

Proposed Ordinance Amendments

to be considered at a

May 2017 Special General Referendum

Amendment

1. Article 8-Shoreland Overlay District
2. Article 9- Green Buildings
3. Shellfish Conservation Ordinance

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Amendment #1

ARTICLE 8-SHORELAND OVERLAY DISTRICT

Ballot Language: The following language would appear on the ballot:

Article X

The Town hereby ordains to amend the **Zoning Ordinance**, specifically amending: Article 2, Definitions; Article 8, Shoreland Overlay District; Article 17, Non-Conforming Situations; and Article 18, Administration.

Statement of Fact: The purpose of this amendment is to modify Article 8, Shoreland Overlay District, to correspond with newly enacted (January 26, 2015) State Chapter 1000, Guidelines for Municipal Shoreland Zoning Ordinances. The Town is required under the **Mandatory Shoreland Zoning Act, 38 M.R.S.A. sections 435-448**, to adopt, administer, and enforce ordinances which regulate land use activities within 250 feet of great ponds, rivers, freshwater and coastal wetlands, including all tidal waters; and within 75 feet of streams as defined. Specifically, the intent of the amendments are to follow current state standards relative to current shoreland district definitions, expansions, timber harvesting, removing of vegetation other than timber harvesting, hazard trees, contractor certification and ensure proper plan filing requirements with the registry. As required by State Law and specific to the proposed changes, within Chapter 1000, municipalities have three options to choose from for timber harvesting in shoreland areas. The Town of York currently utilizes Option 3 that allows a municipality to retain its current timber harvesting standards. This option is inconsistent with the State's timber harvesting standards, which means the Town administers timber harvesting standards without State assistance. Repealing and replacing §8.3.12 with "Option 1" would mean the Bureau of Forestry (Maine Forest Service) will administer and enforce statewide standards. The state has the personnel to administer timber harvesting whereas the Town of York does not employ a licensed forester to regulate harvesting activities.

Amendment: Amend Article 2, Definitions, as follows:

CERTIFIED EXCAVATION CONTRACTOR: *An individual or firm, certified by the Maine Department of Environmental Protection, engaged in a business that causes the disturbance in the shoreland area of soil, including grading, filling and removal, or in a business in which the disturbance of soil results from an activity that the individual or firm is retained to perform.*

FOOTPRINT: *The entire area of ground covered by the structure(s) on a lot, including but not limited to cantilevered or similar overhanging extensions, as well as unenclosed structures, such as patios and decks.*

HAZARD TREE: *A tree with a structural defect, combination of defects, or disease resulting in a structural defect that under the normal range of environmental conditions at the site exhibits a high probability of failure and loss of a major structural component of the tree in a manner that will strike a target. A normal range of environmental conditions does not include meteorological anomalies, such as, but not limited to: hurricanes; hurricane-force winds; tornados; microbursts; or significant ice storm events. Hazard trees also include those trees that pose a serious and imminent risk to bank stability. A target is the area where personal injury or property damage could occur if the tree or a portion of the tree fails. Targets include roads, driveways, parking areas, structures, campsites, and any other developed area where people frequently gather and linger.*

LAND MANAGEMENT ROAD: ~~A route or track consisting of a bed of exposed mineral soil, gravel, or other surfacing materials constructed by the passage of motorized vehicles and used primarily for timber harvesting and related activities, including associated log yards, but not including skid trail.~~

SKID TRAIL: ~~A route repeatedly used by forwarding machinery or animal to haul or drag forest products from the stump to the yard or landing, the construction of which requires minimal excavation.~~

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

STREAM: A channel between defined banks. A channel is created by the action of surface water and has 2 or more of the following characteristics:

- A. It is depicted as a solid or broken blue line on the most recent, ~~edition of the U.S. Geological Survey 7.5 minute series of topographic map~~ *highest resolution version of the national hydrography dataset available from the United States Geological Survey.*
- B. It contains or is known to contain flowing water continuously for a period of at least 6 months of the year in most years.
- C. The channel bed is primarily composed of mineral material such as sand and gravel, parent material or bedrock that has been deposited or scoured by water.
- D. The channel contains aquatic animals such as fish, aquatic insects or mollusks in the water or, if no surface water is present, within the stream bed.

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E. The channel contains aquatic vegetation and is essentially devoid of upland vegetation.

“Stream” does not mean a ditch or other drainage way constructed, or constructed and maintained, solely for the purpose of draining stormwater, or a grassy swale.

TEMPORARY DOCKS: *A structure that remains in or over the water for six (6) months or less in any period of twelve (12) consecutive months, and shall not have a permanent fixed location on or in the ground.*

TIDAL WATERS: All waters affected by tidal action during the ~~maximum spring~~ highest annual tide.

