

GENERAL PROVISIONS ORDINANCE

TOWN OF BURNHAM, MAINE

Enacted September 11, 1996

Special Town Meeting – Article #7

Certified by Caroline Mitchell, Town Clerk

Amended: March 15, 1997 – Article #51

Certified by Caroline Mitchell, Town Clerk

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Certified by Caroline Mitchell, Town Clerk

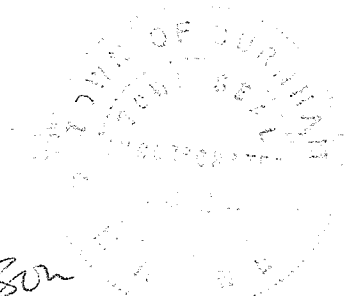
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Certified by Carolyn Hamel, Town Clerk

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Certified by Stacy Patterson, Town Clerk


Stacy Patterson



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General Provisions Ordinance

A. Purpose

The purpose of this Ordinance is to provide a common set of general provisions for all land use regulations within the Town of Burnham to facilitate coordination, minimize confusion, avoid duplication and reduce printing costs.

B. Authority

This Ordinance is enacted pursuant to the enabling provisions of Article VIII, Part 2, S1 of the Maine Constitution, the provisions of Title 30-A MRSA S3001 (*Home Rule*), and Title 30-A MRSA S4311 et seq (*Comprehensive Planning and Land Use Regulation, or "Growth Management" Act*). This Ordinance is founded upon and pursuant to the *Town of Burnham Comprehensive Plan*, as adopted on September 12, 1992 and amended on May 19, 1993.

C. Applicability

The provisions of this Ordinance apply to all ordinances related to land use regulation within the Town of Burnham, collectively known as the *Code of Land Use Ordinances (hereinafter also referred to as the "Code")*. Additional provisions specific to any one ordinance may be found within any particular ordinance. Such provisions shall apply in addition to those within this Ordinance.

D. Land Use Map Incorporated

The *Composite Land Use Map* is incorporated as an integral portion of each land use ordinance within the *Burnham Code of Land Use Ordinances*.

E. Conflicts with Other Ordinances, Laws and Regulations

Whenever a provision of any ordinance within the *Burnham Code of Land Use Ordinances* conflicts with or is inconsistent with another provision of this *Code* or of any other ordinance, regulation or statute from any jurisdiction, the more restrictive provision shall control.

F. Validity and Severability

Should any section or provision of any ordinance within this *Code of Land Use Ordinances* be declared by the courts to be invalid, such decision shall not invalidate any other section or provision of the *Code*.

G. Effective Date

This Ordinance shall be effective as of the date of its enactment, September 11, 1996.

H. Availability

A certified copy of the Ordinance and each ordinance within the *Code of Land Use Ordinances* shall be filed with the Town Clerk and the Administrative Assistant. It shall be accessible to any member of the public during Town Clerk and Town Office hours. Copies shall be made available to the public at reasonable cost paid by the person making the request. Notice of the availability of this Ordinance shall be posted in the Town Office.

I. Amendments

1. An amendment to any ordinance within the *Code of Land Use Ordinances* may be initiated by:
 - a) the Planning Board
 - b) request of the Municipal Officers; or

- c) written petition of a number of registered voters equal to at least 10% of the number of votes cast in Burnham at the last gubernatorial election, but in no case less than 10, with the Municipal Officers.
- 2. The Planning Board shall hold a public hearing on the proposed amendment. Notification of the hearing shall be posted in the Town Office and advertised in a newspaper of general circulation in the municipality at least 14 days prior to the hearing. A second notice will be published in a newspaper of general circulation at least 7 days prior to the hearing.
- 3. If a zoning amendment is proposed which changes land regulation within 500 feet of a common town border, the Town Clerk shall forward notice to the Selectmen and Planning Board of adjacent communities at least ten days in advance of the public hearing. The adjacent community may provide verbal or written testimony.
- 4. An amendment to any ordinance within the *Code of Land Use Ordinances* may be adopted by a majority vote of the Town Meeting. For amendments involving the Shoreland Zoning provisions of this *Code*, copies of amendments, attested and signed by the Municipal Clerk, shall be submitted to the Commissioner of the Department of Environmental Protection following adoption by the municipal legislative body and shall not be effective unless approved by the Commissioner of the Department of Environmental Protection. If the Commissioner fails to act on any amendment within forty-five (45) days of the Commissioner's receipt of the amendment, the amendment is automatically approved. Any application for a permit submitted to the municipality within the forty-five (45) day period shall be governed by the terms of the amendment, if such amendment is approved by the Commissioner.
- 5. At any time an ordinance within the *Code of Land Use Ordinances* is added, deleted or amended, the Administrative Assistant, upon the advise of the Planning Board, is authorized to insert and/or delete ordinances or amendments, add and/or inconsistent references within the *Code* caused by such amendment(s), and renumber sections of the amended ordinance or *Code* in a logical and appropriate fashion, provided said changes do not result in any substantive alteration in the meaning of the ordinance or *Code*.

