
  - (a) Within the strip of land extending 75 feet, horizontal distance, inland from the normal high-water line, timber harvesting may be conducted when the following conditions are met:
    - (1) The ground is frozen;
    - (2) There is no resultant soil disturbance;
    - (3) The removal of trees is accomplished using a cable or boom and there is no entry of tracked or wheeled vehicles into the 75-foot strip of land;
    - (4) There is no cutting of trees less than 6 inches in diameter; no more than 30% of the trees 6 inches or more in diameter, measured at 4 ½ feet above ground level, are cut in any 10-year period; and a well-distributed stand of trees and other natural vegetation remains; and
    - (5) A licensed professional forester has marked the trees to be harvested prior to a permit being issued by the municipality.
  - (b) Beyond the 75 foot strip referred to in Section 410.13(1)(a) above, timber harvesting is permitted in accordance with paragraph 2 below except that in no case shall the average residual basal area of trees over 4 ½ inches in diameter at 4 ½ feet above ground level be reduced to less than 30 square feet per acre.
- (2) Except in areas as described in Section 410.13(1) above, timber harvesting shall conform with the following provisions:
  - (a) Selective cutting of no more than 40 % of the total volume of trees 4 inches or more in diameter measured at 4 1/2 feet above ground level on any lot in any 10-year period is permitted. In addition:
    - (i) Within 100 feet, horizontal distance, of the normal high-water line of a great pond or a river flowing to a great pond, and within 75 feet, horizontal distance, of the normal high-water line of other water bodies, tributary streams, or the upland edge of a wetland, there shall be no clearcut openings and a well-distributed stand of trees and other vegetation, including existing ground cover, shall be maintained.
    - (ii) At distances greater than 100 feet, horizontal distance, of a great pond or a river flowing to a great pond, and greater than 75 feet, horizontal distance, of the normal high-water line of other water bodies or the upland edge of a wetland, harvesting

operations shall not create single clearcut openings greater than 10,000 square feet in the forest canopy. Where such openings exceed 5,000 square feet they shall be at least 100 feet, horizontal distance, apart. Such clearcut openings shall be included in the calculation of total volume removal. Volume may be considered to be equivalent to basal area.

- (b) Timber harvesting operations exceeding the 40% limitation in Section 410.13(2)(a) above, may be allowed by the Planning Board upon a clear showing, including a forest management plan signed by a Maine licensed professional forester, that such an exception is necessary for good forest management and will be carried out in accordance with the purposes of this Article. The planning board shall notify the Commissioner of the Department of Environmental Protection of each exception allowed, within 14 days of the Planning Board's decision.
- (c) No accumulation of slash shall be left within 50 feet, horizontal distance, of the normal high-water line of a water body. In all other areas slash shall either be removed or disposed of in such a manner that it lies on the ground and no part thereof extends more than 4 feet above the ground. Any debris that falls below the normal high-water line of a water body or tributary stream shall be removed.
- (d) Timber harvesting equipment shall not use stream channels as travel routes except when:
  - (i) Surface waters are frozen; and
  - (ii) The activity will not result in any ground disturbance.
- (e) All crossings of flowing water shall require a bridge or culvert, except in areas with low banks and channel beds which are composed of gravel, rock or similar hard surface which would not be eroded or otherwise damaged.
- (f) Skid trail approaches to water crossings shall be located and designed so as to prevent water runoff from directly entering the water body or tributary stream. Upon completion of timber harvesting, temporary bridges and culverts shall be removed and areas of exposed soil re-vegetated.
  - (h) Except for water crossings, skid trails and other sites where the operation of machinery used in timber harvesting results in the exposure of mineral soil shall be located such that an unscarified strip of vegetation of at least 75 feet, horizontal distance, in width for slopes up to 10% shall be retained between the exposed mineral soil and the normal high-water line of a water body or upland edge of a wetland. For each 10% increase in slope, the unscarified strip shall be increased by 20 feet, horizontal distance. The provisions of this paragraph apply only to a face sloping toward the water body or wetland, provided, however, that no portion of such exposed mineral soil on a back face shall be closer than 25 feet, horizontal distance, from the normal high-water line of a water body or upland edge of a wetland.

