Pursuant to the provisions of 38 M.R.S. §§ 435-448, The Mandatory Shoreland Zoning Act (Act), and, the State of Maine Guidelines for Municipal Shoreland Zoning Ordinances, 06-096 C.M.R. Chapter 1000 (amended May 5, 2012) (Guidelines), the Department of Environmental Protection has considered the Land Use and Development Code Ordinance, Chapter 16, (Ordinance), as last amended on February 4, 2013, and FINDS THE FOLLOWING FACTS:

1. The Act requires municipalities to establish zoning controls in areas within 250 feet of the normal high-water line of great ponds and rivers; within 250 feet of the upland edge of freshwater and coastal wetlands; and within 75 feet of the normal high-water line of streams. Such zoning standards must be consistent with or no less restrictive than those in the Guidelines, as adopted by the Board of Environmental Protection (Board).

2. The Act specifies that before a locally adopted shoreland zoning ordinance, or amendments to that ordinance, is/are effective, it must be approved by the Commissioner of the Department of Environmental Protection (Department). The Department may approve, approve with conditions, or disapprove the ordinance or amendment. If disapproved, or approved with conditions, such action must be preceded by notice to the municipality. If the Department fails to act within 45 days of its receipt of the ordinance or amendment, then the ordinance or amendment is automatically approved.

3. On May 25, 2011, the Department approved the Land Use and Development Code Chapter 16, Chapter I, Section XXVII, General Development Zone, as amended on March 7, 2011, with conditions in Department Order #11-2011, addressing deficiencies including exclusion of shoreland zoning standards from applying in the General Development Zone.

4. On May 25, 2011, the Department approved the map titled Presque Isle Comprehensive Plan Shoreland Zoning as adopted on May 3, 1993, with an amendment made on March 7, 2011, that is depicted on the map titled City of Presque Isle Zoning Map General Development Zone (Map).

5. The Department’s review of the Ordinance determined that, with the exception of the deficiencies listed herein, the Ordinance adequately addresses the condition contained in Department Order #11-2011.

6. The Department’s review of the Ordinance has revealed the following significant deficiencies:
A. Chapter I, Section IV, Section B, (Powers and Duties), fails to require the undue hardship test for all shoreland zoning variances and fails to provide required notifications to the Department.

B. Chapter I, Section V, (Definitions), fails to contain all definitions required and required revisions.

C. Chapter I, Section XI, Section C, Section 8 (Single-family residence), fails to sufficiently limit the size of proposed structures.

D. Chapter I, Sections VI through XXVIII, (zones and districts), and Chapter II, Sections I.F.3, 9 & 13, fail to be consistent with the Map and contain all required standards for the shoreland zone.

E. Chapter I, Section XXVII, (General Development Zone), fails to make explicit that all activities in the shoreland zone must meet shoreland zoning standards.

F. Chapter II, Section I, Section C, (Mineral Exploration and Extraction), fails to apply to the shoreland zone in its entirety.

G. Chapter II, Section I, Section E, (Agriculture), fails to apply in the shoreland zone of all resources and fails to contain all required revisions.

H. Chapter II, Section I, Section F, Section 3, (Applicability), fails to be explicit regarding the location of the shoreland zone.

I. Chapter II, Section I, Section F, Section 9, (Districts and Zoning Map), fails to list districts or zones consistent with the Map and consistent with Chapter I.

J. Chapter II, Section I, Section F, Section 12, (Non-conformance), fails to prohibit increases in non-conformity.

K. Chapter II, Section I, Section F, Section 12, (Non-conformance), fails to contain all required standards for non-conforming structures.

L. Chapter II, Section I, Section F, Section 14, (Table of Land Uses), fails to be included. Due to the inconsistency mentioned in deficiency D above, it is not possible to discern whether this section is in compliance with the Guidelines.

M. Chapter II, Section I, Section F, Section 15, (Land Use Standards), fails to make explicit the applicability of provisions within the shoreland zone.

N. Chapter II, Section I, Section F, Section 15, (Land Use Standards), fails to contain adequate standards for structures and uses below the shoreline.

O. Chapter II, Section I, Section F, Section 15, (Land Use Standards), fails to contain adequate standards for individual private campsites.

