

Town of Cape Elizabeth Resource Protection District Ordinance

SEC. 19-6-9. RESOURCE PROTECTION DISTRICTS

(RP1-CW, RP1-CW Buffer Overlay, RP2-WP, and RP3-F)

A. Purpose

The wetlands and floodplains of the Town are fragile natural resources which provide wildlife habitat, pollution control, storage and passage of flood waters, aquifer recharge, erosion control, education, scientific study, recreation, and open space. Nationally, considerable wetland acreage has been lost or impaired by drainage, dredging, filling, excavating, building, pollution, and other activities inconsistent with the natural uses of such areas. Therefore, it is the policy of the Town to ensure that wetlands and floodplains are protected from detrimental impacts and that wetland and floodplain alteration activities do not threaten public safety, welfare or cause nuisances, or negatively alter natural wetland ecology. To protect these natural resources, four (4) Resource Protection Districts are designated based upon their natural resource value and vulnerability:

1. Resource Protection 1 - Critical Wetland District (RP1-CW)

Areas that deserve the highest protection from filling, draining and other adverse activities due to their particular environmental or hydrological importance, sensitivity to alterations or special characteristics are designated Resource Protection 1 - Critical Wetland District (RP1-CW). Any area that, upon field verification, is determined to have one (1) or more of the following characteristics shall be included in the RP1-CW District:

- a. is at least one (1) acre in size and the substrate is predominantly hydric soils categorized as very poorly drained organic or mineral soils as defined (see Sec. 19-1-3, hydric soil definition);
- b. is at least one (1) acre in size and contains, at least periodically, predominantly "Obligate" wetland vegetation, as defined in Sec. 19-1-3, Definitions - Wetland Vegetation; or
- c. is a coastal dune, as defined herein.

The Town has prepared a zoning map showing the RP1-CW District based upon the best available information at a town-wide scale. The actual boundaries of this district, however, shall be determined by field verification in accordance with Sec. 19-2-5, Location of Resource Protection District Boundaries.

2. Resource Protection 1 - Critical Wetland Buffer Overlay District (RP1-CW Buffer Overlay)

Areas that require regulation due to their proximity to Resource Protection 1 - Critical Wetland Districts, and function to protect wetland values including but not limited to wildlife habitat, pollution abatement, and erosion control are designated Resource Protection 1 - Critical Wetland Buffer Overlay District (RP1-CW Buffer Overlay). The RP1-CW Buffer Overlay District is an overlay zone and is located adjacent to Resource Protection 1 - Critical Wetland Districts. The RP1-CW Buffer Overlay District shall extend upland from the wetland upland edge of any critical wetland as determined by the following criteria:

- a. a two hundred fifty (250) foot buffer will be required if the critical wetland meets one (1) of the following criteria:
 - (1) The wetland is rated as having moderate or high value for wildlife by the Maine Department of Inland Fisheries and Wildlife;
 - (2) The wetland is a marine and/or estuarine marsh; or
 - (3) The Resource Protection 1 - Critical Wetland District as defined is not well separated from adjacent areas by topography or other natural features.

- b. Notwithstanding any provision of this section to the contrary, a one hundred (100) foot buffer will be required if the wetland area meets one (1) of the following criteria and the critical wetland is not rated as having moderate or high value for wildlife by the Maine Department of Inland Fisheries and Wildlife:
 - (1) The Resource Protection 1 - Critical Wetland District is distinctly separated from the area of the proposed development by topography such that the development area, in its natural state, drains away from the wetland. An existing road or driveway shall not be considered a topographical divide if the road drains toward the wetland.
 - (2) The Resource Protection 1 - Critical Wetland District is within two hundred fifty (250) feet of densely developed areas. For the purposes of this section, an area shall be considered densely developed if at least six (6) principal buildings are located within two hundred fifty (250) feet of the center of any proposed structure.
 - (3) The Resource Protection 1 - Critical Wetland District is two (2) acres or less in size.

- (4) The Resource Protection 1 - Critical Wetland District is a coastal sand dune as measured from the point where sand and dune grasses are replaced by upland soils and vegetation.
- c. The RP1-CW Buffer Overlay District may be reduced to one hundred (100) feet from the edge of the wetland to allow placement of a permanent or temporary tool shed where the footprint of the tool shed does not exceed eighty (80) square feet and the tool shed will be used for storage. Tool sheds allowed under this provision shall require a building permit.

3. Resource Protection 2 - Wetland Protection District (RP2-WP)

Areas that require regulation due to the sensitivity to development or to their general wetland qualities are designated Resource Protection 2 - Wetland Protection District (RP2-WP). Any area that, upon field verification, is determined to have one (1) or more of the following characteristics shall be included in the RP2-WP District:

- a. An area where the substrate is predominantly hydric soils categorized as poorly drained mineral soils (see Sec. 19-1-3 for hydric soil definition) and that, at least periodically, supports wetland vegetation listed as "Facultative Wetland" as defined in Section 19-1-3, Definitions - Wetland Vegetation.