J. Non-Conformance

1. General Requirements

a) Purpose

It is the intent of the provisions within the *Code of Land Use Ordinances* to promote land use conformities, except that non-conforming conditions that legally existed as of the effective date of this *Code* or any amendment thereto shall be allowed to continue, subject to the requirements set forth in this section. Individual ordinances within the *Code*, including but not limited to the *Shoreland Zoning Ordinance*, have additional provisions related to non-conformance. When a specific ordinance within the *Code* has a more restrictive provision than its counterpart within this section, the stricter provision applies.

b) 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 *Code*.

c) Repair and Maintenance

This *Code* allows, without a permit, the normal upkeep and maintenance of non-conforming uses and structures.

2. Non-Conforming Structures

a) Expansion

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.

b) 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 or other dimensional requirements to the greatest practical extent as determined by the Planning Board, 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* 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 or other dimensional requirements to the greatest practical extent, the Planning Board shall base its decision on the size of the lot, the slope of the land, the location of other structures on the property, the potential for soil erosion, the location of the septic system and other on-site soils suitable for septic systems, the location of water wells, and the type and amount of vegetation to be removed to accomplish the relocation.

c) Reconstruction or Replacement

- i) If a non-conforming structure is destroyed by fire or act of God, it may be rebuilt provided the construction is commenced within 1 year from date of destruction. In no case shall a structure be reconstructed or replaced so as to increase its non-conformity.
- ii) Any non-conforming structure which is damaged or destroyed by 50 percent or less of the market value of the structure, excluding normal maintenance and repair, may be reconstructed in place without a permit.

3. Non-Conforming Uses

a) Expansions

Non-conforming uses that legally existed as of January 1, 1995 may expand in the same location, subject to all applicable performance standards of this Ordinance.

b) 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.

c) Change of Use

An existing non-conforming use may be change to another non-conforming use provided that the Planning Board finds, after receiving a written application, that the proposed use is equally or more appropriate to the district than the existing non-conforming use, and that the proposed use will have no greater adverse impact on adjacent properties than the former use.

The determination of appropriateness shall be based on the probable changes in traffic (volume and type), parking, noise, potential for litter, wastes or by-products, fumes, odors, or other nuisances likely to result from such change of use. The performance standards of this Ordinance shall apply to such requests to establish new non-conforming uses.

4. Non-Conforming Lots

A non-conforming lot of record as of January 1, 1995 may be built upon, provided that applicable performance standards and the requirements of the *State of Maine Subsurface Wastewater Disposal Rules* are met. The use of the lot must be one that is allowed in the district(s) in which it is located.

5. Vested Rights

Non-conforming use rights do not arise by the mere filing of a notice of intent to build, an application for building permits, or an application for required State permits and approvals. Such rights may arise when actual substantial construction has begun, or, in the case of pending applications, when the substantive review process to determine compliance with substantive performance standards on a complete application commences. Such construction must be legal at the time it is commenced and the owner must be in possession of and in compliance with all validly issued permits, both State and local.

K. Administering Bodies and Agents

The following boards and agents hold responsibility for administering the Town's land use ordinances. Further detail may be found in the *Planning Board Ordinance* and the *Board of Appeals Ordinance* for the organization and authority of those two bodies.

1. Planning Board

The municipal Planning Board shall be responsible for reviewing and acting upon applications for appropriate land use permits, development permits, road permits and subdivision approvals as directed by specific ordinance or State statute. Beyond provision contained in this Ordinance and specific land use ordinances, the Board shall issue permits in accordance with its own administrative ordinance and bylaws. In the event that the Code Enforcement Officer is vacant, the Planning Board shall also issue those permits normally assigned to the CEO.

2. Board of Selectmen

The Board of Selectmen shall appoint a Code Enforcement Officer (CEO) and Licensed Plumbing Inspector (LPI) by May 1st of each year. The Board shall appoint members of the Planning Board and Board of Appeals in accordance with the provisions of the administrative ordinances governing those bodies. The Board shall provide assistance as necessary to promote the healthy functioning of the Town's administrative bodies.

The Board of Selectmen shall receive complaints of alleged violations of the Ordinance and assign the Code Enforcement Officer to investigate and prosecute violations as appropriate. The Board shall provide the necessary authorization and support for the CEO in enforcing the provisions of the *Code of Land Use Ordinances*, including the retention of an attorney if necessary to assist in the prosecution of a serious violation.

The Board of Selectmen shall issue junkyard permits in accordance with Title 30-A, S3751 et seq. (*Junkyard and Automobile Graveyard Law*).

3. Code Enforcement Officer

The Board of Selectmen shall appoint a Code Enforcement Officer annually by May 1st. The CEO's job description shall be annually reviewed and approved by the Board.

The Code Enforcement Officer shall, upon request by the Board of Selectmen, investigate complaints and reported violations of the *Code of Land Use Ordinances*. The CEO shall follow guidelines for enforcement procedures developed by the Maine Department of Economic and Community Development. The CEO shall also administer permit applications as authorized in the *Code of Land Use Ordinances*.

4. Licensed Plumbing Inspector

The Board of Selectmen shall appoint a Licensed Plumbing Inspector (LPI) by May 1st of each year. The LPI's job description shall be annually reviewed and approved by the Board. The LPI, in addition to his or her State mandated duties, shall administer the provision of the *Burnham Health and Sanitation Ordinance*.

5. Administrative Assistant

The Administrative Assistant (AA) shall be responsible for distributing permit applications forms and collecting permit applications and fees. Completed applications will be forwarded to the appropriate administrative body for consideration. The AA will post public notices as directed by the Planning Board Secretary.