**410.13-1. Timber Harvesting – Statewide Standards [Effective on effective date established in Section 402.1.B]**

- (1) Shoreline integrity and sedimentation. Persons conducting timber harvesting and related activities must take reasonable measures to avoid the disruption of shoreline integrity, the occurrence of sedimentation of water, and the disturbance of water body and tributary stream banks, water body and tributary stream channels, shorelines, and soil lying within water bodies, tributary streams and wetlands. If, despite such precautions, the disruption of shoreline integrity, sedimentation of water, or the disturbance of water body and tributary stream banks, water body and tributary stream channels, shorelines, and soil lying within water bodies, tributary streams and wetlands occurs, such conditions must be corrected.
- (2) Slash treatment. Timber harvesting and related activities shall be conducted such that slash or debris is not left below the normal high-water line of any water body or tributary stream, or the upland edge of a wetland. This section [410.13-1(2)] does not apply to minor, incidental amounts of slash that result from timber harvesting and related activities otherwise conducted in compliance with this section.
  - (a) Slash actively used to protect soil from disturbance by equipment or to stabilize exposed soil, may be left in place, provided that no part thereof extends more than 4 feet above the ground.
  - (b) Adjacent to great ponds, rivers and wetlands:
    - (i) No accumulation of slash shall be left within 100 feet, horizontal distance, of the normal high-water line or upland edge of a wetland; and
    - (ii) Between 100 feet and 250 feet, horizontal distance, of the normal high-water line or upland edge of a wetland, all slash larger than 3 inches in diameter must be disposed of in such a manner that no part thereof extends more than 4 feet above the ground.
- (3) Timber harvesting and related activities must leave adequate tree cover and shall be conducted per one of the three options presented below so that a well-distributed stand of trees is retained.
  - (a) Option #1 - 40% Volume Removal, as follows:
    - (i) Harvesting of no more than 40% of the total volume on each acre of trees 4.5 inches DBH or greater in any 10-year period is allowed. Volume may be considered to be equivalent to basal area;
    - (ii) A well-distributed stand of trees which is windfirm, and other vegetation including existing ground cover, must be maintained; and,
    - (iii) Within 75 feet, horizontal distance, of the normal high-water line of rivers, streams, and great ponds, and within 75 feet, horizontal distance, of the upland edge of a freshwater or coastal wetlands, there must be no cleared openings. At distances greater than 75 feet, horizontal distance, of the normal high-water line of a river or great pond or upland edge of a wetland, timber harvesting and related activities must not create single cleared openings greater than 14,000 square feet in the forest

canopy. Where such openings exceed 10,000 square feet, they must be at least 100 feet, horizontal distance, apart. Such cleared openings will be included in the calculation of total volume removal. Volume may be considered equivalent to basal area.

(b) Option # 2 (60 square foot basal area retention), as follows:

- (i) The residual stand must contain an average basal area of at least 60 square feet per acre of woody vegetation greater than or equal to 1.0 inch DBH, of which 40 square feet per acre must be greater than or equal to 4.5 inches DBH;
- (ii) A well-distributed stand of trees which is windfirm, and other vegetation including existing ground cover, must be maintained; and,
- (iii) Within 75 feet, horizontal distance, of the normal high-water line of water bodies and within 75 feet, horizontal distance, of the upland edge of wetlands, there must be no cleared openings. At distances greater than 75 feet, horizontal distance, of the normal high-water line of a river or great pond, or upland edge of a wetland, timber harvesting and related activities must not create single cleared openings greater than 14,000 square feet in the forest canopy. Where such openings exceed 10,000 square feet, they must be at least 100 feet, horizontal distance, apart. Such cleared openings will be included in the calculation of the average basal area. Volume may be considered equivalent to basal area.

(c) Option #3 (Outcome based), which requires: an alternative method proposed in an application, signed by a Licensed Forester or certified wildlife professional, submitted by the landowner or designated agent to the State of Maine Department of Conservation's Bureau of Forestry (Bureau) for review and approval, which provides equal or better protection of the shoreland area than this rule.

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

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

(4) Skid trails, yards, and equipment operation. This requirement applies to the construction, maintenance, and use of skid trails and yards in shoreland areas.

- (a) Equipment used in timber harvesting and related activities shall not use river, stream or tributary stream channels as travel routes except when surface waters are frozen and snow covered, and the activity will not result in any ground disturbance.