[Explanatory Note: Most wetlands in Maine would fall under this category. Hydric soils encountered in wetlands typically fall within the "poorly drained" soil drainage class. Additionally, most wetlands encountered in Maine would support vegetation that meets the "Facultative Wetland" classification referenced. Occasionally, lower value wetlands do occur that are both underlain by "somewhat poorly drained" soils and may not harbor plants other than "Facultative" as opposed to "Facultative Wetland" species. If a town wants to provide protection for all wetlands, the 1987 US Army Corps of Engineers definition should be used as an alternative.]

- b. An area less than one (1) acre in size where the substrate is predominantly hydric soils categorized as very poorly drained organic or mineral soils as defined (see Sec. 19-1-3 for hydric soil definition); or
- c. An area where the substrate is saturated with water to the surface or submerged for at least twenty (20) consecutive days during the growing season each year.

The Town has prepared a zoning map showing the RP2-WP District based upon the best available information at a town-wide scale. The actual boundaries of this district, however, shall be determined by field verification in accordance with Sec. 19-2-5, Location of Resource Protection District Boundaries.

4. Resource Protection 3 - Floodplain District (RP3-F)

Areas that require regulation due to their sensitivity to development that would adversely affect water quality, productive habitat, biological ecosystems or natural values are designated Resource Protection 3 - Floodplain (RP3-F). Any area that, upon field verification, is determined to have one (1) or more of the following characteristics shall be included in the RP3-F District:

- a. Floodplains along rivers defined by the 100-year floodplain as shown on the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps or Flood Hazard Boundary Maps, or the flood of record, or in the absence of these, by soil types identified as recent floodplain soils. This district shall also include 100-year floodplains adjacent to tidal waters as shown on FEMA's Flood Insurance Rate Maps or Flood Hazard Boundary Maps. Floodplains that include two (2) or more principal structures per one thousand (1,000) linear feet of shoreline are not included.
- b. Areas of two (2) or more contiguous acres with sustained slopes of twenty percent (20%) or greater.
- c. Land areas along rivers subject to severe bank erosion, undercutting, or riverbed movement and lands adjacent to tidal waters which are subject to severe erosion or mass movement, such as steep coastal bluffs.

The Town has prepared a zoning map showing the RP3-F District based upon the best available information at a town-wide scale. The actual boundaries of this district, however, shall be determined by field verification in accordance with Sec. 19-2-5, Location of Resource Protection District Boundaries.

B. Permitted Uses

Any use shown on Table 19-6-9 as a permitted use in each district shall be permitted in the RP1-CW, RP1-CW Buffer Overlay, RP2-WP, or RP3-F district respectively.

C. Uses Permitted with a Resource Protection Permit

Any use shown on Table 19-6-9 as a permitted use with a resource protection permit in the RP1-CW, RP1-CW Buffer Overlay, RP2-WP, or RP3-F District shall be permitted in that district but only upon the issuance of a resource protection permit in accordance with the provisions of Sec. 19-8-3, Resource Protection Performance Standards.

D. Prohibited Uses

Uses shown as prohibited uses on Table 19-6-9 and any other use not specifically listed as a permitted use or a use permitted with a resource protection permit shall be prohibited in the RP1-CW, RP1-CW Buffer Overlay, RP2-WP, and RP3-F Districts.

**TABLE 19-6-9
Uses permitted, allowed with a resource protection permit,
and prohibited in the Resource Protection Districts.**

All use of land, buildings, and structures within the Resource Protection Districts shall be in accordance with the following:

- **“Permitted”** indicates uses that are permitted by right subject to Sec. 19-8-3, Resource Protection Performance Standards
- **“RPP”** indicates uses that are permitted, provided that a resource protection permit is issued in accordance with Sec. 19-8-3, Resource Protection Performance Standards
- **“No”** indicates uses that are prohibited

No use, structure, or activity shall be permitted that is not in compliance with Sec. 19-8-3, Resource Protection Performance Standards.

Uses allowed with a resource protection permit may include incidental activities that otherwise would be prohibited, provided that such incidental activities are expressly included in the permit application.

A permitted use that includes within it an incidental prohibited activity shall be allowed only if a resource protection permit is issued in accordance with Sec. 19-8-3, Resource Protection Performance Standards.

Use, Activity, Structure	RP1-CW and RP1-CW Buffer Overlay	RP2-WP	RP3-F
1. Expansion of nonconforming structure subject to the provisions of Sec. 19-4-5, Nonconformance within the Resource Protection Districts	Permitted	Permitted	Permitted
2. Forest management activities	Permitted	Permitted	Permitted
3. Timber harvesting	Permitted	Permitted	Permitted
4. Conservation of soil, water, vegetation, fish, shellfish, and wildlife	Permitted	Permitted	Permitted
5. Wilderness area, wildlife preservation and refuges	Permitted	Permitted	Permitted
6. Education and scientific research and nature trails	Permitted	Permitted	Permitted
7. Shellfishing and trapping	Permitted	Permitted	Permitted
8. Non-intensive recreational activity including but not limited to hunting where permitted, bird-	Permitted	Permitted	Permitted