TIMBER HARVESTING: ~~The cutting and removal of trees from their growing site, and the attendant operation of cutting and skidding machinery, but not the construction or creation of roads. Timber harvesting does not include the clearing of land for approved construction.~~ *timber for the primary purpose of selling or processing forest products. “Timber harvesting” does not include the cutting or removal of vegetation within the shoreland zone when associated with any other land use activities. The cutting or removal of trees in the shoreland zone on a lot that has less than two (2) acres within the shoreland zone shall not be considered timber harvesting. Such cutting or removal of trees shall be regulated pursuant to 8.3.3, Clearing or Removal of Vegetation for Activities Other Than Timber Harvesting.*

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

TRIBUTARY STREAM: ~~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 waterbody or wetland as defined.~~ *which is characterized by the lack of terrestrial vegetation or by the presence of a bed, devoid of topsoil, containing waterborne deposits or exposed soil, parent material or bedrock and which is connected hydrologically with other water bodies. “Tributary stream” does not include rills or gullies forming because of accelerated erosion in disturbed soils where the natural vegetation cover has been removed by human activity. This definition does not include the term “stream” as defined elsewhere in this Ordinance, and only applies to that portion of the tributary stream located within the shoreland zone of the receiving water body or wetland.*

WETLAND, COASTAL: All tidal and subtidal lands; all lands with vegetation present that is tolerant to salt water and occurs primarily in a salt water or estuarine habitat; and any swamp, marsh, bog, beach, flat or other contiguous low land which is subject to tidal action during the ~~maximum-spring~~ *highest annual* tide level for the year in which an activity is proposed as identified in the tide tables published by the National Ocean Service. Coastal wetlands may include portions of coastal sand dunes. NOTE: All areas below the ~~maximum-spring~~ *highest annual* tide level are coastal wetlands. These areas may consist of rocky ledges, sand and cobble beaches, mud flats, etc., in addition to salt marshes and salt meadows.

Amendment: Amend Article 8.1.3, regarding maximum lot coverage with the following:

8.1.3 Maximum Lot Coverage. The total area of all structures and other ~~impervious~~, non-vegetated surfaces, *which includes but is not limited to, driveways, parking areas and other areas from which vegetation has been removed* within the Shoreland Overlay District, shall not exceed the least restrictive of the following:

- a. 70% of the land area of the lot, or portion thereof, located within the Mixed Use Subdistrict;
- b. 20% of the land area of the lot, or portion thereof, located within any other subdistrict of the Shoreland Overlay District; or
- c. 30% of the land area of the lot, or portion thereof, for an existing lot of record with a total area less than 12,000 square feet.
- d. *Naturally occurring ledge and rock outcroppings are not counted as non-vegetative surfaces when calculating lot coverage for existing lots of record as of March 24, 1990 and in continuous existence since that date.*

Amendment: Amend the following land uses permitted in section 8.2.1.B:

**Article 8.2.1.B Limited Residential Subdistrict
Commercial Use Category (Limited Res. Shoreland)**

- Restaurants - Expansion is defined as meaning: 1) construction of additions to existing facilities, buildings and structures, and 2) construction of new free standing facilities buildings and structures. Under definition 1 and 2 above, construction is limited to an expansion, within lot lines existing as of November 5, 1996, of existing facilities, buildings and structures and other facilities, buildings and structures reasonably or customarily associated with said existing facilities, buildings and structures. All expansions, regardless of the amount of expansion, shall satisfy to the maximum extent ~~practical~~ *practicable*, as determined by the Planning Board, the requirements of the

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Town of York Planning Board Subdivision and Site Plan Regulations. Also, a Shoreland Permit from the Planning Board is required.

- Ice Cream Stands - Expansion is defined as meaning: 1) construction of additions to existing facilities, buildings and structures, and 2) construction of new free standing facilities buildings and structures. Under definition 1 and 2 above, construction is limited to an expansion, within lot lines existing as of November 5, 1996, of existing facilities, buildings and structures and other facilities, buildings and structures reasonably or customarily associated with said existing facilities, buildings and structures. All expansions, regardless of the amount of expansion, shall satisfy to the maximum extent ~~practical~~ *practicable*, as determined by the Planning Board, the requirements of the Town of York Planning Board Subdivision and Site Plan Regulations. Also, a Shoreland Permit from the Planning Board is required.