P. Chapter II, Section I, Section F, Section 15, (Land Use Standards), fails to apply standards to both roads and driveways, and fails to include required references to tributary streams.

Q. Chapter II, Section I, Section F, Section 15, (Land Use Standards), fails to contain adequate standards for septic waste disposal.

R. Chapter II, Section I, Section F, Section 15, (Land Use Standards), fails to sufficiently limit essential services in the Resource Protection Zone.

S. Chapter II, Section I, Section F, Section 15, (Land Use Standards), fails to contain adequate standards for vegetation removal.

T. Additional amendments required to bring the Ordinance into compliance with the amended Guidelines have not been adopted.

U. The Map fails to consistently depict the shoreland zone and related districts/zones as prescribed by the Ordinance.
CITY OF PRESQUE ISLE
AROOSTOOK COUNTY
SHORELAND ZONING ORDINANCE
ORDER # 14-2013

MANDATORY SHORELAND ZONING ACT
38 M.R.S. §§ 435-448
APPROVAL WITH CONDITIONS

7. In a letter dated April 1, 2013, the City of Presque Isle (municipality) was notified by the Department of the above deficiencies, and the proposed conditional approval of the Ordinance. Said letter included a list of the remaining amendments required that are mentioned in paragraph 6.T above.

BASED on the above Findings of Fact, the Department makes the following CONCLUSIONS:

1. The deficiencies noted in paragraph 6 above can be addressed by the Department approving the Ordinance with conditions that will result in the Ordinance being consistent with the standards in the Guidelines.

2. The Department Order #11-2011 is no longer necessary, because the Conditions herein shall adequately address the deficiencies identified in that Order.

3. The failure of the municipality to adopt required amendments to its ordinance, including the shoreland zoning map, should not prevent the municipality from administering recently amended Ordinance and the Conditions contained herein. Municipalities must fully update their local shoreland zoning ordinances, including the shoreland zoning maps, to be consistent with the Guidelines.

THEREFORE, the Department APPROVES the Ordinance, as amended on February 4, 2013, SUBJECT TO THE ATTACHED CONDITIONS:

1. Chapter I, Section IV.B.3, must be replaced by Appendix A.
2. Chapter I, Section V, must include the definitions and revisions provided in Appendix B.
3. Chapter I, Section XI.C.8., must read: “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.”
4. Chapter I, Sections VI through XXVIII, must be revised as necessary to be consistent with the Map and with the Guidelines; and Chapter II, Section I.F.9.A, must be revised as necessary to be consistent with Chapter I and the Map. Chapter II, Section I.F.3 and 13 may then need to be revised.
5. Chapter I, Section XXVII: Section D must read: “All activities in the General Development Zone shall meet the shoreline setbacks and other shoreland zoning standards established for the ‘General Development I District’ in the most current Department of Environmental Protection Chapter 1000 Rules ‘Guidelines For Municipal Shoreland Zoning Ordinances’ until such time as the City of Presque Isle establishes consistent standards in the Land Use and Development Code. These standards include a reduced setback of 25 feet from the shoreline for principal and accessory structures.” Section E must be deleted, so that Chapter II, Section I, Section F prevails.
6. Chapter II, Section I.C.d, must read: “No part of any extraction operation, including drainage and runoff control features, shall be permitted within one
hundred (100) feet of the normal high-water line of a great pond or a river, and
within one hundred (100) feet 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 seventy-five (75) feet of any property line, without
written permission of the owner of such adjacent property.”
7. Chapter II, Section I.F, must be replaced by Appendix C.
8. Chapter II, Section I.F.3, must read: “This section of the Code applies to all land
areas 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
freshwater wetland rated moderate or high value by the Maine Department of
Inland Fisheries and Wildlife or as reflected on the Shoreland Zoning Map for the
City of Presque Isle; within 100 feet, horizontal distance, of the normal high-
water line of any stream as defined; and within 100 feet, horizontal distance, of
the upland edge of a freshwater wetland rated low or not rated by the Maine
Department of Inland Fisheries and Wildlife or as reflected on the Shoreland
Zoning Map for the City of Presque Isle.
Such areas intentionally embrace and overlay parts of other zones established by
the City of Presque Isle, in order that the purposes of shoreland protection can
best be served.
This section of the Code also applies to any structure extending or located below
the normal high-water line of a water body or within a wetland.”
9. Chapter II, Section I.F.9.A, must read: “Within the shoreland zone, the Resource
Protection Zone and the Watershed Protection Zones are considered the same as
the 250-foot Resource Protection District as depicted on the map titled Presque
Isle Comprehensive Plan Shoreland Zoning as adopted on May 3, 1993, and the
Resource Protection Zone may also be depicted on said map as a 100-foot
Resource Protection District overlay. The General Development Zone is
considered the same as the General Development Zone depicted on the map titled
City of Presque Isle Zoning Map General Development Zone as amended on
March 7, 2011, and in depicting this zone it shall prevail over other zoning maps.”
This section must be revised as necessary once revisions required by Condition 4
above are made.
10. Chapter II, Section I.F.12.A, must read: “It is the intent of this section of the Code
to promote land use conformities, except that non-conforming conditions that
existed before the effective date of this section of the Code, or amendments
thereto, shall be allowed to continue, subject to the requirements set forth in
Section 12. Except as provided in this section of the Code, a non-conforming
condition shall not be permitted to become more non-conforming.”
11. Chapter II, Section I.F.12.C, must be replaced by Appendix D.
12. Chapter II, Section I.F.14, must be included in the Ordinance or the equivalent
must be incorporated into the Ordinance, such as into Chapter I.
13. Chapter II, Section I.F.15, first section must be replaced with Appendix E.
14. Chapter II, Section I.F.15.B, must be replaced with Appendix F.
15. Chapter II, Section I.F.15.C, must be replaced with Appendix G.
16. Chapter II, Section I.F.15.F, must apply to both roads and driveways, including related features, and setbacks shall apply to all water bodies, tributary streams and wetlands.