The Administrative Assistant shall maintain a current copy of the *Code of Land Use Ordinances* in the Town Office and make it available to the public for inspection. Any member of the public may obtain a copy of all or part of the *Code*; the AA may charge a fee to cover the reproduction cost.

6. Town Clerk

The Town Clerk shall keep an attested copy of the *Code of Land Use Ordinances*, including any future amendments, on file for the official Town record.

7. Road Commissioner

The Road Commissioner shall administer the driveway permit and road construction permit provisions of the *Burnham Road Ordinance*.

8. Board of Appeals

The Board of Appeals shall be responsible for deciding administrative and variance appeals according to the procedures outlined in the *Burnham Board of Appeals Ordinance*.

L. Permits and Fees

1. Permits Required

After the effective date of this Ordinance, no person shall engage in any land use activity requiring a permit under any ordinance within the *Burnham Code of Land Use Ordinances* without first obtaining such a permit. Unless outlined specifically within the applicable ordinance, the permit application will be administered as outlined in this Ordinance.

2. Fees

a) General

The application fees are designated to partially offset the costs incurred by the Town for reviewing permit applications, without discouraging compliance with the system. Fees for each type of permit are assigned in individual ordinances, except that until such time that a subdivision ordinance is enacted, the fee for subdivision review shall be \$25.00 per lot. All fees shall be made payable to the Town of Burnham.

b) After-the-Fact Permit Application

A fee of \$500.00 shall be charged for a permit application submitted after commencement of the applicable land use activity requiring a permit.

c) Catastrophe Waiver

There will be a waiver of any building permit fee if reconstruction commences with one year from the date of a fire, flood or other catastrophe.

d) ~~Multiple Permit Waiver~~

~~When a single activity requires more than one type of permit, the permitting officer or Planning Board may waive a portion of the fees assessed if the total is deemed to be inappropriate relative to the cost of review. In such cases, the applicant shall remit all fees with each application to begin the process; any decision to waive a portion of the fees will be done after all work on the Town's part has been completed.~~

M. Permit Application

1. Application Form

Every applicant for a permit shall submit a written application on a form provided by the municipality, to the Administrative Assistant. The Planning Board, in consultation with the Town officials associated with each type of permit, shall assist the Administrative Assistant in designing appropriate permit application forms.

2. Authorization

All applications shall be signed by the owner or owners of the property or other person authorizing the work, certifying that the information in the application is complete and correct. If the person signing the application is not the owner or lessee of the property, then that person shall submit a letter of authorization from the owner or lessee.

3. Date

All applications shall be dated, and the Administrative Assistant shall note upon each application the date and time of its receipt.

4. Plumbing Permit

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 activity would require the installation of a subsurface wastewater disposal system.

5. Sketch Plan

All applications shall include a scaled sketch plan of the property and proposed activity providing sufficient information to ensure that dimensional standards and other relevant requirements will be met.

6. Deed

A copy of the deed to the property shall be attached to all permit applications.

7. Application Fees Paid

All fees shall be paid at the time the application is filed, at the Town Office during regular office hours. No application shall be reviewed, nor shall any permits or approvals be issued until all fees have been paid.

N. Procedure for Administering Permits

1. Permits Administered by Individual Permitting Officers (Plumbing Inspector, Code Enforcement Officer, Road Commissioner and Planning Board.
 - a) The Administrative Assistant shall review any application presented and check it for completeness. The AA will inform any applicant of missing information that must be supplied before the application will be dated as received and filed. Upon receipt of the completed application and fee, the AA shall stamp the application with the date received and alert the permitting officer that an application has been filed. Within 7 days of the date of filing, the permitting officer will contact the applicant and arrange a site visit of the property. Unless waived by the applicant or impractical due to weather conditions, the site visit shall occur within 15 days of the date of filing.
 - b) At the site visit, the permitting officer shall verify field conditions and measurements that are required within relevant portions of the *Code of Land Use Ordinances* and make findings of fact regarding the proposed activity's compliance with applicable regulations. If original plans of the applicant do not meet the Town requirements but the permitting officers sees ways the applicant might adjust design plans to conform to the standards of the *Code*, the permitting officer may so advise the applicant. The applicant may amend the application without reapplying or paying an additional fee. The permitting officer shall attach the amended portion to the application to the original application, making sure that the final form is clear.
 - c) Within 5 business days of the site visit, the permitting officer shall issue a written decision on the application, in the form of a permit granted or denied. If the officer finds that the conditions in this *Code of Land Use Ordinances* will be met, he or she shall issue the permit. Any conditions for approval, such as specifics of driveway or structure location, shall be clearly indicated on the permit. The original copy of the permit shall be given to the applicant in person or by mail after a copy is made and filed at the Town Office.

If, in the opinion of the permitting officer, the provisions of the *Code* cannot be met by the applicant, he or she will deny the permit in writing with the reason(s) detailed. The original shall be remitted to the applicant, with a copy filed at the Town Office. If the applicant disagrees with the interpretation of the permitting officer, he or she may appeal the decision to the Board of Appeals, following the procedures outlined in the *Board of Appeals Ordinance*.