Use, Activity, Structure	RP1-CW and RP1-CW Buffer Overlay	RP2-WP	RP3-F
watching, duck blinds, hiking, horseback riding, swimming and trapping, provided there is no alteration of the wetland and no operation of any motorized recreational vehicles			
9. Maintenance of existing golf course waterholes, municipal skating ponds	Permitted	Permitted	Permitted
10. Maintenance of stormwater detention basins by the Town, or by a homeowners' association as approved by the Planning Board as part of an approved subdivision or site plan	Permitted	Permitted	Permitted
11. Grooming of existing residential lawns and landscaping, including the installation of fences in existing lawns	Permitted	Permitted	Permitted
12. Fire prevention activities	Permitted	Permitted	Permitted
13. Aquaculture	Permitted	Permitted	Permitted
14. Replacement of septic disposal system	Permitted	Permitted	Permitted
15. Service drop to allowed use	Permitted	Permitted	Permitted
16. Individual campsite	Permitted	Permitted	Permitted
17. Home occupation and home business	Permitted	Permitted	Permitted
18. Fences, wildlife management shelters, observation decks and shelters	RPP	Permitted	RPP
19. Minor recreational structure	RPP	Permitted	RPP
20. Catwalks and footbridges	RPP	RPP	RPP
21. Public utilities/essential utility services	RPP	RPP	RPP
22. Existing road reconstruction	RPP	RPP	RPP
23. Official vegetated playing fields and related accessory structures, including parking facilities, located more than one hundred (100) feet from the RP1 wetland upland edge	RPP	RPP	RPP
24. Damming	RPP	RPP	No
25. Dredging	No	RPP	RPP
26. Grading	No	RPP	RPP
27. New street construction	No	RPP	RPP
28. Agriculture (existing uses exempted)	No	RPP	RPP
29. Piers, docks and boathouses	No	RPP	RPP
30. Marina	No	RPP	RPP
31. Filling	No	RPP	No
32. Draining	No	RPP	No
33. Excavating	No	RPP	No
34. Mining or drilling	No	RPP	No
35. One and two family dwellings and accessory buildings and structures	No	RPP	No

Use, Activity, Structure	RP1-CW and RP1-CW Buffer Overlay	RP2-WP	RP3-F
36. Multi-unit residential	No	RPP	No
37. Parking facility	No	No	RPP
38. Commercial structure	No	No	No
39. Industrial structure	No	No	No
40. Governmental/institutional	No	No	No
41. Conversion to year-round	No	No	No
42. Private septic disposal system	No	No	No
43. Campground	No	No	No
44. Polluting	No	No	No

E. Standards

1. Performance Standards

- a. The general standards of Articles VII and VIII shall be observed.
- b. All uses of land and buildings within the RP1-CW, RP1-CW Buffer Overlay, RP2-WP, and RP3-F Districts shall be subject to the applicable provisions of Sec. 19-8-3, Resource Protection Performance Standards.

2. Space and Bulk Standards

Within a Resource Protection District, the Space and Bulk Standards of the most restrictive abutting district shall apply except that lots within one hundred (100) feet of the Residence C District shall use the Space and Bulk Standards of the Residence C District.

3. Other Standards

All permitted structures shall be constructed to allow the unobstructed flow of waters and preserve the natural contour of the wetland except as authorized by resource protection permits.

F. Concurrent Site Plan Review

Uses or activities listed in Sec. 19-9-2.A, Activities Requiring Site Plan Review, as requiring site plan review that also require a resource protection permit shall be reviewed concurrently by the Planning Board.

SEC. 19-8-3. RESOURCE PROTECTION PERFORMANCE STANDARDS

All activities in the Resource Protection Districts shall comply with the following performance standards as applicable:

A. Resource Protection Permit Procedures

1. Review

- a. Any activity, use or structure listed in Sec. 19-6-9, Resource Protection Districts, in a Resource Protection 1-Critical Wetland, Resource Protection 2-Wetland Protection, Resource Protection 3-Floodplain, or Resource Protection 1-Critical Wetland Buffer Overlay District listed as permitted with a Resource Protection Permit shall be permitted only if a Resource Protection Permit is obtained in accordance with this section.