Amendment: Amend the following land uses permitted in sections 8.2.1 A-D:

Timber Harvesting- Shoreland Permit ~~from the~~ *Notification to the CEO after review and approval from the Maine Bureau of Forestry*

Land Management Road- Shoreland Permit ~~from the~~ *Notification to the CEO after review and approval from the Maine Bureau of Forestry*

Amendment: Amend section 8.3.3.2 by including Cape Neddick River, Brave Boat Harbor and their tributaries to the same vegetation buffer requirements as required for the York River; and amend 8.3.3.2(a) regarding a single footpath and access to the shoreline:

8.3.3 Clearing or Removal of Vegetation for Activities Other Than Timber Harvesting

8.3.3.2 Except in areas as described in §8.3.3.1, above, and except to allow for the development of permitted uses, a buffer strip of vegetation shall be preserved within a strip of land extending: 100 feet, horizontal distance, inland from the normal high-water mark of a great pond; 100 feet, horizontal distance, from the normal high water mark of the tidal waters or upland edge of coastal wetlands along ~~the~~ York River, *Cape Neddick River, Brave Boat Harbor* and ~~its~~ *their* tributaries; or 75 feet, horizontal distance, from any other waterbody or the upland edge of a wetland. The following standards shall apply:

- (a) There shall be no cleared opening greater than 250 square feet in the forest canopy (or other existing woody vegetation if a forested canopy is not present) as measured from the outer limits of the tree or shrub crown. However, a *single* footpath not to

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exceed six (6) feet in width as measured between tree trunks and/or shrub stems is allowed *for accessing the shoreline* provided that a cleared line of sight to the water through the buffer strip is not created.

Amendment: Amend section 8.3.6 regarding uses that extend over water with the following:

8.3.6 Piers, Docks, Wharves, Breakwaters, Causeways, Marinas, Bridges, and uses extending over or below beyond the Normal High Water Mark of a Waterbody or within a Wetland, and Shoreline Stabilization.

8.3.6.9 ~~Along the York River~~ A pier may be built only on a tract of land with river frontage *on the York River* existing as of March 5, 1977; *and only on a tract of land with river frontage on the Cape Neddick River or shore frontage on Brave Boat Harbor existing as of May 20, 2017*, provided that there is no pier presently on the land and that the following requirements are met:

- a. The total area of all floats associated with any single pier shall not exceed 200 square feet, ~~excepting~~ that floats exceeding 200 square feet in place at a pier before March 6, 1977 shall be allowed to continue, be maintained and repaired. This limitation shall not apply to any pier or wharf with an owner whose use is categorized as “Public, Semi-Public, Institutional” per the use tables of Article 4.
- b. Piers shall not be constructed where uplands adjacent to the water body are in the Resource Protection Subdistrict.
- c. Approval pursuant to the Harbor Ordinance shall be required prior to approval of the Code Enforcement Officer.

8.3.6.11 *No more than one pier, dock, wharf or similar structure extending or located beyond the normal high-water line of a water body or within a wetland is allowed on a single lot.*

Amendment: Amend section 8.3.11 Structures by repealing and adding language regarding expansions of structures that do not comply with setback requirements as follows:

8.3.11.4 Expansions of Structures that Do Not Comply with Setback Requirements

~~In the Shoreland Overlay District, only that portion of the structure which is in compliance with the required setback from the normal high water mark~~

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~~may expand without the 30% limitation, provided all expansions conform to the current setback requirement.~~

In the Shoreland Overlay District, the portion of a principal structure that does not satisfy the required shoreland setback may be expanded only in accordance with the following provisions:

Expansions. All new principal and accessory structures, excluding functionally water dependent uses, must meet the water body, tributary stream, or wetland setback requirements contained in this ordinance. A non-conforming structure may be added to or expanded after obtaining a permit from the authorized permitting authority, if such addition or expansion does not increase the non-conformity of the structure and is in accordance with the subparagraphs below.

- ~~a. Expansion of the nonconforming portion of the structure is limited as follows: total expansion of the nonconforming portion can not exceed 30% of the floor area or building volume of the nonconforming portion of the structure as it existed as of January 1, 1989. Basements which have a ceiling height of greater than 6 feet and a solid non earthen floor shall be considered in calculating the permitted amount of floor area and volume expansion. No accessory structure shall be included in the calculation of existing floor area or building volume calculations. In the event that the principal structure is destroyed or removed by any means, the Code Enforcement Officer shall determine the base floor area and volume of that structure using the measurements shown on a prior building permit, property tax card, or the most reasonable record available.~~
- a. *Expansion of any portion of a principal structure within 25 feet of the normal high-water line of a water body, tributary stream, or upland edge of a wetland is prohibited, even if the expansion will not increase nonconformity with the water body, tributary stream or wetland setback requirement. Expansion of an accessory structure that is located closer to the normal high water mark of a water body, tributary stream, or upland edge of a wetland than the principal structure is prohibited, even if the expansion will not increase nonconformity with the water body, tributary stream, or wetland setback requirement.*
- ~~b.~~ b. *Notwithstanding paragraph (a) above, if a legally existing nonconforming principal structure is entirely located less than 25 feet from the normal high-water line of a water body, tributary*

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stream or upland edge of a wetland, that structure may be expanded as follows, as long as all other applicable municipal land use standards are met and the expansion is not prohibited.