If the permitting officer finds that the activity of the applicant does not, in fact, require a permit, the officer will advise the municipal officers to refund the fee paid by the applicant.

- d) If there is a vacancy in the position of Code Enforcement Officer, the Administrative Assistant shall notify the chairperson of the Planning Board when an application has been received that normally would be reviewed by the CEO. The chairperson will assign the application to one or more members of the Planning Board to contact the applicant and perform the site visit. If necessary, the member assigned the job will contact State regulators or technical assistance providers for advice on the application. The member will make a report at the next Planning Board meeting and a decision will be made by Board vote.
2. Permits Administered by Planning Board
 - a) Consideration of Application

Applications received at the Town Office, together with the required fee, within prior to 5 business days of a regularly scheduled Planning Board meeting, will be considered at that meeting. The Planning Board may consider applications that are filed within fewer than 5 days of a meeting, but has no obligation to consider such applications until the following regularly scheduled meeting. While no required, applicants or their agents are encouraged to attend the meeting of the Board to discuss the application and answer any questions that may arise. If the Board has questions that cannot be answered, it shall table the application until the next meeting.

b) Determination of Completeness of Application

The first analysis the Board will conduct will be to determine whether or not the application is complete. The Board will review the application against the requirements for the permit requested and make this determination. If the application is complete, this shall be noted in the meeting minutes and consideration of the application may begin. If the application is incomplete, the missing items will be noted and recorded in the minutes. Acting upon direction of the Planning Board Secretary, The Administrative Assistant shall cause notice of any additional information required to be mailed to the applicant within 7 business days of the meeting. The notice will include the deadline for receipt of the information for consideration of the application at the next Planning Board meeting.

c) Site Visits

If it is felt that a site visit is necessary to fully understand the physical context of the proposed activity, the Board may schedule such a visit. The applicant shall attend the site visit if possible. The date, time and location of the visit shall be posted and if a quorum is present the Board may finalize the decision on the application at that meeting. Alternatively, the Board may request that the CEO conduct the site visit and report back to the Board at its next meeting. In the event that the CEO makes the site visit, his or her observations will be recorded in writing and presented to the Board. Any permit decision shall still be made by the Board at a legally posted meeting.

d) Professional Review

i) Professional Services

The Planning Board may require that an expert consultant or consultants review one or more submissions of an application and report as to compliance or noncompliance with this Ordinance, and advise if necessary, of procedures which will result in compliance. The consultant shall estimate the cost of such review and the applicant shall deposit with the Town the full estimated cost, which the Town shall place in an escrow account. The Town shall pay the consultant from the escrow account and reimburse the applicant if funds remain after payments are completed. The consultant shall be fully qualified to provide the required information and shall be mutually acceptable to the Town and the applicant.

ii) Additional Studies

The Planning Board may require the applicant to undertake any study, which it deems reasonable and necessary to insure that the requirements of the Ordinance are met. The costs of all such studies shall be borne by the applicant.

e) Public Hearing

Unless required by specific ordinance, the Planning Board may, at its discretion, schedule one or more public hearings to allow the public an opportunity to comment on any land use permit application. Hearings will be posted and conducted in accordance with Planning Board bylaws.

f) Financial Guarantee

For any proposed land use activity in which improper or incomplete development might, in the judgment of the Planning Board, endanger the public health, safety or welfare, the Planning Board is authorized to require a financial guarantee from the applicant. The applicant may be required to post, prior to a final approval of any application, a bond or escrow agreement in such amount as is approved by the Board as being reasonably necessary to ensure completion of all improvements required as conditions of approval of the proposed development. The Board in consultation with the Board of Selectmen will approve the specific form of the guarantee. Town officials shall have all records and documents related to

the project. *Note: Specific land use ordinances may have detailed financial guarantee provisions for particular activities, e.g. road to be offered to the Town for acceptance.*

g) Findings of Fact

The Board will record its findings of fact as to whether the proposed activity does or does not meet the requirements of each relevant land use ordinance. Any requirement not met shall be clearly documented.

h) 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 the Burnham's *Code of Land Use Ordinances*.

i) Decisions

Permits shall be approved if the proposed use or structure is found to be in conformance with the purposes and provisions of this Ordinance. Permits may be made subject to reasonable conditions to ensure conformity with the purposes and provisions of this *Code of Land Use Ordinances*, and the permittee shall comply with such conditions. If a permit is either denied or approved with conditions, the reasons as well as conditions shall be stated in writing. The CEO shall be responsible for monitoring compliance with any permit conditions imposed.

No approval shall be granted for an application involving a structure if the structure would be located in an unapproved subdivision or would violate any other local ordinance or regulation or any State law which the municipality is responsible for enforcing.

j) Timing

The Board shall seek to render a decision within 45 days of the date that the application is determined to be complete.

O. Expiration of Permit

Following the issuance of a permit, if no substantial start is made in the approved construction or in use of the property within one year of the date of the permit, the permit shall lapse and become void.

P. Enforcement

1. Nuisance

Any violation of the *Code of Land Use Ordinances* shall be deemed to be a nuisance.