- b. The Planning Board shall review the submitted application and accompanying materials. The Planning Board may require additional material that, considering the probable cost and effects of the proposed alteration, it deems necessary for a full consideration of the proposal and its effects, including more detailed plans.
- c. The Planning Board in its review of an application may require a "peer review" by a professional engineer, a botanist or other relevant expert. The cost of all such reviews, including the cost of review by the Town Engineer, shall be taken from the application's Review Escrow Account. If a Review Escrow Account has not been established pursuant to the provisions of other ordinances governing an aspect of the applicant's proposed activity, the Planning Board shall be authorized to require an applicant for a Resource Protection permit to establish a Review Escrow Account under the terms of Sec. 16-2-4 (a)(1) of the Subdivision Ordinance. Any funds not disbursed from the Review Escrow Account shall be promptly returned to the applicant upon final disposition of his or her application.
- d. The Planning Board shall process the application in accordance with the procedures established for site plan review in Sec. 19-9-4, Review Procedures.
- e. Prior to considering the application, the Planning Board shall refer it to the Conservation Commission for its review and recommendation.
- f. Within thirty-five (35) days following the public hearing if one is held or sixty (60) days following the application being determined to be complete if no hearing is held, or such longer period as may be mutually agreeable to the Planning Board and the applicant, the Planning Board shall render its decision to approve, to approve with conditions or to disapprove in writing, specifying the reasons therefore. Notwithstanding other provisions of this ordinance, the applicant, or any property owner entitled to notice of the public hearing, who is aggrieved by a decision of the Planning Board under this ordinance, may appeal to the Superior Court as provided by the Maine Rules of Civil Procedure.
- g. For projects reviewed under the Subdivision Regulations or the Site Plan Review Provisions, the Planning Board shall conduct a concurrent review of any past or proposed wetlands alterations within the subdivision, applying the procedures and standards of this Ordinance. Alterations to be reviewed shall include proposed public improvements and all anticipated wetlands alterations within any of the proposed individual lots or common areas.

- h. Permits shall be valid for one (1) year from the date of issue. An applicant may request an extension of the permit for an additional period of up to one (1) year. The request must be submitted prior to the expiration of the permit.

2. *Submission Requirements*

- a. The owner of lands in a Resource Protection District shall apply for the Resource Protection Permit by submitting to the Town Planner or the Code Enforcement Officer fifteen (15) copies of the plans for the proposed location or activity.
- b. Upon receipt of all such materials and upon payment by the applicant of fees established by the Town Council, the Town Planner shall submit the proposal to the Planning Board; the Town Planner shall also submit one (1) copy of all materials to the Chair of the Conservation Commission for its consideration and any recommendations which it deems advisable. The Conservation Commission may request that the applicant attend a meeting of the Commission to discuss the application.
- c. Unless the Planning Board waives one or more of the following requirements, applications for a Resource Protection Permit shall include the information listed below. For Resource Protection Permit applications in the Resource Protection 3-Floodplain District, the submission requirements in Sec. 6-6-3 of the Floodplain Management Ordinance shall be substituted for the list below, except that item (4). below shall also be submitted. The application shall include:
 - (1) a detailed site plan for the proposed activity including a map at a scale of one (1) inch equals one hundred (100) feet showing the location, width, depth, and length of all existing and proposed structures, roads, wells, sewage treatment facilities, drainage facilities, and utility installations within three hundred (300) feet of the mapped wetland
 - (2) a topographic map showing the location and slope for all grades existing and as proposed upon the completion of the wetland alteration. Wetland areas should be mapped at no greater than one (1) foot contours, and non-wetland areas at no more than two (2) foot contours
 - (3) a written description of the entire parcel of land owned by the applicant and the location of the wetland on the parcel
 - (4) property locations and names of all abutting property owners

- (5) a written description of the vegetative cover of the site including dominant species, and a map indicating existing wetland vegetation as defined herein and the Wetland Upland Edge as defined by wetland vegetation. This map and accompanying materials shall be prepared by a qualified botanist or wetland specialist
- (6) a written description of the site's underlying soils and a high intensity soils map with all mapping units being no greater than one quarter (1/4) acre, indicating the boundaries of soil types, the location of hydric soils as defined herein and the Wetland Upland Edge as defined by hydric soils. This requirement shall apply notwithstanding that fill material has been placed on the site, and shall apply regardless of the depth to the underlying soils. Where fill has been placed (prior to 5/9/90) on hydric soils and then developed by construction of a principal structure on the filled land, the area of filled wetland to a maximum distance of fifty (50) feet from the principal building footprint shall be identified as filled land. This map and accompanying materials shall be prepared by a soils scientist certified by the State of Maine
- (7) in cases where there are no hydric soils or wetland vegetation, a map indicating the Wetland Upland Edge based on site-specific hydrology
- (8) the location and flow direction of all existing watercourses, ponds, or standing water present for two (2) or more months each year
- (9) a stormwater runoff plan prepared by a professional engineer showing pre- and post-development runoff patterns for both twenty-five (25) and one hundred (100) year storm events, a contour map of the wetland's watershed and proposed stormwater management measures including sewers, drainage ditches, conduits, catch basins, culverts and impoundment areas
- (10) delineation of the building envelope within which the proposed activities will occur
- (11) the exact sites and specifications for all proposed draining, filling, grading, dredging, and vegetation removal including the amount and procedures
- (12) the purpose of the project and an explanation of why the proposed activity cannot be located at other sites, and if applicable, an explanation of how the proposed activity is dependent on wetlands or water-related resources

- (13) any mitigation measures taken to offset wetland losses
- (14) the Town Planner may require the submission of additional information, such as study of flood erosion, other hazards at the site, and the effect of any protective measures that might be taken to reduce such hazards, and other information deemed necessary to evaluate the proposed use in terms of the goals and standards of the wetlands provisions of this Ordinance.