17. Chapter II, Section I.F.15.I, must be replaced with Appendix H.

18. Chapter II, Section I.F.15.J, must be replaced with Appendix I.

19. Chapter II, Section I.F.15.K, must be replaced with Appendix J.

20. The municipality must adopt additional amendments, to address the deficiency noted in Findings of Fact paragraph 6.T above. These amendments were noted in the letter mentioned in Findings of Fact paragraph 7 above.

21. Until such time as the municipality addresses the deficiency noted in paragraph 6.U above, the map titled Presque Isle Comprehensive Plan Shoreland Zoning map as adopted on May 3, 1993, and the map titled City of Presque Isle Zoning Map General Development Zone as amended on March 7, 2011, shall prevail in depicting the shoreland zone and the districts/zones contained therein.

All CONDITIONS of Department Order #11-2011 are hereby REPEALED.

DONE AND DATED AT AUGUSTA, MAINE, THIS 2ND DAY OF April, 2013.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: Patricia W. Aho, Commissioner

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES...
APPENDIX A

Variance Appeals

3) Variance Appeals. To authorize upon appeal a variance from the terms of this ordinance, in conformity with 30-A M.R.S.A. § 4353, especially affecting a particular parcel of land or an existing structure thereon, but not affecting generally the zone in which it is located, where a literal enforcement of the provisions of this ordinance would involve undue hardship or practical difficulty, as differentiated by statute, to the appellant, and where desirable relief may be granted without substantial detriment to the neighborhood and provided there is no substantial departure from the intent or purpose of this ordinance. Variances shall be granted only for a use permitted in a particular zone.

Except as provided in Sections 3.a, b, and c below, the Board may grant a variance only where strict application of this ordinance or a provision thereof to the petitioner and his/her property would cause "undue hardship". The term "undue hardship" as used in this subsection means:

1. The land in question cannot yield a reasonable return unless a variance is granted;
2. The need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;
3. The granting of a variance will not alter the essential character of the locality; and
4. The hardship is not the result of action taken by the applicant or a prior owner.

a. Disability Variance: The Board may grant a variance to an owner of a dwelling for the purpose of making that dwelling accessible to a person with a disability who resides in or regularly uses the dwelling. The Board shall restrict any variance granted under this subsection solely to the installation of equipment or the construction of structures necessary for access to or egress from the dwelling by the person with the disability. The Board may impose conditions on the variance, including limiting the variance to the duration of the disability or to the time that the person with the disability lives in the dwelling. For the purposes of this subsection, a disability has the same meaning as a physical or mental handicap, as defined by state statute and as amended from time to time. For the purposes of this subsection, the term "structures necessary for access to or egress from the dwelling" is defined to include railing, wall or roof systems necessary for the safety or effectiveness of the structure.