- (b) Skid trails and yards must be designed and constructed to prevent sediment and concentrated water runoff from entering a water body, tributary stream, or wetland. Upon termination of their use, skid trails and yards must be stabilized.
- (c) Setbacks:
  - (i) Equipment must be operated to avoid the exposure of mineral soil within 25 feet, horizontal distance, of any water body, tributary stream, or wetland. On slopes of 10% or greater, the shoreline setback for equipment operation must be increased by 20 feet, horizontal distance, plus an additional 10 feet, horizontal distance, for each 5% increase in slope above 10%. Where slopes fall away from the resource, no increase in the 25-foot shoreline setback is required.
  - (ii) Where such shoreline setbacks are impracticable, appropriate techniques shall be used to avoid sedimentation of the water body, tributary stream or wetland. Such techniques may include the installation of sump holes or settling basins, and/or the effective use of additional ditch relief culverts and ditch water turnouts placed to avoid sedimentation of the water body, tributary stream, or wetland. If, despite such precautions, sedimentation or the disruption of shoreline integrity occurs, such conditions must be corrected.
- (5) Land Management Roads. Land management roads, including approaches to crossings of water bodies, tributary stream channels, and freshwater wetlands, ditches and other related structures, must be designed, constructed, and maintained to prevent sediment and concentrated water runoff from directly entering the water body, tributary stream or wetland. Surface water on or adjacent to water crossing approaches must be diverted through vegetative filter strips to avoid sedimentation of the watercourse or wetland. Because roadside ditches may not extend to the resource being crossed, vegetative filter strips must be established in accordance with the shoreline setback requirements in Section 410.13-1(7) of this rule.
  - (a) Land management roads and associated ditches, excavation, and fill must be set back at least:
    - (i) 100 feet, horizontal distance, from the normal high-water line of a great pond, river or freshwater or coastal wetland;
    - (ii) 50 feet, horizontal distance, from the normal high-water line of streams; and
    - (iii) 25 feet, horizontal distance, from the normal high-water line of tributary streams
  - (b) The minimum 100-foot shoreline setback specified in Section 410.13-1(5)(a)(i) above may be reduced to no less than 50 feet, horizontal distance, and the 50-foot shoreline setback specified in Section 410.13-1(5)(a)(ii) above may be reduced to no less than 25 feet, horizontal distance, if, prior to construction, the landowner or the landowner's designated agent demonstrates to the Planning Board's satisfaction that no reasonable alternative exists and that appropriate techniques will be used to prevent sedimentation of the water body, tributary stream, or wetland. Such techniques may include, but are not limited to, the installation of settling basins, and/or the effective use of additional ditch relief culverts and turnouts placed to avoid sedimentation of the water body, tributary stream or wetland. If, despite such precautions, sedimentation or the disruption of shoreline integrity occurs, such conditions must be corrected.

- (c) On slopes of 10% or greater, the land management road shoreline setback must be increased by at least 20 feet, horizontal distance, plus an additional 10 feet, horizontal distance, for each 5% increase in slope above 10%.
- (d) New land management roads are not allowed in a Resource Protection District, unless, prior to construction, the landowner or the landowner's designated agent makes a clear demonstration to the Planning Board's satisfaction that no reasonable alternative route exists outside the shoreland zone, and that the new road must be set back as far as practicable from the normal high-water line and screened from the river by existing vegetation.
- (e) Ditches, culverts, bridges, dips, water turnouts and other water control installations associated with roads must be maintained on a regular basis to assure effective functioning. Drainage structures shall deliver a dispersed flow of water into an unscarified filter strip no less than the width indicated in the shoreline setback requirements in Section 410.13-1(7). Where such a filter strip is impracticable, appropriate techniques shall be used to avoid sedimentation of the water body, tributary stream, or wetland. Such techniques may include the installation of sump holes or settling basins, and/or the effective use of additional ditch relief culverts and ditch water turnouts placed to avoid sedimentation of the water body, tributary stream, or wetland. If, despite such precautions, sedimentation or the disruption of shoreline integrity occurs, such conditions must be corrected.
- (f) Road closeout and discontinuance. Maintenance of the water control installations required in Section 410.13-1(5)(e) must continue until use of the road is discontinued and the road is put to bed by effective installation of water bars or other adequate road drainage structures at appropriate intervals, constructed to avoid surface water flowing over or under the water bar, and extending a sufficient distance beyond the traveled way so that water does not reenter the road surface.
- (g) Upgrading existing roads. Extension or enlargement of presently existing roads must conform to the provisions of Section 410.13-1. Any nonconforming existing road may continue to exist and to be maintained, as long as the nonconforming conditions are not made more nonconforming.
- (h) Exception. Extension or enlargement of presently existing roads need not conform to the shoreline setback requirements of Section 410.13-1(5)(a) if, prior to extension or enlargement, the landowner or the landowner's designated agent demonstrates to the Planning Board's satisfaction that no reasonable alternative exists and that appropriate techniques will be used to prevent sedimentation of the water body, tributary stream, or wetland. Such techniques may include, but are not limited to, the installation of settling basins, and/or the effective use of additional ditch relief culverts and turnouts placed to avoid sedimentation of the water body, tributary stream, or wetland. If, despite such precautions, sedimentation or the disruption of shoreline integrity occurs, such conditions must be corrected.
- (i) Additional measures. In addition to the foregoing minimum requirements, persons undertaking construction and maintenance of roads and river, stream and tributary stream crossings must take reasonable measures to avoid sedimentation of surface waters.