B. Resource Protection Permit Standards

The Planning Board shall grant a Resource Protection Permit for uses, structures and activities within Resource Protection Districts if it makes a positive finding based upon the information presented that the alteration as proposed, or with specified conditions of approval:

1. will not materially obstruct the flow of surface or subsurface waters across or from the alteration area;
2. will not impound surface waters or reduce the absorptive capacity of the alteration area so as to cause or increase the flooding of adjacent properties;
3. will not increase the flow of surface waters across, or the discharge of surface waters from, the alteration area so as to threaten injury to the alteration area or to upstream and/or downstream lands by flooding, draining, erosion, sedimentation or otherwise;
4. will not result in significant damage to spawning grounds or habitat for aquatic life, birds or other wildlife;
5. will not pose problems related to the support of structures;
6. will not be detrimental to aquifer recharge or the quantity or quality of groundwater;
7. will not disturb coastal dunes or contiguous back dune areas;
8. will maintain or improve ecological and aesthetic values;
9. will maintain an adequate buffer area between the wetland and adjacent land uses;
10. will be accomplished in conformance with the erosion prevention provisions of Environmental Quality Handbook Erosion and Sediment Control, published by the Maine Soil and Water Conservation Commission dated March, 1986, or subsequent revisions thereof;

- 11.* will be accomplished without discharging wastewater from buildings or from other construction into Wastewater Treatment Facilities in violation of Section 15-1-4 of the Sewage Ordinance; and
- 12.* will, in the case of Resource Protection Permits in the Resource Protection-Floodplain District, also comply with Section 6-6-6 of the Floodplain Management Ordinance.

In evaluating the proposed activity, the Planning Board may consult with expert persons or agencies.

C. Resource Protection Permit Conditions

The Planning Board may attach such conditions to the granting of a Resource Protection Permit as it deems necessary to carry out the purposes of the ordinance. Such conditions may include but shall not be limited to:

- 1.* establishment of a buffer between Resource Protection 2-Wetland Protection Districts and adjacent uses, structures and activities
- 2.* increases beyond two hundred fifty (250) feet in the required buffer for Resource Protection 1-Critical Wetland Districts
- 3.* limitation on the total portion of any lot or the portion of the wetland on the lot that may be graded, filled, or otherwise modified. This limitation may be linked to an overall protection policy for the particular wetland
- 4.* requirements that structures be elevated on piles or otherwise protected against natural hazards
- 5.* modification of subsurface waste disposal systems and water supply facilities
- 6.* imposition of operational controls and deed restrictions concerning future use and subdivision of land such as flood warnings, preservation of undeveloped areas in open space use, and limitation of vegetation removal
- 7.* dedication of easements to protect wetlands
- 8.* erosion control measures
- 9.* setbacks for structures, fill deposit of spoil and other activities from the wetlands
- 10.* modifications in project design to ensure continued water supply to the wetland and circulation of waters
- 11.* replanting of wetland vegetation.

The Planning Board may require that the applicant furnish to the Town, before the issuance of a permit, a performance guarantee in accordance with Section 16-2-4(c)(7)(A) of the Subdivision Ordinance. The amount and the conditions shall be consistent with the purposes of this Ordinance and shall secure the proper performance of the alteration work. The amount shall be based upon the estimated cost of completing or correcting any work necessary to satisfy the conditions of the permit and the criteria of this Ordinance plus the estimated costs of preventing or correcting any damage to the subject or other property which the Planning Board considers probable or of sufficient gravity to justify the expected expense of such guarantee. Further, as an additional remedy, and not in lieu of such performance guarantee, the Planning Board or Code Enforcement Officer may pursue the remedies hereafter set forth in Sec. 19-8-3.D.

Further, the Code Enforcement Officer may suspend or revoke a permit if he/she finds that the applicant has not complied with the conditions or limitations set forth in the permit, or has exceeded the scope of the work set forth in the application.

D. Wetlands Restoration and Creation

- I.* The Planning Board, as a condition of a Resource Protection Permit or the Code Enforcement Office, as a remedy for a violation of this Ordinance, may require that the applicant, or violator, engage in the restoration or creation of wetlands in order to offset, in whole or in part, the losses resulting from an applicant's or violator's actions. In determining whether such a requirement will be imposed, the Planning Board or the Code Enforcement Officer shall consider factors including the following:
 - a. The type, size, and location of the wetland altered, and the effect it may have upon the remaining system or watershed of which the wetland is a part
 - b. The reversible or irreversible nature of the wetland's impairment or loss
 - c. The degree to which the applicant has demonstrated a good faith effort to incorporate measures to minimize or avoid any negative impact upon wetlands
2. As part of this process, the applicant or violator may be required to develop a wetlands restoration or creation plan for review and approval by the Planning Board, with advice from the Conservation Commission. This plan should contain the following elements: the location of the proposed wetlands restoration or creation site; ownership, size, type, and complete ecological assessment of the restored or new wetland area; topographic survey data, including slope percentage and final grade elevations; plane view and cross-sectional scaled drawings; and other technical information in sufficient detail as required to explain, illustrate and provide for:

- a. soils and substrate conditions
 - b. erosion and sediment control needed for the short and long-term survival of the new or restored wetland area
 - c. planting plants specifying plant species types, quantities, locations, size, and method(s) of planting
 - d. water quality and hydrocycle conditions necessary to ensure the long-term viability of the restored or new wetland area
 - e. a three (3) year monitoring and replacement plan establishing responsibility for the permanent establishment of the wetland system
 - f. a demonstration of fiscal capacity and technical competence to successfully execute the overall project
3. The applicant or violator shall ordinarily be required to undertake restoration or creation efforts on or adjacent to the site where permanent losses have been sustained or where restoration of a former wetland is possible. Replication of the impacted wetland will be the preferred alternative for restoration or creation efforts. Where the applicant is able to demonstrate to the satisfaction of the Planning Board, with advice from the Conservation Commission, that a wetland of a different type or location is strongly justified, or that replication is not feasible due to technical constraints, the Planning Board may approve an alternative proposal that meets the intent of this Ordinance.
 4. In evaluating the proposed wetland restoration or creation proposal and implementation, the Planning Board or the Code Enforcement Officer may consult with expert persons or agencies.

E. Additional Standards for Construction of Roads and Public Utilities

The Planning Board may permit the construction of public utilities and the reconstruction of existing roads within Resource Protection 1-Critical Wetland Districts or associated buffers and the construction of public utilities and new roads or the reconstruction of existing roads within Resource Protection 2-Wetland Protection Districts and Resource Protection 3-Floodplain Districts, which may include associated construction activities that are otherwise not permitted under Sec. 19-6-9, Resource Protection Districts. In addition to meeting the Resource Protection Permit standards above, the proposed construction or reconstruction shall meet one of the following standards:

1. The road or structure shall be sited within the designated Resource Protection 1-Critical Wetland Buffer Overlay as far as possible from the established Wetland

Upland Edge; or, if siting within the actual wetland area is unavoidable, as close to the Wetland Upland Edge as possible.

2. The road or structure shall be sited in such a way that the least amount of wetland area is disturbed.

In determining whether subsection 1. or subsection 2. should be applied to a proposed development, the Planning Board shall select the siting standard that will minimize the negative ecological impact on the wetland area.

The placement of public utilities in the Resource Protection 1-Critical Wetland District shall also be subject to the following standards:

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 is not permitted except to provide services to a permitted use within the Resource Protection 1-Critical Wetland District, or except where the applicant demonstrates that no reasonable alternative exists. Where permitted, such structures and facilities shall be located so as to minimize any adverse impacts on surrounding uses and resources, including visual impacts.

F. Timber Harvesting Standards

1. Notification and Plan

a. Notification

The owner of the land to be harvested shall give the Code Enforcement Officer written notice at least five (5) working days prior to the start of any timber harvesting activities.

b. Forest Management and Timber Harvesting Plan

Prior to timber harvesting that involves more than fifty (50) cords in any five (5) year period, a Forest Management and Timber Harvesting Plan prepared by a professional forester licensed in the State of Maine in accordance with 36 M.R.S.A. § 573 (3-A) shall be submitted to the Code Enforcement Officer. In addition to the minimum requirements, the Forest Management and Timber Harvesting Plan shall include a map of the area to be harvested drawn to scale with a tie-in to an accepted town road, north arrow, property lines, name of the property owner, names of the abutting property owners, and the location of the Wetland Upland Edge as defined in this Ordinance based on the forester's best assessment.

2. *Wetland Buffer Overlay Surrounding Great Pond*

- a. Within the Resource Protection 1 - Critical Wetland Buffer Overlay surrounding Great Pond, there shall be no timber harvesting within the strip of land extending seventy-five (75) feet inland from the Wetland Upland Edge surrounding Great Pond except to remove safety hazards.
- b. At a distance of greater than seventy-five (75) feet from the Wetland Upland Edge surrounding Great Pond, selective cutting of no more than forty percent (40%) of the basal area on any lot within a ten (10) year period shall be permitted in the Resource Protection 1 - Critical Wetland Buffer Overlay. There shall be no clearcut openings and a well distributed stand of trees and other vegetation, including existing ground cover, shall be maintained.

3. *Other Resource Protection 1 - Critical Wetlands*

- a. Within seventy-five (75) feet of any Wetland Upland Edge in the RP1-CW District other than the Wetland Upland Edge surrounding Great Pond, selective cutting of no more than forty percent (40%) of the basal area on any lot within a ten (10) year period shall be permitted in the Resource Protection 1 - Critical Wetland Buffer Overlay. There shall be no clearcut openings and a well distributed stand of trees and other vegetation, including existing ground cover, shall be maintained.
- b. At a distance of greater than seventy-five (75) feet from any Wetland Upland Edge in the RP1-CW District other than the Wetland Upland Edge surrounding Great Pond, selective cutting of no more than forty percent (40%) of the basal area on any lot within a ten (10) year period shall be permitted in the Resource Protection 1 - Critical Wetland Buffer Overlay. In addition, clearcut openings not to exceed ten thousand (10,000) square feet in the forest canopy shall be permitted. Where clearcut openings exceed five thousand (5,000) square feet, they shall be at least one hundred (100) feet apart.