b. Set-Back Variance for Single-Family Dwellings: The Board may grant a set-back variance for a single-family dwelling only when strict application of this ordinance to the petitioner and the petitioner’s property would cause undue hardship. The term “undue hardship” as used in this subsection means:

1. The need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;
2. The granting of a variance will not alter the essential character of the locality;
3. The hardship is not the result of action taken by the applicant or a prior owner;
4. The granting of the variance will not substantially reduce or impair the use of abutting property; and
5. That the granting of the variance is based upon demonstrated need, not convenience, and no other feasible alternative is available.
Under this subsection, a variance may be granted only for a single-family dwelling that is
the primary year-round residence of the petitioner. A variance under this subsection may
not exceed 20% of a setback requirement and may not be granted if the variance would
cause the area of the dwelling to exceed the maximum permissible lot coverage. Under
this subsection, if the petitioner has obtained the written consent of an affected abutting
landowner, the Board may allow for a variance to exceed 20% of a setback requirement.
A variance from any shoreland zoning standard shall not be granted under Section 3.b.

c. Variance from Dimensional Standards: The Board may grant a variance from
dimensional standards of this ordinance when strict application of the ordinance to the
petitioner and the petitioner’s property would cause a practical difficulty and when the
following conditions exist:
1. The need for a variance is due to the unique circumstances of the property and
not to the general conditions of the neighborhood;
2. The granting of a variance will not produce an undesirable change in the
character of the neighborhood and will not unreasonably detrimentally affect the
use or market value of abutting properties;
3. The practical difficulty is not the result of action taken by the petitioner or a
prior owner;
4. No other feasible alternative to a variance is available to the petitioner;
5. The granting of a variance will not unreasonably adversely affect the natural
environment; and
6. The property is not located in whole or in part within shoreland areas, as
described by state statute.

As used in this subsection, “dimensional standards” means and is limited to provisions of
this ordinance relating to lot area, lot coverage, frontage, and setback requirements.
As used in this subsection, “practical difficulty” means that the strict application of this
ordinance to the property precludes the ability of the petitioner to pursue a use permitted
in the zoning district in which the property is located and results in significant economic
injury to the petitioner.
A variance from any shoreland zoning standard shall not be granted under Section 3.c.

d. A variance application also must meet the requirements of a special exception, as
described in Chapter I, Section IV.B.2.

c. When applicable to the shoreland zone, a copy of each variance request, including the
application and all supporting information supplied by the applicant, shall be forwarded
by the municipal officials to the Commissioner of the Department of Environmental
Protection at least twenty (20) days prior to action by the Board of Appeals. Any
comments received from the Commissioner prior to the action by the Board of Appeals
shall be made part of the record and shall be taken into consideration by the Board of
Appeals.

f. When applicable to the shoreland zone, the Board shall cause written notice of its
decision to be mailed or hand-delivered to the applicant and to the Department of
Environmental Protection within seven (7) days of the Board’s decision.
g. Recording a Variance: Variances granted by the Zoning Board of Appeals will receive a certificate from the Code Enforcement Office on which information related to the variance, as determined by state statute and including any conditions imposed by the Board, will be prepared in recordable form. This certificate must be recorded at the Aroostook County Registry of Deeds, Southern Division, Houlton, Maine, within 90 days of the date of final written approval of the variance or the variance is void. The variance is not valid until recorded as described above. The date of the final written approval shall be the date stated on the written approval.
Normal High Water Line: That line which is apparent from visible markings, changes in the character of soils due to prolonged action of the water or changes in vegetation, and which distinguishes between predominately aquatic and predominately 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.

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.

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

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

Shoreland Zone: The land area located within two hundred and fifty (250) feet, horizontal distance, of the normal high-water line of any great pond, or river; within 250 feet, horizontal distance, of the upland edge of a freshwater wetland rated moderate or high value by the Maine Department of Inland Fisheries and Wildlife; within one hundred (100) feet, horizontal distance, of the normal high-water line of a stream; or within one hundred (100) feet, horizontal distance, of the upland edge of a freshwater wetland rated low or not rated by the Maine Department of Inland Fisheries and Wildlife.