2. Enforcement Procedure

a) It shall be the duty of the Code Enforcement Officer to enforce the provisions of the *Code of Land Use Ordinances*. If the Code Enforcement Officer shall find that any provision is being violated, he or she shall notify in writing the person responsible for such violation, indicating the nature of the violation and ordering the action necessary to correct it, including discontinuance of illegal use of land, buildings or structures, or work being done, removal of illegal buildings or structures, and abatement of nuisance conditions. A copy of such notices shall be submitted to both the Board of Selectmen and Planning Board and be maintained as a permanent record.

b) The Code Enforcement Officer shall conduct on-site inspections to insure compliance with all applicable laws and conditions attached to permit approvals. The Code Enforcement Officer shall also investigate all complaints of alleged violations of this Ordinance that are referred by the Board of Selectmen.

- c) The Code Enforcement Officer shall keep a complete record of all essential transactions, including violations investigated, violations found, enforcement orders written, court actions and fees collected.
- d) On a biannual basis, the Code Enforcement Officer shall submit a summary of the record of such transactions within the Shoreland Zone to the Director of the Bureau of Land Quality Control within the Department of Environmental Protection.

3. Legal Actions

The Board of Selectmen, 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 the *Code of Land Use Ordinances* in the name of the municipality. The Board shall retain counsel as necessary to pursue legal action in enforcing this *Code*.

4. Consent Agreements

The Board of Selectmen, or its authorized agent, is hereby authorized to enter into administrative consent agreements for the purpose of eliminating violations of the *Code of Land Use Ordinances* and recording fines without Court action. Such agreements shall not allow an illegal structure or use to continue unless there is clear and convincing evidence that the illegal structure or use was constructed or conducted as a direct result of erroneous advice given by an authorized municipal official and there is no evidence that the owner acted in bad faith, or unless the removal of the structure or use will pose a threat or hazard to public health and safety or will result in substantial environmental damage.

5. Fines

Any person, including but not limited to a landowner, a landowner's agent or a contractor, who orders or conducts any activity in violation of the *Code of Land Use Ordinances* shall be penalized in accordance with Title 30-A MRSA Section 4452. This shall not preclude the payment of further penalties named in any specific ordinance, applicable statute or rule.

Q. Appeals

An applicant or other aggrieved party may appeal any decision of the Planning Board, or apply for a variance, by filing with the Board of Appeals according to the procedures outlined in the *Burnham Board of Appeals Ordinance*.

R. Definitions of Land Use Terms

1. Construction of Language

In the interpretation and enforcement of this *Code of Land Use Ordinances*, all words other than those specifically defined in this Ordinance shall have the meaning implied by their context in the Ordinance or their ordinarily accepted meaning. Where any uncertainty arises, the Board of Appeals shall be the final authority.

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

The present tense includes the future tense, the singular number includes the plural, and plural numbers include the singular.

The words "shall," "will" and "must" are mandatory; the word "may" is permissive.

The word "Ordinance" may refer to the entire "Code of Land Use Ordinances".

The word "lot" includes the word "parcel".

The word "structure" includes the word "building".

The words "Town" or "municipality" mean the Town of Burnham, Maine.

The term "municipal officers" means the Burnham Board of Selectmen.

2. Definition of Terms

In this *Code of Land Use Ordinances* the following terms shall have the following meanings:

Abutter - the owner of any property with one or more common boundaries, or across the street or stream from, the property involved in an application or appeal.

Access (or accessway) - legal right-of-way connecting a parcel of land with a road.

Access point - same as "curbcut".

Accessory apartment - a secondary dwelling unit attached to a single-family residence that may be occupied by a family member or tenant of the owner-occupants of the main dwelling unit.

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

Active farmland - land with a minimum of 5 contiguous acres generating at least \$300 worth of commercial crop annually.

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

After-the-Fact – land use activity that was commenced without first obtaining a permit required by Town ordinance.

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

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

Alternative toilet - a device, other than a water closet, designed to treat human waste only. Examples are: privies and compost, chemical, recirculating, incinerating, and vacuum toilets.

Applicant - person seeking permission from Town to undertake land use activity.

Area of a Shallow Flooding - means a designated AO and AH zone on a community's Flood Insurance Rate Map (FIRM) with a one percent or greater annual chance of flooding to an average depth of one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

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

Average Daily Traffic - the average number of vehicles per day that enter and exit the premises or travel over a specific section of road.

Backlot - any lot or parcel of land that does not have frontage on a public or private road.

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

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

Best Management Practice (BMP) -

(a) **Agricultural:** a method or practice which, when installed or used, is consistent with efficient, practical, technically and environmentally sound animal or crop production practices. For those practices that have an impact on water quality, BMP's are those practices best suited for preventing, reducing or correcting surface and groundwater contamination.

(b) **Construction:** a method of construction that effectively and efficiently prevents soil erosion.

Bridge - a structure designed to convey a road over a physical barrier or obstacle such as other roads, railroads or water, including culverts with a combined opening of 80 square feet or greater.

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.

Breakaway Wall - means a wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces, without causing damage to the elevated portion of the building or supporting foundation system.

Buffer strip or zone - area of vegetation designed to effectively shield a land use activity from surrounding properties from potentially disturbing sights, sounds, odors and other nuisances. See Section IV.1.4. for buffer strip standards.

Building - same as structure.

Building height - the vertical distance between the highest point of the roof and the average grade of the existing or original ground adjoining the building, whichever distance is greater.