4. *Resource Protection 2 - Wetland Protection District*

Within the Resource Protection 2 - Wetland Protection District, selective cutting of no more than forty percent (40%) of the basal area on any lot within a ten (10) year period shall be permitted. There shall be no clearcut openings and a well distributed stand of trees and other vegetation, including existing ground cover, shall be maintained.

5. *Additional Timber Harvesting Standards*

- a. No accumulation of slash shall be left within fifty (50) feet of the Wetland Upland Edge in the Resource Protection 1 - Critical Wetland Buffer Overlay District. In all other areas, slash shall either be removed or disposed of in such a manner that it lies on the ground and no part thereof extends more than four (4) feet above ground.
- b. Timber harvesting equipment shall not use stream channels as travel routes except when surface waters are frozen and the activity will not result in any ground disturbance.
- c. All crossings of flowing water shall require a bridge or culvert, except in areas with low banks and channel beds which are composed of gravel, rock or similar hard surface which would not be eroded or otherwise damaged.
- d. Skid trail approaches to water crossings shall be located and designed so as to prevent water runoff from directly entering the water body or tributary stream. Upon completion of timber harvesting, temporary bridges and culverts shall be removed and areas of exposed soil revegetated.
- e. Skid trails, log yards, and other sites, excepting water crossings, where the operation of machinery used in timber harvesting results in the exposure of mineral soil shall be located such that an unscarified strip of vegetation of at least seventy-five (75) feet in width for slopes up to ten percent (10%) shall be retained between the exposed mineral soil and the Wetland Upland Edge. For each ten percent (10%) increase in slope, the width of the unscarified strip shall be increased by twenty (20) feet. The provisions of this paragraph apply only to a face sloping toward the wetland, provided, however, that no portion of such exposed mineral soil on a back face shall be closer than twenty-five (25) feet from the Wetland Upland Edge.
- f. Timber harvesting activities shall be conducted between the first hard frost of the winter and the spring thaw.

G. *Agriculture Standards*

1. *New Agricultural Activities*

- a. There shall be no new agricultural activities in a Resource Protection 1-Critical Wetland District nor within seventy-five (75) feet, horizontal distance, of the Wetland Upland Edge.

- b. New agricultural activities shall be permitted within a Resource Protection I-Critical Wetland District's buffer area at distances greater than seventy-five (75) feet, horizontal distance, of the Wetland Upland Edge.

2. *All Agricultural Activities*

Where soil is tilled in a Resource Protection I-Critical Wetland District, such tillage shall be carried out in compliance with the provisions of a Conservation Plan which meets the standards of the State Soil and Water Conservation Commission, and is approved by the Cumberland County Soil and Water Conservation District. The plan shall be filed with the Code Enforcement Officer. Noncompliance with the provisions of such Conservation Plan shall be considered to be a violation of this Ordinance.

Agricultural activities that exist in a Resource Protection I-Critical Wetland District (including buffers) on or before the effective date of the wetlands provisions of this ordinance are a permitted use.

H. Exempted Water Bodies

The general maintenance and use of stormwater detention basins approved by the Planning Board as part of an approved site plan or subdivision, existing golf course water holes, and municipal skating ponds shall be exempt from the requirements for Resource Protection Permits.

A Resource Protection Permit shall not be required for ponds used primarily for agriculture or fire protection purposes, such as but not limited to irrigation, on active farms as of May 9, 1990. Ponds on inactive farmland or where the agricultural or fire protection use of the pond has been discontinued as of May 9, 1990, shall not be exempt under this provision.

General maintenance and use shall include trimming of vegetation, removal of snow and debris, repair of culverts, retaining walls and other drainage infrastructure, landscaping and similar activities as determined by the Code Enforcement Officer. Activities that change the size of a pond are not exempted.

SEC. 19-2-5. LOCATION OF RESOURCE PROTECTION DISTRICT BOUNDARIES

Where uncertainty exists as to the location of a resource protection district boundary, the following procedures shall be used to reach an official determination of the location:

- A. Upon written request by a property owner, Town board or a municipal staff person, the Code Enforcement Officer shall determine, in writing, the existence of wetland areas and the location of resource protection and buffer district boundaries based on the Zoning Map, this Ordinance, documents cited in this

Ordinance and similar materials, and a site visit. If a requesting property owner believes that an initial determination by the Code Enforcement Officer is in error or if a reasonable doubt exists regarding the existence, classification, or location of wetlands, the property owner may submit information on soils and/or vegetation and request a meeting with the Code Enforcement Officer to reconsider the determination. If the property owner does not concur with the reconsidered determination, the Code Enforcement Officer shall refer the issue to the Planning Board for its review and determination, to be made with the advice of the Conservation Commission.