- (6) Crossings of waterbodies. Crossings of rivers, streams, and tributary streams must allow for fish passage at all times of the year, must not impound water, and must allow for the maintenance of normal flows.
- (a) Determination of flow. Provided they are properly applied and used for the circumstances for which they are designed, methods including but not limited to the following are acceptable as a means of calculating the 10 year and 25 year frequency water flows and thereby determining water crossing sizes as required in Section 410.13-1: The United States Geological Survey (USGS) Methods; specifically: Hodgkins, G. 1999. Estimating the Magnitude of Peak Flows for Streams in Maine for Selected Recurrence Intervals. U.S. Geological Survey. Water Resources Investigations Report 99-4008. 45 pp.
  - (b) Upgrading existing water crossings. Extension or enlargement of presently existing water crossings must conform to the provisions of Section 410.13-1. Any nonconforming existing water crossing may continue to exist and be maintained, as long as the nonconforming conditions are not made more nonconforming; however, any maintenance or repair work done below the normal high-water line must conform to the provisions of Section 410.13-1.
  - (c) Other Agency Permits. Any timber harvesting and related activities involving the design, construction, and maintenance of crossings on waterbodies other than a river, stream or tributary stream may require a permit from the Land Use Regulation Commission, the Department of Environmental Protection, or the US Army Corps of Engineers.
  - (d) Any timber harvesting and related activities involving the design, construction, and maintenance of crossings of freshwater wetlands identified by the Department of Inland Fisheries and Wildlife as essential wildlife habitat require prior consultation with the Department of Inland Fisheries and Wildlife.
  - (e) Notice to Bureau of Forestry. Written notice of all water crossing construction maintenance, alteration and replacement activities in shoreland areas must be given to the Bureau prior to the commencement of such activities. Such notice must contain all information required by the Bureau, including:
    - (i) a map showing the location of all proposed permanent crossings;
    - (ii) the GPS location of all proposed permanent crossings;
    - (iii) for any temporary or permanent crossing that requires a permit from state or federal agencies, a copy of the approved permit or permits; and
    - (iv) a statement signed by the responsible party that all temporary and permanent crossings will be constructed, maintained, and closed out in accordance with the requirements of this Section.
  - (f) Water crossing standards. All crossings of rivers require a bridge or culvert sized according to the requirements of Section 410.13-16(g) below. Streams and tributary streams may be crossed using temporary structures that are not bridges or culverts provided:
    - (i) concentrated water runoff does not enter the stream or tributary stream;
    - (ii) sedimentation of surface waters is reasonably avoided;
    - (iii) there is no substantial disturbance of the bank, or stream or tributary stream channel;
    - (iv) fish passage is not impeded; and,
    - (v) water flow is not unreasonably impeded.

Subject to Section 410.13-1(6)(f)(i-v) above, skid trail crossings of streams and tributary streams when channels of such streams and tributary streams are frozen and snow-covered or are composed of a hard surface which will not be eroded or otherwise damaged are not required to use permanent or temporary structures.

- (g) Bridge and Culvert Sizing. For crossings of river, stream and tributary stream channels with a bridge or culvert, the following requirements apply:
- (i) Bridges and culverts must be installed and maintained to provide an opening sufficient in size and structure to accommodate 10-year frequency water flows or with a cross-sectional area at least equal to 2 ½ times the cross-sectional area of the river, stream, or tributary stream channel.
  - (ii) Temporary bridge and culvert sizes may be smaller than provided in Section 410.13-1(6)(g)(i) if techniques are effectively employed such that in the event of culvert or bridge failure, the natural course of water flow is maintained and sedimentation of the water body or tributary stream is avoided. Such crossing structures must be at least as wide as the channel and placed above the normal high-water line. Techniques may include, but are not limited to, the effective use of any, a combination of, or all of the following:
    - 1. use of temporary skidder bridges;
    - 2. removing culverts prior to the onset of frozen ground conditions;
    - 3. using water bars in conjunction with culverts;
    - 4. using road dips in conjunction with culverts.
  - (iii) Culverts utilized in river, stream and tributary stream crossings must:
    - 1. be installed at or below river, stream or tributary stream bed elevation;
    - 2. be seated on firm ground;
    - 3. have soil compacted at least halfway up the side of the culvert;
    - 4. be covered by soil to a minimum depth of 1 foot or according to the culvert manufacturer's specifications, whichever is greater; and
    - 5. have a headwall at the inlet end which is adequately stabilized by riprap or other suitable means to reasonably avoid erosion of material around the culvert.
  - (iv) River, stream and tributary stream crossings allowed under Section 410.13-1, but located in flood hazard areas (i.e. A zones) as identified on a the Flood Insurance Rate Maps (FIRM) or Flood Hazard Boundary Maps (FHBM) for Ellsworth, must be designed and constructed under the stricter standards contained in the National Flood Insurance Program (NFIP) for Ellsworth. For example, a water crossing may be required to pass a 100-year flood event.
  - (v) Exception. Skid trail crossings of tributary streams within shoreland areas and wetlands adjacent to such streams may be undertaken in a manner not in conformity with the requirements of the foregoing subsections provided persons conducting such activities take reasonable measures to avoid the disruption of shoreline integrity, the occurrence of sedimentation of water, and the disturbance of stream banks, stream

channels, shorelines, and soil lying within ponds and wetlands. If, despite such precautions, the disruption of shoreline integrity, sedimentation of water, or the disturbance of stream banks, stream channels, shorelines, and soil lying within ponds and wetlands occurs, such conditions must be corrected.