- 1. The maximum total footprint for the principal structure may not be expanded to a size greater than 800 square feet or 30% larger than the footprint that existed on January 1, 1989, whichever is greater. The maximum height of the principal structure may not be made greater than 15 feet or the height of the existing structure, whichever is greater.*
- € c. All other legally existing non-conforming principal and accessory structures that do not meet the water body, tributary stream, or wetland setback requirements may be expanded or altered as follows, as long as other applicable municipal land use standards are met and the expansion is not prohibited by Section §8.3.11.4 or §8.3.11.4.a above.*
- 1. For structures located less than 75 feet from the high water mark of a water body, tributary stream, or upland edge of a wetland, the maximum combined total footprint for all structures may not be expanded to a size greater than 1,000 square feet or 30% larger than the footprint that existed on January 1, 1989, whichever is greater. The maximum height of any structure may not be made greater than 20 feet or the height of the existing structure, whichever is greater.*
 - 2. For structures located less than the required 100 foot setback specified in section 8.3.11 or less than 100 feet from a great pond classified as GPA or a river flowing to a great pond classified as GPA, the maximum combined total footprint for all structures may not be expanded to a size greater than 1,500 square feet or 30% larger than the footprint that existed on January 1, 1989, whichever is greater. The maximum height of any structure may not be made greater than 25 feet or the height of the existing structure, whichever is greater. Any portion of those structures located less than 75 feet from the normal high water mark of a water body, tributary stream, or upland edge of a wetland must meet the footprint and height limits in §8.3.11.4.b.1 above.*
 - 3. In addition to the limitations in subparagraphs 1 and 2, for structures that are legally non-conforming due to their location within the Resource Protection Overlay when located at less*

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than 250 feet from the normal high water mark of a water body or upland edge of a wetland, the maximum combined total footprint for all structures may not be expanded to a size greater than 1,500 square feet or 30% larger than the footprint that existed at the time the Resource Protection Overlay was established on the lot, whichever is greater. The maximum height of any structure may not be made greater than 25 feet or the height of the existing structure, whichever is greater, except that any portion of those structures located less than 75 feet from the normal high water mark of a water body, tributary stream, or upland edge of a wetland must meet the footprint and height limits in §8.3.11.4.b.1 above.

- ~~d.~~ *d. An approved plan for expansion of a non-conforming structure must be recorded by the applicant with the York County Registry of Deeds, within 90 days of approval. The recorded plan must show the existing and proposed footprint of the non-conforming structure, the existing and proposed structure height, the footprint of any other structures on the parcel, the shoreland zone boundary and evidence of approval by the municipal review authority.*

- ~~e.~~ *e. No part of the addition that does not comply with a minimum setback requirement shall be closer to any waterbody, tributary, stream, or wetland than any part of the existing structure.*

- ~~f.~~ *f. Any non-conforming use of such structure shall not be expanded or intensified and;*

- ~~g.~~ *g. For structures within the Resource Protection Subdistrict which are less than 100 feet, within the Limited Residential Subdistrict which are less than 75 feet, within the Stream Protection Subdistrict which are less than 50 feet, or within the Mixed Use Subdistrict which are less than 75 feet (but 35 feet on Harris Island only) from the Normal High Water Mark or upland edge of the shoreland resource, the new addition must be on the side of the structure located the furthest away from the high water mark or upland edge and the direction of the expansion must be away from the water. The requirements of §8.3.11.4.d g does not apply to vertical expansion above existing interior enclosed living space for the principal building (not to include screen porches, decks, patios and similar structures, but does include attached garages) which shall be permitted so long as the*

expansion does not exceed the height of the building as it existed on January 1, 1989.

- h. Foundations.* Whenever a new, enlarged or replacement foundation is constructed under a non-conforming structure, the structure and new foundation must be placed such that the setback requirement is met to the greatest ~~practical~~ *practicable* extent as determined by the Planning Board *or its designee*, basing its decision on the criteria specified in subsection “i” below. This section shall expressly supersede any conflicting provisions of §17.2. ~~If the completed foundation does not extend beyond the exterior dimensions of the structure, except for expansion in conformity with subsections “b” “d” and “d” “f” above, and the foundation does not cause the structure to be elevated by more than 3 additional feet, as measured from the uphill side of the structure (from original ground level to the bottom of the first floor sill), it shall not be considered to be an expansion of the structure.~~
- i. Relocation.* A non-conforming structure may be relocated within the boundaries of the parcel on which the structure is located provided that the site of relocation conforms to all setback requirements to the greatest ~~practical~~ *practicable* extent as determined by the Planning Board or its designee, and provided that the applicant demonstrates that the present subsurface sewage disposal system meets the requirements of State law and the State of Maine Subsurface Wastewater Disposal Rules (Rules), or that a new system can be installed in compliance with the law and said Rules. In no case shall a structure be relocated in a manner that causes the structure to be more non-conforming. In no case shall relocation be required for a building which has been determined by a qualified historic resources expert to be eligible for National Register listing.