- B.** If an applicant disputes the determination of wetlands, the boundaries of resource protection districts or buffer districts by the Code Enforcement Officer, or if the Code Enforcement Officer concludes that the location of the boundary is in doubt, the applicant shall submit the following information to the Planning Board, unless otherwise waived by the Planning Board:
1. a site plan map showing the proposed use, structure or activity including a map at a scale of one inch equals fifty feet (1" = 50'), including any boundaries of Resource Protection 1-Critical Wetland Districts, Resource Protection 2-Wetland Protection Districts, Resource Protection 3-Floodplain District scaled from the Zoning Map, as well as the outer limits of Resource Protection 1-Critical Wetland Buffer Overlays, if established;
 2. a topographic map showing the location and slopes for all grades within the site, by not greater than 1-foot contours;
 3. a high intensity soils map as described in Sec. 19-8-3.A.2.c.6, Resource Protection Permit Procedures, showing the Wetland Upland Edge for the site as defined by wetland soils;
 4. a description of the vegetative cover of the site, including dominant species and the location of the Wetland Upland Edge for the site as defined by wetland vegetation;
 5. a description, supported by necessary documentation, explaining why the site is not within a Resource Protection 1-Critical Wetland District, Resource Protection 2-Wetland Protection District, Resource Protection 3-Floodplain District or Resource Protection 1-Critical Wetland Buffer Overlay as defined herein; and
 6. additional information deemed necessary by the Planning Board.
- C.** In determining the existence and boundaries of particular wetland areas, district boundaries and buffer areas, the Code Enforcement Officer, the Town Planner or the Planning Board may request the Conservation Commission to inspect the site and submit its recommendations in writing.

- D. In evaluating wetland or floodplain boundaries, the Code Enforcement Officer, the Planning Board or the Conservation Commission may consult with expert persons or agencies.
- E. In determining wetland boundaries, the Code Enforcement Officer or Planning Board may exclude areas beyond the point where the wetland area is less than one hundred (100) feet in width for a distance of more than one hundred (100) feet.
- F. In all cases, the burden of proof shall be on the applicant to show that the site in question is not within a Resource Protection 1-Critical Wetland District, Resource Protection 2-Wetland Protection District, Resource Protection 3-Floodplain District or designated Resource Protection 1-Critical Wetland Buffer Overlay.

Definitions specific to this case study:

Hydric Soils: Soils as defined in U. S. Soil Conservation Service publication entitled Hydric Soils of Southern Maine, Revised 12/3/86, as further revised, a copy of which is available for review in the Town Office. (Formerly used names in parentheses.) These soils shall include, but not be limited to, the following:

1. Very poorly drained organic soils, including Chocorua, Ossipee, Rifle, Sebago, Togus, Vassalboro and Waskish
2. Very poorly drained mineral soils, including Biddeford, Burnham, Gouldsboro (Tidal Marsh), Halsey, Medomak (Saco), Peacham (Whitman), Searsport (Scarboro), Washburn, and Whately
3. Poorly drained mineral soils, including Atherton, Aurelie, Brayton (Ridgebury), Charles (Limerick), Easton, Fredon, Lyme, Monarda, Moosilauke (Walpole), Naskeag, Naumberg (Au Gres), Roundabout, Rumney, Scantic, and Swanton

Wetlands: Land where saturation with water is the dominant factor determining the nature of soil development and the types of plants and animal communities living in the soil and on its surface. For the purpose of this Ordinance, different categories of wetlands are identified in Sec. 19-6-9, Resource Protection Districts.

Wetland Buffer: A designated area bordering wetlands required to be left in their natural state in order to protect wetlands from adjacent land uses.

Wetland Upland Edge: The boundary between (1) land with predominantly wetland or aquatic vegetation and land with predominantly terrestrial vegetation; or (2) soil that is predominantly hydric and soil that is predominantly nonhydric; or (3) in the case of wetlands without aquatic vegetation or hydric soils, land that is saturated with water to the surface or covered with shallow water and land that is not saturated with water to the

surface or covered with shallow water. Where there is both wetland vegetation and wetland soils, the highest boundary shall be used. In places where the upland edge cannot be accurately determined (e.g., due to ledges or erosion), said upland edge shall be estimated from the nearest locations where wetland vegetation or wetland soils occurs.

Wetland Vegetation: those species that are typically adapted for life in saturated or seasonally saturated soil conditions. For the purpose of this ordinance, species identified as Obligate (always found in wetlands under natural conditions with a frequency greater than 99% but may persist in nonwetlands if planted or if a wetland has been transformed into nonwetland) or Facultative Wetland (usually found in wetlands with a frequency of 67% to 99% but occasionally found in nonwetland areas) in the U.S. Fish and Wildlife Service publication entitled Wetland Plants of the State of Maine 1986, as revised, shall be considered to be wetland vegetation. A copy of the publication is available for review in the Town Office.