- (h) Skid trail closeout. Upon completion of timber harvesting and related activities, or upon the expiration of a Forest Operations Notification, whichever is earlier, the following requirements apply:
  - (i) Bridges and culverts installed for river, stream and tributary stream crossings by skid trails must either be removed and areas of exposed soil stabilized, or upgraded to comply with the closeout standards for land management roads in Section 410.13-1(6)(i) below.
  - (ii) Water crossing structures that are not bridges or culverts must either be removed immediately following timber harvesting and related activities, or, if frozen into the river, stream or tributary stream bed or bank, as soon as practical after snowmelt.
  - (iii) River, stream and tributary stream channels, banks and approaches to crossings of water bodies and tributary streams must be immediately stabilized on completion of harvest, or if the ground is frozen and/or snow-covered, as soon as practical after snowmelt. If, despite such precautions, sedimentation or the disruption of shoreline integrity occurs, such conditions must be corrected.
- (i) Land management road closeout. Maintenance of the water control features must continue until use of the road is discontinued and the road is put to bed by taking the following actions:
  - (i) Effective installation of water bars or other adequate road drainage structures at appropriate intervals, constructed to reasonably avoid surface water flowing over or under the water bar, and extending sufficient distance beyond the traveled way so that water does not reenter the road surface.
  - (ii) Water crossing structures must be appropriately sized or dismantled and removed in a manner that reasonably avoids sedimentation of the water body or tributary stream.
  - (iii) Any bridge or water crossing culvert in roads to be discontinued shall satisfy one of the following requirements:
    1. it shall be designed to provide an opening sufficient in size and structure to accommodate 25 year frequency water flows;
    2. it shall be designed to provide an opening with a cross-sectional area at least 3 ½ times the cross-sectional area of the river, stream or tributary stream channel; or
    3. it shall be dismantled and removed in a fashion to reasonably avoid sedimentation of the river, stream or tributary stream.

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

(7) Slope Table

Filter strips, skid trail shoreline setbacks, and land management road shoreline setbacks must be maintained as specified in Section 410.13-1, but in no case shall be less than shown in the following table.

| Average slope of land between exposed mineral soil and the shoreline (percent) | Width of strip between exposed mineral soil and shoreline (feet along surface of the ground) |
|--|--|
| 0  | 25   |
| 10   | 45   |
| 20   | 65   |
| 30   | 85   |
| 40   | 105  |
| 50   | 125  |
| 60   | 145  |
| 70   | 165  |

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

- (1) Vegetation Cutting in the RP. In a Resource Protection District (RP) abutting a great pond, there shall be no cutting of vegetation within the strip of land extending 75 feet, horizontal distance, inland from the normal high-water line, except to remove safety hazards.

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

- (2) Buffer Strip Preservation. Except in areas as described in Section 410.14(1), above, and except to allow for the development of permitted uses, within a strip of land extending 100 feet, horizontal distance, inland from the normal high-water line of a great pond or a river, and 75 feet, horizontal distance, from any other water body, tributary stream, or the upland edge of a wetland, a buffer strip of vegetation shall be preserved as follows:
- (a) There shall be no cleared opening greater than 250 square feet in the forest canopy (or other existing woody vegetation if a forested canopy is not present) as measured from the outer limits of the tree or shrub crown. However, a footpath not to exceed 6 feet in width as measured between tree trunks and/or shrub stems is allowed provided that a cleared line of sight to the water through the buffer strip is not created.
  - (b) Selective cutting of trees within the buffer strip is allowed provided that a well-distributed stand of trees and other natural vegetation is maintained. For the purposes of this section 410.14(2)(b) a "well-distributed stand of trees" adjacent to a great pond or a river or stream flowing to a great pond, shall be defined as maintaining a rating score of 24 or more in each 25-foot by 50-foot rectangular (1250 square feet) area as determined by the following rating system.

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

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

The following shall govern in applying this point system:

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

For the purposes of Section 410.14(2)(b) "other natural vegetation" is defined as retaining existing vegetation under 3 feet in height and other ground cover and retaining at least 5 saplings less than 2 inches in diameter at 4½ feet above ground level for each 25-foot by 50-foot rectangle area. If five saplings do not exist, no woody stems less than 2 inches in diameter can be removed until 5 saplings have been recruited into the plot.