Shoreline: the normal high-water line or upland edge of a wetland.

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

Timber Harvesting:
1. The cutting or removal of at least 50 cords, or equivalent, of timber on a contiguous ownership during a calendar year for the primary purpose of selling or processing forest products, and the attendant operation of cutting and skidding machinery but not the construction or creation of roads. Timber harvesting does not include the clearing of land for approved construction.
2. In the shoreland zone, timber harvesting is 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 Chapter II Section 1 Section F Section 15.K.

Tributary Stream: A channel between defined banks created by the action of surface water, whether intermittent or perennial, and which is characterized by the lack of 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 or wetlands. “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 Code and only applies to that portion of the tributary stream located within the shoreland zone of the water body or wetland.

Upland Edge of a Wetland: The boundary between upland and wetland. For purposes of a freshwater wetland, the upland edge is formed where the soils are not saturated for a duration sufficient to support wetland vegetation.

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

Water Body: Any great pond, river, or stream, as defined herein.

Wetland: freshwater wetland, as defined.

Wetlands: Those areas that are inundated by surface or groundwater with a frequency sufficient to support and under normal circumstances does or would support a prevalence of vegetative or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction. Wetlands generally include swamps, marshes, bogs, and similar areas such as sloughs, potholes, wet meadows, river overflows, mud flats, and natural ponds.

Wetlands Associated with Great Ponds and Rivers: Wetlands contiguous with or adjacent to a great pond or river, and which during normal high water are connected by surface water to the great pond or river. Also included are wetlands which are separated from the great pond or river by a berm, causeway, or similar feature less than 100 feet in width, and which have a surface elevation at or below the normal high-water line of the great pond or river. Wetlands associated with great ponds or rivers are considered to be part of that great pond or river.

Wetlands Not Associated with Great Ponds and Rivers (Non-Significant): Wetlands less than 10 acres in size, not contiguous with, nor adjacent to a great pond, river or stream, nor within the Shoreland zone of a Waterbody and which are not hydraulically connected to a waterbody.
APPENDIX C
Agriculture

1. All agricultural activities must be conducted in accordance with all applicable laws, rules, and standards, including but not limited to: the Right to Farm Law [17 M.R.S.A., Section 2805] and the Maine Nonpoint Source Control Program [38 M.R.S.A. c. 3, subsection-C:1].

2. Agricultural practices shall be conducted to minimize solid erosion, sedimentation, contamination, and nutrient enrichment of ground and surface waters.

3. All spreading of manure shall be accomplished in conformance with the Manure Utilization Guidelines published by the Maine Department of Agriculture on November 1, 2001, and the Nutrient Management Law (7 M.R.S.A. sections 4201-4209).

4. Manure shall not be stored or stockpiled within one hundred (100) feet horizontal distance, of a pond or a river, or within one hundred (100) feet horizontal distance of other water bodies, tributary streams, or wetland. 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.

5. Agricultural activities involving tillage of soil greater than forty thousand (40,000) square feet in surface area within the Shoreland Zone shall require a Conservation Plan to be filed with the Planning Board. Non-conformance with the provisions of said plan shall be considered to be a violation of this Code.

6. There shall be no new tilling of soil within one hundred (100) feet, horizontal distance, of the normal high-water line of a pond; within seventy-five (75) feet, horizontal distance, from other water bodies; nor within twenty-five (25) feet, horizontal distance, of tributary streams, and wetlands. Operations in existence on the effective date of this section of the Code and not in conformance with this provision may be maintained.

7. Newly established livestock grazing areas shall not be permitted within one hundred (100) feet, horizontal distance, of the normal high-water line of a pond; within seventy-five (75) feet, horizontal distance of other water bodies; nor, within twenty-five (25) feet, horizontal distance, of tributary streams and wetlands. Livestock grazing associated with ongoing farm activities, and which are not in conformance with the above setback provisions may continue, provided that such grazing is conducted in accordance with a Conservation Plan.
APPENDIX D
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 subsections a and b below.

a. After January 1, 1989 if any portion of a structure is less than the required setback from the normal high-water line of a water body or tributary stream or the upland edge of a wetland, that portion of the structure shall not be expanded in floor area or volume, by 30% or more, during the lifetime of the structure. If a replacement structure conforms with the requirements of Section 12.C.3, and is less than the required setback from the water body, tributary stream or wetland, the replacement structure may not be expanded if the original structure existing on January 1, 1989 had been expanded by 30% in floor area and volume since that date.