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

Clear cutting - timber harvesting on a forested site greater than 5 acres in size which in over a 10 year period results in an average residual basal area of trees over 6 inches in diameter of less than 30 square feet per acre, unless one or both of the following conditions exist:

- a) If, after harvesting, the average residual basal area of trees over 1 inch in diameter measured at 4.5 feet above the ground is 30 square feet per acre or more, a clearcut does not occur until the average residual basal area of trees 6 inches or larger measured at 4.5 feet above the ground is less than 10 square feet per acre; or

- b) After harvesting, the site has a well-distributed stand of trees at least 5 feet hi height, that meets the regeneration standards applicable under 12 MRSA, c. 805, sec. 8869, subsec. 1.

Code Enforcement Officer - any person or board responsible for performing the inspection, licensing, and enforcement duties required by a particular statute or ordinance.

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.

Construct - build, place, move upon, pave, grade or make other physical improvement operations on land, including excavation, fill, drainage, etc.

Culvert - a conduit for water placed under a road, driveway or other passageway. Multiple culverts with a combined opening of less than 80 square feet shall also be defined as culverts and those with a combined opening of 80 square feet or greater shall be defined as a bridge.

Curbcut - junction of a vehicular accessway and the public or private road accessed.

Density - the number of dwelling units per area of land.

Development - means any change caused by individuals or entities to improved or unimproved real estate, including but not limited to the construction of buildings or other structures; the construction of additions or substantial improvements to buildings or other structures; mining, dredging, filling, grading, paving, excavation, drilling operations or storage of equipment or materials; and the storage, deposition, or extraction of materials, public or private sewage disposal systems or water supply facilities.

Development permit - document issued by Planning Board authorizing a land use activity requiring such a permit as defined in this *Code of Land Use Ordinances*.

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

Direct watershed - that portion of the watershed that does not first drain through an upstream lake.

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.

District - a specified portion of the municipality, delineated on the *Burnham Land Use Map*, within which certain regulations and requirements or various combinations thereof apply under the provisions of this *Code of Land Use Ordinances*.

Driveway (outside Shoreland Zone) - a vehicular accessway serving one or two principal structures or lots.

Driveway (Shoreland Zone only) - a vehicular accessway less than 500 feet in length serving two lots or less.

Dwelling - any building or structure or portion thereof designed or used for residential purposes.

Dwelling unit - A room or suite of rooms used by a family as a habitation which is separate from other such rooms or suites of rooms, and which contains independent living, cooking, sleeping, bathing and sanitary facilities.

Duplex - same as two-family dwelling.

Elevated Building - means a non-basement building:

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

In the case of Zones AE or A, **Elevated Building** also includes a building elevated by means of fill or solid foundation perimeter walls less than three feet in height with openings sufficient to facilitate the unimpeded movement of flood waters.

Elevation Certificate - An official form (FEMA Form 81-31, 05/90, as amended) that:

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

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

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

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

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

Family development- a development that would otherwise constitute a subdivision as defined by Title 30-A, Section 4401 but the development meets the exception because of a gift to a person related to the donor by blood, marriage or adoption.

Flood or Flooding - means:

- (a) A general and temporary condition of partial or complete inundation of normally dry land areas from:
 - (1) The overflow of inland or tidal waters.
 - (2) The unusual and rapid accumulation or runoff of surface waters from any source.

- (b) The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in paragraph (a)(l) of this definition.

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

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

Flood Insurance Study - see Flood Elevation Study.

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

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

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

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

Floodway - see Regulatory Floodway.

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

Floor area - the sum of the horizontal areas of the floor(s) of a structure enclosed by exterior walls, with 5' vertical distance or more of headroom, plus the horizontal area of any unenclosed portions of a structure such as porches and decks.

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

Forested wetland - a freshwater wetland dominated by woody vegetation that is six meters tall or taller.

Forestry - the operation of timber tracts, tree farms, forest nurseries, the gathering of forest products, or the performance of forest services.

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

Freeboard - means a factor of safety usually expressed in feet above a flood level for purposes of floodplain management. Freeboard tends to compensate for the many unknown factors, such as wave

action, bridge openings, and the hydro logical effect of urbanization of the watershed, that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions.

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

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

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

Frontage, road - the horizontal, straight-line distance between the intersections of the side lot lines with the road right-of-way.

Frontage, shore - the horizontal distance, measured in a straight line, between the intersections of the lot lines with the shoreline at normal high water elevation.

Functionally water-dependent uses - those uses that require, for their primary purpose, location on submerged lands or that require direct access to, or location in, coastal and inland waters and which cannot be located away from these waters. The uses include, but are not limited to commercial and recreational fishing and boating facilities, 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 aides, basins and channels, industrial uses dependent upon water-borne transportation or requiring large volumes of cooling or processing water and which cannot reasonably be located or operated at an inland site, and uses which primarily provide general public access to marine or tidal waters.

Grandfathered - exempted from mandatory compliance with one or more standards of this Ordinance due to existence prior to Ordinance enactment;

Gravel pit - borrow pit in which the excavation of sand or gravel takes place. **Great pond or Great pond classified GPA** - Unity Pond.

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

Historic Structure - means any structure that is:

- a. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- b. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary of the Interior to qualify as a registered historic district;
- c. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or

- d. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
 - 1) By an approved state program as determined by the Secretary of the Interior, or
 - 2) Directly by the Secretary of the Interior in states without approved programs.