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

- (c) In order to protect water quality and wildlife habitat, existing vegetation under 3 feet in height and other ground cover, including leaf litter and the forest duff layer, shall not be cut, covered, or removed, except to provide for a footpath or other permitted uses as described in Section 410.14 paragraphs (2) and (2)(a) above.
- (d) Pruning of tree branches, on the bottom 1/3 of the tree is allowed.
- (e) In order to maintain a buffer strip of vegetation, when the removal of storm-damaged, diseased, unsafe, or dead trees results in the creation of cleared openings, these openings shall be replanted with native tree species unless existing new tree growth is present.

Section 410.14(2) does not apply to those portions of public recreational facilities adjacent to public swimming areas as long as cleared areas are limited to the minimum area necessary.

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

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

- (4) Cleared Openings. Legally existing nonconforming cleared openings may be maintained, but shall not be enlarged, except as allowed by this Article.
- (5) Reverted Openings. Fields and other cleared openings which have reverted to primarily shrubs, trees, or other woody vegetation shall be regulated under the provisions of Section 410.14.

#### **410.15 Erosion and Sedimentation Control**

Acceptable measures shall be those specified in the Maine Erosion and Sediment Control Best Management Practices Manual (latest revision) by the DEP Bureau of Land and Water Quality and the following:

- A. Applicability. All activities which involve filling, grading, excavation or other similar activities which result in unstabilized soil conditions and which require a permit shall also require a written soil erosion and sedimentation control plan. The plan shall be submitted to the permitting authority for approval and shall include, where applicable, provisions for:
- (i) Mulching and revegetation of disturbed soil.
  - (ii) Temporary runoff control features such as hay bales, silt fencing or diversion ditches.
  - (iii) Permanent stabilization structures such as retaining walls or riprap.
- B. Design Provisions. In order to create the least potential for erosion, development shall be designed to fit with the topography and soils of the site. Areas of steep slopes where high cuts and fills may be required shall be avoided wherever possible, and natural contours shall be followed as closely as possible.
- C. All Construction Phases. Erosion and sedimentation control measures shall apply to all aspects of the proposed project involving land disturbance, and shall be in operation during all stages of the activity. The amount of exposed soil at every phase of construction shall be minimized to reduce the potential for erosion.

- D. **Stabilization.** 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 9 months of the initial date of exposure. In addition:
- (i) Where mulch is used, it shall be applied at a rate of at least one (1) 30-pound bale per 300 square feet and shall be maintained until a catch of vegetation is established.
  - (ii) Anchoring the mulch with netting, peg and twine or other suitable method may be required to maintain the mulch cover.
  - (iii) Additional measures shall be taken where necessary in order to avoid siltation into the water. Such measures may include the use of staked hay bales and/or silt fences.
- E. **Drainageways.** Natural and man-made drainage ways and drainage outlets shall be protected from erosion from water flowing through them. Drainageways shall be designed and constructed in order to carry water from a 25-year storm or greater, and shall be stabilized with vegetation or lined with riprap.

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

**410.17 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.

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

**410.19 Phosphorus Control.** Refer to City of Ellsworth Code of Ordinance, Chapter 56, Unified Development Ordinance, Article 10. Stormwater Management Design and Construction Standards.

## **411 Shoreland Zoning Definitions.**

**Accessway** - Any public or private street, right-of way, or driveway used to enter or leave a public or private street or adjacent land using an on-road vehicle. All streets are considered accessways but not all accessways are considered streets. Within the Shoreland Zone, an accessway also includes 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 residential driveway less than 500 feet in length.

**Accessory Use or Structure** - A subordinate use or structure customarily incidental to and located on the same lot as the principal use or structure, such as a garage, workshop, or the like. Accessory uses, in the aggregate, shall not subordinate the principal use or structure on a lot.

**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 Article; 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.

**Agricultural, Activity** - Farming, including plowing, tillage, cropping, installation of best management practices, seeding, cultivating, or harvesting for the production of food and fiber products (except timber harvesting); grazing or raising of livestock (except in feedlot); aquaculture; sod productions; orchards.

**Agricultural, Gardening** - Consists of agricultural activities involving tillage of soil of 40,000 square feet or less.

**Agricultural, Feedlot** - A lot, structure, building, or confined area used intensively for the keeping of farm animals, including but not limited to, of bovine, equine, swine, ovine, or sheep species in close quarter for the purpose of fattening for market or slaughter and where animal waste may accumulate. Does not include a barn or similar structure.

**Agricultural Processing, Major** - Agricultural activities involving a variety of operations on crops or livestock which may generate dust, noise, odors, pollutants, or visual impacts that could adversely affect adjacent properties. These uses include but are not limited to slaughterhouse, mills, refineries, canneries, and milk processing plants.

**Agriculture Processing, Minor** - Agricultural activities not regulated as major agricultural processing which involve a variety of operations on crops after harvest to prepare them for market, or further processing and packaging at a distance from the agricultural area. Included activities are cleaning, milling, pulping, drying, roasting, storing, packing, selling and other similar activities.