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 setback requirement is met to the greatest practical extent as determined by the Zoning Board of Appeals, basing its decision on the criteria specified in Section 12.C.2. Relocation, below. If the completed foundation does not extend beyond the exterior dimensions of the structure, except for expansion in conformity with Section 12.C.1.a above, and that the foundation does not cause the structure to be elevated by more than three (3) additional feet, as measured from the uphill side of the structure (from original ground level to the bottom of the first floor sill), it shall not be considered to be an expansion of the structure.

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

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

When it is necessary to remove vegetation within the water or wetland setback area in order to relocate a structure, the Zoning Board of Appeals shall require replanting of native vegetation to compensate for the destroyed vegetation. In addition, the area from which the relocated structure was removed must be replanted with vegetation. Replanting shall be required as follows:
a. Trees removed in order to relocate a structure must be replanted with at least one native tree, three (3) feet in height, for every tree removed. If more than five 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 re-established within the setback area. The vegetation and/or ground cover must consist of similar native vegetation and/or ground cover that was disturbed, destroyed or removed.
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 setback from the normal high-water line of a water body, tributary stream, or upland edge of a wetland and which is removed, or damaged or destroyed, 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 one year of the date of said damage, destruction, or removal, and provided that such reconstruction or replacement is in compliance with the water body, tributary stream or wetland setback requirement of the greatest practical extent as determined by the Zoning Board of Appeals in accordance with the purposes of this section of the Code. 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 setback it shall not be any larger than the original structure, except as allowed pursuant to Section 12.C.1 above, as determined by the non-conforming floor area and volume of the reconstructed or replaced structure at its new location. If the total amount of floor area and volume of the original structure can be relocated or reconstructed beyond the required setback area, no portion of the relocated or reconstructed structure shall be replaced or constructed at less than the setback requirement for a new structure. When it is necessary to remove vegetation in order to replace or reconstruct a structure, vegetation shall be replanted in accordance with Section 12.C.2 above.

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

In determining whether the building reconstruction or replacement meets the water setback to the greatest practical extent, the Zoning Board of Appeals shall consider in addition to the criteria in Section 12.C.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 Zoning Board of Appeals, 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 Zoning Board of Appeals shall require written documentation from the applicant, regarding the probable effects on public health and safety, erosion and sedimentation, water quality, fish and wildlife habitat, vegetative cover, visual and actual points of public access to waters, natural beauty, flood plain management, archaeological and historic resources, and functionally water-dependent uses.
Section 15. Land Use Standards

1. In addition to sections of Chapter I, within the Shoreland Zone described in Section 3 above the following shall apply:

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

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

4. The minimum width of any portion of any lot within one hundred (100) feet, horizontal distance, of the normal high-water line of a water body or upland edge of a wetland shall be equal to or greater than the shore frontage requirement for a lot with the proposed use.

5. If more than one residential dwelling unit, principal governmental, institutional, commercial or industrial structure or use, or combination thereof, is constructed or established on a single parcel, all dimensional requirements shall be met for each additional dwelling unit, principal structure or use.
APPENDIX F
Structures and Uses

B. 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 six 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 zone.

8. Structures built on, over or abutting a pier, wharf, dock or other structure extending beyond the normal high-water line of a water body or within a wetland shall not exceed twenty (20) feet in height above the pier, wharf, dock or other structure.

NOTE:
New permanent structures, and expansions thereof, projecting into or over water bodies shall require a permit from the Department of Environmental Protection pursuant to the Natural Resources Protection Act, 38 M.R.S.A. section 480-C. Permits may also be required from the Army Corps of Engineers if located in navigable waters.
C. Individual Private Campsites
Individual private campsites not associated with campgrounds are permitted provided the following conditions are met:

1. One campsite per lot existing on the effective date of this section of the Code, or thirty thousand (30,000) square feet of lot area within the Shoreland Zone, whichever is less, may be permitted.