In determining whether the building relocation meets the setback to the greatest ~~practical~~ *practicable* extent, the Planning Board or its designee shall consider the size of the lot, the slope of the land, the potential for soil erosion, the location of other structures on the property and on adjacent properties, the location of the septic system and other on-site soils suitable for septic systems, and the type and amount of vegetation to be removed to accomplish the relocation. When it is necessary to remove vegetation within the water or wetland setback area in order to relocate a structure, the Planning Board shall require replanting of native vegetation to compensate for

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of the original structure can be relocated or reconstructed beyond the required setback area, no portion of the relocated or reconstructed structure shall be replaced or reconstructed at less than the setback requirement for a new structure. When it is necessary to remove vegetation in order to replace or reconstruct a structure, vegetation shall be replanted in accordance with §8.3.11.4.f *i* above.

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

In determining whether the building reconstruction or replacement meets the setback to the greatest ~~practical~~ *practicable* extent the Planning Board or its designee shall consider, in addition to the criteria of §8.3.11.4.f *h* above, the physical condition and type of foundation present, if any.

Amendment: Amend section 8.3.12 Timber Harvesting by repealing and replacing the section with the following reference language and by adding a new section regarding hazard trees, storm damaged trees and dead tree removal as follows:

8.3.12 Timber Harvesting- *All timber harvesting and forestry activities shall be administered by the Maine Bureau of Forestry*

NOTE: This section pertains to timber harvesting only. For provisions regarding the clearing for approved development, see section 8.3.3.

- ~~8.3.12.1 No substantial accumulation of slash shall be left within fifty (50) feet of the normal high water mark of any waterbody. At distances greater than fifty (50) feet from the normal high water mark of such waters and extending to the limits of the Shoreland Overlay District, all 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 feet above the ground. Any debris that falls below the normal high water mark of a waterbody shall be removed.~~
- ~~8.3.12.2 Harvesting operations shall be conducted in such a manner and at such a time that minimal soil disturbances results. Adequate provision shall be made to prevent soil erosion and sedimentation of surface waters.~~

- ~~8.3.12.3~~ Harvesting operations shall be conducted in such a manner that a well-disturbed stand of trees and other natural vegetation is retained.
- ~~8.3.12.4~~ In any stand, harvesting shall remove not more than forty (40) percent of the trees 4 inches or more in diameter, measured at 4 ½ feet above ground level, in any ten (10) year period. For the purpose of these standards, a stand means a contiguous group of trees, sufficiently uniform in species, arrangement of age classes, and conditions, to be identifiable as a homogeneous and distinguishable unit.
- ~~8.3.12.5~~ Within one hundred (100) feet, horizontal distance of the normal high water mark of a great pond, and within seventy five (75) feet, horizontal distance, of the normal high water mark of other waterbodies, tributary streams, or the upland edge of a wetland, there shall be no clear-cut openings and a well-disturbed stand of trees and other vegetation, including existing ground cover, shall be maintained.
- ~~8.3.12.6~~ In areas other than those described in section 8.3.12.5 above, harvesting operations shall not create single clear-cut openings greater than 7,500 sq. ft. in the forest canopy. Where such openings exceed five thousand (5,000) sq. ft. they shall be at least one hundred (100) feet apart. Such clear-cut openings shall be included in the calculation of total volume removal.
- ~~8.3.12.7~~ No roads requiring earthmoving, cut or fill shall be constructed within the Shoreland Overlay District solely for the purpose of Timber Harvesting.
- ~~8.3.12.8~~ Within any Resource Protection Subdistrict abutting a great pond, there shall be no timber harvesting within the strip of land extending 75 feet inland from the normal high water mark except to remove safety hazards.
- ~~8.3.12.9~~ Timber harvesting equipment shall not use stream channels as travel routes except when:
- ~~a.~~ Surface waters are sufficiently frozen to support the weight of the equipment; and
 - ~~b.~~ The activity will not result in any ground disturbance.
- ~~8.3.12.10~~ 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.
- ~~8.3.12.11~~ Skid trail approaches to water crossings shall be located and designed so as to prevent water runoff from directly entering the waterbody, tributary stream or wetland. Upon completion of timber harvesting, temporary bridges and culverts shall be removed and areas of exposed soil revegetated.
- ~~8.3.12.12~~ Except for water crossings, skid trails and other sites where the operation of machinery used in timber harvesting results in the exposure of mineral soil shall be located such that an unscarified strip of vegetation of at least seventy five (75) feet in width for slopes up to ten (10) percent shall be retained between the exposed mineral soil and the normal high water mark of a waterbody or wetland. For each ten (10) percent increase in slope, the unscarified strip shall be increased by twenty (20) feet. The provisions of this paragraph apply only to a face sloping toward the waterbody or

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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 normal high-water mark of a waterbody or wetland.