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

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

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

**Bureau** - State of Maine Department of Conservation's Bureau of Forestry

**Campground** - A business, public or private establishment operated as a recreational site for tents, camper, trailer, and travel trailer or other forms of temporary living shelter that can accommodate two or more parties.

**Campsite, Individual private** - Private land for exclusive personal use not associated with a campground, but which is developed for repeated camping by only one group not to exceed 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.

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

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

**Conservation Plan** - a customized document that outlines the use and best management practices of the natural resources on public or private lands. Typically, the plan will include land use maps, soil information, inventory of resources, engineering notes, and other supporting information.

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

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

**Development** - Uses including but not limited to the construction of a new building or other structures on a lot or below the shoreline or in a wetland, the relocation of an existing building on another lot, or the use of open land for a new use; any man-made change to improved or unimproved real estate, including but not limited to parking, temporary uses, clearing of land or vegetation, mining, dredging, filling, grading, paving, excavation, or drilling operations; it includes a building, a development site under the same ownership, a consolidated development, and phased development.

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

**Disability** - any disability, infirmity, malformation, disfigurement, congenital defect or mental condition caused by bodily injury, accident, disease, birth defect, environmental conditions or illness; and also includes the physical or mental condition of a person which constitutes a substantial handicap as determined by a physician or in the case of mental handicap, by a psychiatrist or psychologist, as well as any other health or sensory impairment which requires special education, vocational rehabilitation or related services.

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

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

**Essential Services, Distribution** - Small-scale facilities serving a local area, including power lines, water and sewer lines, storm drainage facilities, transformers, pump stations and hydrants, switching boxes, and other buildings normally, but not always, found in a street right-of-way to serve adjacent properties.

**Essential services, Facilities** - A building or other structure used or intended to be used by public or private utilities, including but not limited to gas tank and other storage facilities; water or sewer storage facilities; compost facility; and electrical transmission and distributions substations.

**Essential Services, Transmission** - Large-scale facilities serving the entire city or region such as power transmission lines, natural gas transmission lines, water storage tanks and reservoirs, major water transmission lines or sewer collectors and interceptors, solid waste disposal or processing facilities, excluding landfill, sewage or wastewater treatment plants, and generating facilities.

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

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

**Family** - One (1) or more persons occupying a dwelling unit as a single non-profit housekeeping unit whether or not related to each other by birth, marriage or adoption, but not to consist of more than five (5) unrelated persons.

**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, plus the horizontal area of any unenclosed portions of a structure such as porches and decks.

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

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

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

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

**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 dams, commercial and recreational fishing and boating facilities, excluding recreational boat storage buildings; finfish and shellfish processing; fish storage and retail and wholesale fish marketing facilities; waterfront dock and port facilities; shipyards and boat building facilities; marinas; navigation aids; basins and channels; retaining walls; 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.

**Great pond** - any inland body of water which in a natural state has a surface area in excess of ten acres, and any inland body of water artificially formed or increased which has a surface area in excess of 30 acres. For the purposes of this Article, Ellsworth's Great Ponds are: Branch Lake, Graham Lake, Green Lake, Jesse Bog, Little Duck Pond, Little Rocky Pond, Lower Patten Pond, Upper Patten Pond, Wormwood Pond, and Leonard Lake.

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

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

**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.

**High and moderate value waterfowl and wading bird habitat** - High and moderate value waterfowl and wading bird habitats are significant wildlife habitats. Waterfowl are members of the family Anatidae including but not limited to brant, wild ducks, geese, and swans. Wading birds include but are not limited to herons, glossy ibis, bitterns, rails, coots, common moorhens, and sandhill cranes. High and moderate value waterfowl and wading bird habitats are depicted on a GIS data layer maintained by the Maine

Department of Inland Fisheries and Wildlife (IF&W) and available from either IF&W or the Maine Department of Environmental Protection. The IF&W rating procedure and list of waterfowl and wading bird species was created December 22, 1993, updated September 1, 2005, and is available at IF&W offices.

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

**Increase in nonconformity of a structure** - any change in a structure or property which causes further deviation from the dimensional standard(s) creating the nonconformity such as, but not limited to, reduction in shoreline 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 shoreline setback requirement if the expansion extends no further into the required shoreline 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.

**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 City-owned or -operated building, structure or land used for public purposes.

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

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

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

**Lot, minimum width, shoreland** - 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.

**Lot Coverage, Shoreland** - The total footprint area of all structures, parking lots and other non-vegetated surfaces, within the shoreland zone for the lot or for a portion thereof that is located within the shoreland zone, including land area previously developed.

**Marina** - A use of waterfront land involved in the operation of a marina including structures and activities normally integral to the operation of a marina, such as servicing, fueling, pumping-out, chartering, launching, and dry-storage and boating equipment.

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

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

**Mineral extraction** - any operation within any 12 month period which removes more than 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.