2. Campsite placement on any lot, including the area intended for a recreational vehicle or tent platform, shall be set back one hundred (100) feet from the normal high-water line of a great pond or river, and one hundred (100) feet from the normal high-water line of other water bodies, tributary streams, or the upland edge of a wetland.

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

4. The clearing of vegetation for the siting of the recreational vehicle, tent or similar shelter in a Resource Protection Zone shall be limited to one thousand (1,000) square feet.

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

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

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

a. Clearing or removal of woody vegetation necessary to site a new system and any associated fill extensions shall not extend closer than seventy-five (75) feet, horizontal distance, from the shoreline of a water body or wetland, and

b. A holding tank is not allowed for a first-time residential use in the shoreland zone.
J. 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 Zone, except to provide services to a permitted use within said zone, 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. Additionally, sewer mains will be constructed such that there is not inflow into the sewer mains from the flooding of the water body.
K. Clearing or Removal of Vegetation for Activities other than Timber Harvesting

1. In a Resource Protection Zone 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 Zone the clearing of vegetation shall be limited to that which is necessary for uses expressly authorized in that zone.

2. Except in areas as described in Section 15.K.1, above, and except to allow for the development of permitted uses, within a strip of land extending one-hundred (100) feet, horizontal distance, inland from the normal high-water line of a great pond or a river, and seventy-five (75) feet, horizontal distance, from any other water body, tributary stream, or the upland edge of a wetland, a buffer strip of vegetation shall be preserved as follows:

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

   b. Selective cutting of trees within the buffer strip is allowed provided that a well-distributed stand of trees and other natural vegetation is maintained. For the purposes of Section 15(P)(2)(b) a "well-distributed stand of trees" adjacent to a great pond, or a river or stream flowing to a great pond, shall be defined as maintaining a rating score of 12 or more in any 25-foot by 25-foot square (625 square feet) area as determined by the following rating system:

<table>
<thead>
<tr>
<th>Diameter of Tree at 4-1/2 feet Above Ground Level (inches)</th>
<th>Points</th>
</tr>
</thead>
<tbody>
<tr>
<td>2 &lt; 4</td>
<td>1</td>
</tr>
<tr>
<td>4 &lt; 12</td>
<td>2</td>
</tr>
<tr>
<td>12 inches or greater</td>
<td>4</td>
</tr>
</tbody>
</table>

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

NOTE: As an example, adjacent to a great pond, if a 25-foot X 25-foot plot contains three (3) trees between 2 and 4 inches in diameter, three trees between 4 and 12 inches in diameter, and three trees over 12 inches in diameter, the rating score is: (3X1) + (3X2) + (3X4) = 21 points Thus, the 25-foot by 25-foot plot contains trees worth 21 points. Trees totaling 9 points (21 - 12 = 9) may be removed from the plot provided that no cleared openings are created.
For the purposes of Section 15.K.2.b, “other natural vegetation” is defined as retaining existing vegetation under three (3) feet in height and other ground cover and retaining at least three (3) saplings less than two (2) inches in diameter at four and one-half (4 1/2) feet above ground level for each 25-foot by 25-foot square area. If three (3) saplings do not exist, no woody stems less than two (2) inches in diameter can be removed until three (3) saplings have been recruited into the plot.

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

c. In order to protect water quality and wildlife habitat, existing vegetation under three (3) feet in height and other ground cover, including leaf litter and the forest duff layer, shall not be cut, covered, or removed, except to provide for a footpath or other permitted uses as described in Sections 15.K.2.a and b, 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 15.K.2 above 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. At distances greater than one hundred (100) feet, horizontal distance, from a great pond or a river flowing to a great pond and seventy-five (75) feet, horizontal distance, from the normal high-water line of any other water body, tributary stream, or the upland edge of a wetland, there shall be allowed on any lot, in any ten (10) year period, selective cutting of not more than forty (40) percent of the volume of trees four (4) inches or more in diameter, measured 4 1/2 feet above ground level. Tree removal in conjunction with the development of permitted uses shall be included in the forty (40) percent calculation. For the purposes of these standards volume may be considered to be equivalent to basal area.

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

5. Legally existing nonconforming cleared openings may be maintained, but shall not be enlarged, except as allowed by this Code.

6. Fields and other cleared openings which have reverted to primarily shrubs, trees, or other woody vegetation shall be regulated under the provisions of Section 15.K.