Home occupation - a home-based enterprise in which: (a) the proprietor lives on the same parcel as the business or on an abutting parcel; and (b) there are no more than six full-time (or equivalent) non-resident employees.

Impervious surface - one that does not absorb moisture, including but not limited to rooftops and paved areas.

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

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

Junkyard - a yard, field or other area used as place of storage for:

- 1) Discarded, worn-out, junked plumbing, heating supplies, household appliances, and furniture;
- 2) Discarded, scrap and junked lumber;
- 3) Old or scrap copper, brass, rope, rags, batteries, paper trash, rubber debris, plastic debris, waste, and all scrap iron, steel and other scrap ferrous or non-ferrous material, and included;
- 4) Garbage dumps, waste dumps and sanitary landfills.

Land use permit - document issued by Code Enforcement Officer or Planning Board authorizing a particular land use by an applicant.

Large commercial (or industrial, or public/civic) land use - a non-residential land use that utilizes 10,000 square feet or more of combined floor area and/or impervious surface.

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

Lot - an area of land in one ownership, or one leasehold, with ascertainable boundaries established by deed or instrument of record, or a segment of land ownership defined by lot boundary lines on a land subdivision plan duly approved by the Planning Board and recorded in the County Registry of Deeds.

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

Lot width - the distance between the side boundaries of the lot measured at the front setback line.

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

Manufactured housing or mobile home unit - a structure, transportable in one or two sections, which was constructed in a manufacturing facility and is transported to a building site and designed to be used as a dwelling when connected to the required utilities, including the plumbing, heating, air conditioning and electrical systems contained therein and as otherwise defined in Title 30-A MRSA, Section 4358(1).

Marina - a business establishment having frontage on navigable water and, as its principal use, providing for hire offshore moorings or docking facilities for boats, and which may also provide accessory services such as boat and related sales, boat repair and construction, indoor and outdoor storage of boats and marine equipment, boat and tackle shops and marine fuel service facilities.

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

MDOT specifications - Maine Department of Transportation publication, *Standards Specifications, Highways and Bridges, Revision of October 1990*.

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

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

Mineral extraction - any operation within any 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.

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

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

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

Mobile home park - a parcel of land under unified ownership approved by the Town for the placement of 3 or more manufactured homes. Mobile home parks shall be limited to so-called "single-wide" manufactured homes, unless the lots meet the Town's dimensional requirements for other residential development.

Multi-family dwelling - a building containing 3 or more dwelling units, such buildings being designed exclusively for residential use and occupancy by 3 or more families living independently of one another, with the number of families not exceeding the number of dwelling units.

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

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

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

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

Non-residential structure - any building that has a principal use other than as a dwelling or as an accessory to a dwelling.

Normal high-water line - that line which is apparent from visible markings, changes in the character of soils due to prolonged action of the water or changes in vegetation, and which distinguishes between predominantly aquatic and predominantly terrestrial land. In the case of wetlands adjacent to rivers and great ponds, the normal high-water line is the upland edge of the wetland, and not the edge of the open water.

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

Outlet stream - any perennial or intermittent stream, as shown on the most recent edition of a 7.5-minute series topographic map produced by the United States Geological Survey, that flows from a freshwater wetland.

Parcel - same as lot

Permanent (road or driveway) - used for more than a twelve-month period.

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

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

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

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

Primitive disposal field - a minimal disposal field designed specifically to treat gray wastewater originating from a non-pressurized water supply.

Primitive system - a subsurface wastewater disposal system consisting of a primitive disposal field and an alternative toilet.

Principal structure - a building whose function is predominant to the developed use of a piece of property. For example, homes and central commercial buildings are principal structures, while garages, barns and sheds are accessory structures.

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

Private road or roadway - a privately-owned road, neither open to nor maintained by the Town or general public.

Public easement - an easement held by a municipality for purposes of public access to land or water not otherwise connected to a public way.

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

Public road - a Town way or public easement for highway purposes as defined in 23 MRSA §3021.

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

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

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

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

Recreational vehicle (*Floodplain Management Ordinance* only) - means a vehicle which is:

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

Regulatory Floodway -

- 1) means the channel of a river or other water course and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot, and
- 2) in riverine areas is considered to be the channel of a river or other water course and the adjacent land areas to a distance of one-half the width of the floodplain, as measured from the normal high water mark to the upland limit of the floodplain.

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

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

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

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

Right-of-way - all public or private roads, state and federal highways, public easements (formerly private ways), and land reserved for the purpose of public access, including utility rights-of-way.

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

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

Road (outside Shoreland Zone) - any public or private way designed for vehicular access, other than driveways, shared driveways, farm roads, trails or logging roads. The term "road" includes the normal meaning conveyed by synonymous words including street, avenue, highway, land and way.

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

Seasonal use - one that takes place no more than seven months of the year.

Selective cutting - tree harvesting that shall not remove, in any ten year period, more than 40% of the volume on each acre involved of trees 6 inches in diameter and larger measured at 4.5 feet above ground level. Removal of trees less than 6 inches in diameter, measured as above, is permitted if otherwise in conformance with the regulations in the *Shoreland Zoning Ordinance*. For the purpose of these standards, volume may be determined as being equivalent to basal area.