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

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

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

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

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

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

**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. Areas contiguous with rivers and great ponds that support non-forested wetland vegetation and hydric soils and that are at the same or lower elevation as the water level of the river or great pond during the period of normal high-water are considered part of the river or great pond.

**Parking Lot:** An open area other than an accessway used for the parking of two or more vehicles, excluding an area associated with a residential driveway serving no more than two residential dwelling units.

**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 below the normal high-water line or within a wetland.** Temporary: Structures which remain in or over the water for less than seven (7) months in any period of 12 consecutive months. Permanent: Structures which remain in or over the water for seven (7) months or more in any period of 12 consecutive months.

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

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

**Processing, fish wholesale** - The loading, unloading, packing, processing, and packaging of edible fish and other seafood products but not including processing of fish wastes or fish by-products.

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

**Recent floodplain soils** - the following soil series as described and identified by the National Cooperative Soil Survey: Fryeburg, Hadley, Limerick, Lovewell, Medomak, Ondawa, Alluvia, Cornish, Charles, Podunk, Rumney, Saco, Suncook, Sunday, and Winooski.

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

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

**Replacement system** - 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.

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

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

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

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

**River** - a free-flowing body of water including its associated floodplain wetlands. For the purposes of this Article, Ellsworth's only River is the Union River from the Graham Lake dam to Leonard Lake. The Union River below the Leonard Lake dam is a tidal estuary considered a coastal wetland.

**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 an accessway right-of-way; and b. the total length of the extension is less than 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 1,000 feet in length.

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

**Setback from a property line**- The horizontal distance from a side or rear property line to the nearest part of a structure or other regulated object or area.

**Setback from the edge of a right-of-way**- The horizontal distance from a right of way to the nearest part of a structure or other regulated object or area

**Shoreland zone** - the land area located within 250 feet, horizontal distance, of the normal high-water line of any great pond or river; within 250 feet, horizontal distance, of the upland edge of a coastal wetland, including all areas affected by tidal action; within 250 feet of the upland edge of a freshwater wetland; or within 75 feet, horizontal distance, of the normal high-water line of a stream, as defined, and/or streams mapped on the Official Land Use Map.

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

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

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

**Special Use** - A governmental or public service use providing public health, safety, comfort, convenience, or the general welfare for the general benefit of the citizens funded in whole or in part by the City of Ellsworth or a quasi-municipal organization, including by way of illustration, municipal buildings, schools, public parks and recreational facilities, cemetery, public art, museum, interpretation center, public parking, fire stations, ambulance services, highway garage, distribution and transmission of essential services ; essential facilities, hospital, Federal Aviation Administration –designated commercial service airport, heliport.

**Stream** - a free-flowing body of water from the outlet of a great pond or the confluence of two (2) perennial streams as depicted on the most recent edition of a United States Geological Survey 7.5 minute series topographic map, or a perennial or intermittent stream shown as such on the most recent edition of a United States Geological Survey 7.5 minute series topographic map and/or mapped on the Official

Land Use Map, to the point where the body of water becomes a river or flows to another water body or wetland within the shoreland area.

**Structure** - Anything built for the support, shelter or enclosure of persons, animals, goods or property of any kind, together with anything constructed or erected with a fixed location on or in the ground. The term includes structures temporarily or permanently located, such as decks and patios. Only structures covering more than 10 square feet must comply with the requirements of zoning districts, exclusive of shoreland zoning districts, where all structures, regardless of size, must comply with the shoreland zoning requirements.

The following are not considered structures: fences, poles, wiring and other aerial equipment normally associated with service drops as well as guying and guy anchors, a retractable awning or shade used solely to shade a door or window.

The following are not considered structures outside of shoreland zoning districts: parking lots, driveways, an awning or tent for a temporary event and backyard tents used for sleeping.

**Substantial start** - completion of 30 percent of a permitted structure or use measured as a percentage of estimated total cost.

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

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

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

**Timber harvesting** - the cutting and removal of timber for the primary purpose of selling or processing forest products. 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 410.14, *Clearing or Removal of Vegetation for Activities Other Than Timber Harvesting*.

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

**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 Article, 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 purposes of a coastal wetland, this boundary is the line formed by the landward limits of the salt tolerant vegetation and/or the 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 6 meters (approximately 20 feet) tall or taller.

**Vegetation** - all live trees, shrubs, and other plants including without limitation, trees both over and under 4 inches in diameter, measured at 4½ 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 great pond, river or stream.

**Water crossing** - any project extending from one bank to the opposite bank of a river, stream, tributary stream, or wetland whether under, through, or over the water or wetland. Such projects include but may not be limited to accessways, 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.

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

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

- 1) Of ten or more contiguous acres; or of less than 10 contiguous acres and adjacent to a surface water body, excluding any river, stream, 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

**Wetland, Coastal** - 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. Coastal wetlands may include portions of coastal sand dunes.

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

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