8.3.12.1 Hazard Trees, Storm-Damaged Trees, and Dead Tree Removal

1. *Hazard trees in the shoreland zone may be removed provided a shoreland permit is obtained from the Code Enforcement Officer, and said removal complies with the following:*
 - a. *Within the shoreline buffer, if the removal of a hazard tree results in a cleared opening in the tree canopy greater than two hundred and fifty (250) square feet, replacement with native tree species is required, unless there is new tree growth already present. New tree growth must be as near as practicable to where the hazard tree was removed and be at least two (2) inches in diameter, measured at four and one half (4.5) feet above the ground level. If new growth is not present, then replacement trees shall consist of native species and be at least four and one half (4.5) feet in height, and be no less than two (2) inches in diameter. Stumps may not be removed.*
 - b. *Outside of the shoreline buffer, when the removal of hazard trees exceeds forty (40) percent of the volume of trees four (4) inches or more in diameter, measured at four and one half (4.5) feet above ground level in any ten (10) year period, and/or results in cleared openings exceeding twenty-five (25) percent of the lot area within the shoreland zone, or ten thousand (10,000) square feet, whichever is greater, replacement with native tree species is required, unless there is new tree growth already present. New tree growth must be as near as practicable to where the hazard tree was removed and be at least two (2) inches in diameter, measured at four and one half (4.5) feet above the ground level. If new growth is not present, then replacement trees shall consist of native species and be at least two (2) inches in diameter, measured at four and one half(4.5) feet above the ground level.*
 - c. *The removal of standing dead trees, resulting from natural causes, is permissible without the need for replanting or a permit, as long as the removal does not result in the creation of new lawn areas, or other permanently cleared areas, and stumps are not removed. For the purposes of this provision dead trees are those trees that contain no foliage during the growing season.*

- d. *The Code Enforcement Officer shall require the property owner to submit an evaluation from a licensed forester or arborist before any hazard tree can be removed within the shoreland zone.*
 - e. *The Code Enforcement Officer shall require more than a one-for-one replacement for hazard trees removed that exceed eight (8) inches in diameter measured at four and one half (4.5) feet above the ground level.*
2. *Storm-damaged trees in the shoreland zone may be removed without a permit after consultation with the Code Enforcement Officer if the following requirements are met:*
- a. *Within the shoreline buffer, when the removal of storm-damaged trees results in a cleared opening in the tree canopy greater than two hundred and fifty (250) square feet, replanting is not required, but the area shall be required to naturally revegetate, and the following requirements must be met:*
 - (i) *The area from which a storm-damaged tree is removed does not result in new lawn areas, or other permanently cleared areas;*
 - (ii) *Stumps from the storm-damaged trees may not be removed;*
 - (iii) *Limbs damaged from a storm event may be pruned even if they extend beyond the bottom one-third (1 /3) of the tree; and*
 - (iv) *If after one growing season, no natural regeneration or regrowth is present, replanting of native tree seedlings or saplings is required at a density of one seedling per every eighty (80) square feet of lost canopy.*
 - b. *Outside of the shoreline buffer, if the removal of storm damaged trees exceeds 40% of the volume of trees four (4) inches or more in diameter, measured at four and one half (4.5) feet above the ground level in any ten (10) year period, or results, in the aggregate, in cleared openings exceeding 25% of the lot area within the shoreland zone or ten thousand (10,000) square feet, whichever is greater, and no natural regeneration occurs within one growing season, then native tree seedlings or saplings shall be replanted on a one-for-one basis. The removal of standing dead trees, resulting from natural causes, is permissible without the need for replanting, as long as the removal does not result in the creation of new lawn, or other permanently cleared areas, and stumps are not removed. For the purposes of this provision dead trees are those trees that contain no foliage during the growing season.*

Amendment: Add Section 8.3.19 Revegetation Requirements by incorporating the states minimum standards as follows:

8.3.19 Revegetation Requirements

When revegetation is required in response to violations of the vegetation standards set forth in Section 8.3.3, to address the removal of non-native invasive species of vegetation, or as a mechanism to allow for development that may otherwise not be permissible due to the vegetation standards, including removal of vegetation in conjunction with a shoreline stabilization project, the revegetation must comply with the following requirements.