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

1) in the case of electric service:

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

Set-aside of land - a contiguous portion of land, owned by one or more parties in one or more parcels, that is protected from future development by deed restriction or other legal instrument.

Setback - the minimum horizontal distance from the lot boundary to the nearest part of a building, including porches, steps and railings.

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

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

Sight Distance - the length of unobstructed view from a particular access point to the farthest visible point of reference on a roadway.

Sign - any structure, display, logo, device or representation which is designed or used to advertise or call attention to any thing, person, business, activity or place and is visible from any public way. It does not include the flag, pennant or insignia of any nation, state or town. Whenever dimensions of a sign are specified they shall include frames. A 2-sided sign is considered one sign for purposes of this Ordinance.

Single-family Dwelling - any structure containing only one dwelling unit for occupation by not more than one family.

Slash - bark, branches, tops, chunks, cull logs, uprooted stumps and broken or uprooted trees and shrubs left on the ground as a result of a timber harvesting operation.

Small commercial (or industrial, or public/civic) land use - a non-residential land use that utilizes less than 10,000 square feet of combined floor area and/or impervious surface.

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

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

Stream (Shoreland Zoning Only) - a free-flowing body of water from the outlet of Unity Pond or a freshwater wetland, or the confluence of two (2) perennial streams as depicted on the most recent edition of a United States Geological Survey 7.5 minute series topographic map, or if not available, a 15-minute series topographic map, to the point where the body of water becomes a river or flows to another water body or wetland within the shoreland area (this definition includes Outlet Streams, as defined).

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

Sub-district - one of the five districts within the Shoreland Zone: either Resource Protection, Limited Residential, Limited Commercial, General Development or Wetland/Stream Protection.

Subdivision - the division of a tract or parcel of land into 3 or more lots within any 5-year period that begins on or after September 23, 1971. This definition applies whether the division is accomplished by sale, lease, development, buildings or otherwise. The term "subdivision" also includes the division of a new structure or structures on a tract or parcel of land into 3 or more dwelling units within a 5-year period, the construction or placement of 3 or more dwelling units on a single tract or parcel of land and the division of an existing structure or structures previously used for commercial or industrial use into 3 or more dwelling units within a 5-year period. In Unity, lots of 40 acres or greater in size are considered lots within this definition and come under municipal review.

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

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

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

- (1) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or
- (2) Any alteration of a historic structure, provided that the alteration will not preclude the structures's continued designation as a historic structure.

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

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

Temporary road or driveway - designed for a limited purpose requiring no more than twelve months of usage to complete. *Due to anticipated realistic constraints in road use (e.g. weather), the applicant and Road Commissioner may construct an interrupted twelve-month actual usage period that extends beyond a nominal consecutive twelve-month period. This shall be clearly stated in the permit, with the permit expiration date specified.*

Timber harvesting - the cutting and removing of trees from their growing site, and the attendant operation of mobile and portable chipping mills and of cutting and skidding machinery, including the creation and use of skid trails, skid roads and winter haul roads. Timber harvesting does not include the clearing of land for allowed uses.

Tributary stream - a channel between defined banks created by the action of surface water, whether intermittent or perennial, and which is characterized by the lack of upland vegetation or presence of aquatic vegetation and by the presence of a bed devoid of topsoil containing waterborne deposits on exposed soil, parent material or bedrock, and which flows to a water body or wetland as defined. This definition does not include the term "stream" as defined elsewhere in this Ordinance, and only applies to that portion of the tributary stream located within the shoreland zone of the receiving water body or wetland.

Two-family dwelling (duplex) - a building containing two dwelling units, for occupation by not more than two families.

Undue hardship - as used in this Ordinance, the words "undue hardship" shall mean all of the following:

- a) That the land in question cannot yield a reasonable return unless a variance is granted; and
- b) That the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood; and
- c) That the granting of a variance will not alter the essential character of the locality; and
- d) That the hardship is not the result of action taken by the applicant or a prior owner.

Unserviceable motor vehicle - any motor vehicle which is wrecked, dismantled, cannot be operated legally on any public highway or which is not being used for the purpose for which it was manufactured. It does not apply to wrecked or dismantled vehicles that are awaiting parts and/or adjustment. The limit of "temporary storage" is 90 days.

Upland edge - the boundary between upland and wetland.

Variance - a relaxation of the terms of this Ordinance where such relaxation will not be contrary to the public interest where, owing to conditions peculiar to the property, and not the result of the actions of the applicants, a literal enforcement of the Ordinance would result in undue hardship. Variances permissible under this Ordinance are limited to height of buildings, structures, lot size, yard and open spaces sizes, frontage, and setbacks. No variance can be granted for the establishment of any use otherwise prohibited, nor shall a variance be granted because of the presence of non-conformities in the immediate or adjacent districts.

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

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

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.

Waiver - a relaxation of requirements of this Ordinance allowed by the Planning Board as prescribed in this Ordinance. Waivers occur due to circumstances of a particular application that require adjustment in order to best accomplish the Town's objectives.

Water body - pond, river, or stream.

Water crossing - any project extending from one bank to the opposite bank of a river or stream, whether under, through, or over the water course. Such projects include but may not be limited to roads, fords, bridges, culverts, water lines, sewer lines, and cables as well as maintenance work on these crossings.

Wetland - a freshwater wetland.

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.