1. *The property owner must submit a revegetation plan, prepared with and signed by a qualified professional that describes revegetation activities and maintenance. The plan must include a scaled site plan, depicting where vegetation was, or is to be removed, where existing vegetation is to remain, and where vegetation is to be planted, including a list of all vegetation to be planted.*
2. *Revegetation must occur along the same segment of shoreline and in the same area where vegetation was removed and at a density comparable to the pre-existing vegetation, except where a shoreline stabilization activity does not allow revegetation to occur in the same area and at a density comparable to the pre-existing vegetation, in which case revegetation must occur along the same segment of shoreline and as close as possible to the area where vegetation was removed.*
3. *If part of a permitted activity, revegetation shall occur before the expiration of the permit. If the activity or revegetation is not completed before the expiration of the permit, a new revegetation plan shall be submitted with any renewal or new permit application.*
4. *Revegetation activities must meet the following requirements for trees and saplings:*
 - a. *All trees and saplings removed must be replaced with native noninvasive species;*
 - b. *Replacement vegetation must at a minimum consist of saplings;*
 - c. *If more than three (3) trees or saplings are planted, then at least three (3) different species shall be used;*
 - d. *No one species shall make up 50% or more of the number of trees and saplings planted;*
 - e. *If revegetation is required for a shoreline stabilization project and it is not possible to plant trees and saplings in the same area where trees or saplings were removed, then trees or saplings must be planted in a location that effectively reestablishes the screening between the shoreline and structures; and*

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- f. *A survival rate of at least eighty (80) percent of planted trees or saplings is required for a minimum five (5) year period.*
5. *Revegetation activities must meet the following requirements for woody vegetation and other vegetation under three (3) feet in height:*
- a. *All woody vegetation and vegetation under three (3) feet in height must be replaced with native noninvasive species of woody vegetation and vegetation under three (3) feet in height as applicable;*
 - b. *Woody vegetation and vegetation under three (3) feet in height shall be planted in quantities and variety sufficient to prevent erosion and provide for effective infiltration of storm water;*
 - c. *If more than three (3) woody vegetation plants are to be planted, then at least three (3) different species shall be planted;*
 - d. *No one species shall make up 50% or more of the number of planted woody vegetation plants; and*
 - e. *Survival of planted woody vegetation and vegetation under three feet in height must be sufficient to remain in compliance with the standards contained within this chapter for minimum of five (5) years.*
6. *Revegetation activities must meet the following requirements for ground vegetation and ground cover:*
- a. *All ground vegetation and ground cover removed must be replaced with native herbaceous vegetation, in quantities and variety sufficient to prevent erosion and provide for effective infiltration of stormwater;*
 - b. *Where necessary due to a lack of sufficient ground cover, an area must be supplemented with a minimum four (4) inch depth of leaf mulch and/or bark mulch to prevent erosion and provide for effective infiltration of stormwater; and*
 - c. *Survival and functionality of ground vegetation and ground cover must be sufficient to remain in compliance with the standards contained within this chapter for minimum of five (5) years.*

Amendment: Amend Article 17, specifically section 17.2 Non-Conforming Structures by adding section “I” to the list of requirements for the enlargement of non-conforming structures as follows:

17.2 Non-Conforming Structures

17.2.1 Repair, Enlargement

17.2.1.1 Maintenance, Repair and Improvement Without Enlargement. A non-conforming structure may be maintained, repaired and improved, provided

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there is no enlargement of the structure with respect to its footprint and/or its volume.

17.2.1.2 Enlargement. The standards applicable to Enlargement of Non-Conforming structures, as amended by the voters on November 4, 2008, shall retroactively apply to any application accepted by the Planning Board or Code Enforcement Officer on or after June 26, 2008, the date on which the first public hearing was posted for the amendments. The former Enlargement of Non-Conforming Structures provisions shall apply to applications accepted prior to this date. A non-conforming structure may be enlarged only in conformance with the provisions of this Section. A Code Enforcement Officer shall review the application to determine conformance with these standards, and may impose conditions on an approval to ensure conformance. Criteria for approval include each of the following:

- I. *An approved plan for expansion of a non-conforming structure shall be recorded by the applicant with the York County Registry of Deeds, within 90 days of approval. The recorded plan must show the existing and proposed footprint of the non-conforming structure, the existing and proposed structure height, the footprint of any other structures on the parcel, the shoreland zone boundary and evidence of approval by the municipal review authority.*

Recommended by the Planning Board:

Recommended by the Board of Selectmen:

Amendment #2

Article 9- Green Buildings

Ballot Language: The following language would appear on the ballot:

Article X

The Town hereby ordains amendment of the **Zoning Ordinance** to amend Article 9- Green Buildings to offer more options for energy efficiency standards and municipal buildings.

Statement of Fact: The purpose of this amendment is to provide alternative green building standards in addition to the current LEED certification for the construction of municipal buildings. It will give the Town a specific energy-saving target while providing more flexibility in choosing the energy efficiency design and construction alternative that is most appropriate for each situation.

Amendment: Modify language in Article 9 (Green Buildings) as follows:

Article Nine

Green Buildings Sustainable Energy Efficient Buildings

9.1 Purpose

The purpose of the ~~Green Buildings Sustainable Energy Efficient Buildings~~ Article is to promote sustainable building practices through resource conservation, reduction of waste generated in building construction, increases in energy efficiency, and promotion of the health of residents, employees and visitors to the Town of York.

9.2 Standards for New Municipal Buildings.

- A. Any new building *or new addition to an existing building* funded in whole by the Town of York, or in part if the portion funded by the Town is 75% or greater of total construction costs, shall be certified by ~~the Leadership in Energy and Environmental Design (LEED) Green Building Rating System, to meet or exceed Silver Certification based on the most current criteria of the United States Green Building Council,~~ *an established third-party green or sustainable energy efficient building performance rating organization or shall be designed to conform to a nationally-recognized green or sustainable energy efficient building standard model code, unless exempted in §9.2.B. Acceptable systems include, but are not limited to: Efficiency Maine's Maine Advanced Building Program; the Green Buildings Initiatives' Green Globes Certification; the International Code Council's*

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2012 International Green Construction Code (IgCC); or the U.S. Green Building Council's Leadership in Energy and Environmental Design (LEED) Certification. All buildings or additions shall be designed to be at least 30% more energy-efficient than the minimum standards found in the latest version of the Maine Universal Building and Energy Code (MUBEC).

- B. The following types of new municipal buildings shall not be required to ~~be LEED-Certified~~ address green building elements or design standards:
 - a. A building or addition designed and used exclusively for storage; or
 - b. A building or addition that has less than 5,000 square feet of gross floor area.

- C. ~~LEED Silver Certification~~ Energy efficiency that is at least 30% better than the minimum standards found in the latest version of the Maine Universal Building and Energy Code (MUBEC) shall be a required element in Requests for Proposals for design and/or construction of any new municipal building or addition covered by this article ~~which is required to be certified.~~

9.3 Standards for Private Buildings

Privately funded buildings do not require ~~LEED-Certification~~ sustainable energy efficient building standards at this time. The Town recommends private construction to include as many ~~LEED~~ sustainable energy efficient building standards as are feasible.

Recommended by the Planning Board:

Recommended by the Board of Selectmen:

Amendment #3

Shellfish Conservation Ordinance

Ballot Language: The following language would appear on the ballot:

Article X

The Town hereby ordains amendment of the Shellfish Conservation Ordinance.

Statement of Fact: The purpose of this amendment is to incorporate required language regarding conservation closures and prohibiting the harvesting of shellfish within those areas. The Department of Marine Resources (DMR) is requiring towns incorporate this language to ensure that any enforcement of illegal harvesting in closed conservation areas can be addressed by the local authorities.

Amendment: Add the following language to Section 6-Opening and Closing of Flats of the Town of York's Shellfish Conservation Ordinance:

6. OPENING AND CLOSING OF FLATS: The municipal Officers, upon the approval of the Commissioner of Marine Resources, may open and close areas for shellfish harvest. Upon recommendation of the Shellfish Conservation Committee and concurrence of the Department of Marine Resources area biologist that the status of shellfish resource and other factors bearing sound management indicate that an area should be opened or closed, the Municipal Officers may call a public hearing on ten-days' notice published in a newspaper having general circulation in the Town, stating the time, place and subject matter of the hearing, and shall send a copy of the notice to the Department of Marine Resources. The decision of the Municipal Officers made after the hearing shall be based on findings of fact.

It shall be unlawful for any person to harvest, take or possess shellfish from any areas closed by the Town of York in accordance with DMR Regulation, Chapter 7. Harvesting shellfish in a closed area is a violation of the Town of York Shellfish Conservation Ordinance and is punishable under MRSA Title 12 section 6671.

Boundaries of conservation closures are explicitly defined in the conservation closure application submitted by the Town of York to DMR and are part of the resulting permit issued by DMR. These permits are posted at the town office and online: <http://www.maine.gov/dmr/shellfish-sanitation-management/programs/municipal/ordinances/towninfo.html> .

Recommended by the Board of Selectmen:

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