

Order 296-08/09

Passage: 6/15/09 7-0 (\Skolnik out, Duson absent)

JILL C. DUSON (MAYOR)
KEVIN J. DONOGHUE (1)
DAVID A. MARSHALL (2)
DANIEL S. SKOLNIK (3)
CHERYL A. LEEMAN (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

JOHN R. COYNE (5)
JOHN M. ANTON (A/L)
DORY RICHARDS WAXMAN (A/L)
NICHOLAS M. MAVODONES (A/L)

AMENDMENT TO PORTLAND CITY CODE
CHAPTER 14 LAND USE
ARTICLE III. ZONING
SECTIONS 14-47, 14-382, 14-447, 14-449 and 14-473

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORTLAND,
MAINE IN CITY COUNCIL ASSEMBLED AS FOLLOWS:**

1. *That Sections 14-47, 14-382 and 14-447, 14-449 and 14-473 of the Portland City Code are hereby amended to read as follows:*

Sec. 14-47 Definitions

Coastal Wetland: All tidal and subtidal lands; ~~all lands below any identifiable debris line left by tital action;~~ all lands with vegetation present that is tolerant of salt water and that occurs primarily in a salt water or estuarine habitat; and/or any swamp, marsh, bog, beach, flat or other contiguous low land ~~which~~ that is subject to tidal action during the ~~maximum spring~~ highest tide level for the year in which an activity is proposed as identified in tide tables published by the National Ocean Service. Coastal wetlands may include portions of coastal sand dunes.

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

Normal high water line (non-tidal waters): That line which is apparent from visible markings, changes in the character of soils due to prolonged action of the water or changes in vegetation, and which distinguishes between predominantly aquatic and predominantly terrestrial land. ~~In the case of wetlands adjacent to rivers, the normal high water line is the upland edge of the wetland, and not the edge of the open water.~~ Areas contiguous with rivers that support non-forested wetland vegetation and hydric soils and that are at the same or lower elevation as the water level of the

river during the period of normal high-water are considered part of the river.

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

Shoreland zone: The land area located within two hundred fifty (250) feet, horizontal distance, of the normal high water line of any river ~~or saltwater body~~; within two hundred fifty (250) feet, horizontal distance, of the upland edge of a coastal wetland, including all areas affected by tidal action; within 250 feet of the upland edge of ~~or~~ freshwater wetland; or within seventy-five (75) feet, horizontal distance of the normal high water line of a stream.

Water body: Any river, or stream ~~or tidal area~~.

Wetland: A freshwater or coastal wetland.

~~Wetlands associated with rivers: Wetlands contiguous with or adjacent to a river and which are connected by surface water to the river during normal high water. Also included are wetlands which are separated from the river by a berm, causeway or similar feature less than one hundred (100) feet in width, and which have a surface elevation at or below the normal high water line of the river. Wetlands associated with rivers are considered to be part of that river.~~

Tributary stream: means a channel between defined banks created by the action of surface water, which is characterized by the lack of terrestrial vegetation or by the presence of a bed, devoid of topsoil, containing waterborne deposits or exposed soil, parent material or bedrock; and which is connected hydrologically with other water bodies. "Tributary stream" does not include rills or gullies forming because of accelerated erosion in disturbed soils where the natural vegetation cover has been removed by human activity.

Upland edge of a wetland: the boundary between upland and wetland. For purposes of a coastal wetland, this boundary is the line formed by the landward limits of the salt tolerant vegetation and/or the maximum spring tide level, including all areas affected by tidal action. For purposes of a freshwater wetland, the upland edge is formed where

the soils are not saturated for a duration sufficient to support wetland vegetation; or where the soils support the growth of wetland vegetation but such vegetation is dominated by woody stems that are six (6) meters (approximately

Sec. 14-382. Increase in nonconforming use of building or alterations to nonconforming buildings limited.

(d) Alteration, modification or addition may be made to a building which is lawfully nonconforming as to space and bulk or any dimensional requirement where the proposed changes in existing exterior walls and/or roofs would be within the space occupied by the existing shell of the building, and would not create any new nonconformity nor increase any existing nonconformity. This subsection shall not apply to buildings located within shoreland zones and existing on June 15, 1992, which are nonconforming only as to setbacks from wetlands, tributary streams or other water bodies, which shall be regulated in accordance with subsection (f) of this section.

(f) Expansions. A non-conforming structure may be added to or expanded after obtaining a permit from the same permitting authority as that for a new structure, if such addition or expansion does not increase the non-conformity of the structure and is in accordance with the sections below.

(1) After January 1, 1989, if any portion of a structure is less than the required setback from the normal high water line of a water body or tributary stream or the upland edge of a wetland that portion of the structure shall not be expanded, as measured in floor area or volume, by 30% or more, during the lifetime of the structure. If a replacement structure conforms with the requirements of section 14-382, and is less than the required setback from a water body, tributary stream or wetland, the replacement structure may not be expanded if the original structure existing on January 1, 1989 had been expanded by 30% in floor area and volume since that date.

(2) Whenever a new, enlarged, or replacement foundation is constructed under a non-conforming structure, the

structure and new foundation must be placed such that the setback requirement is met to the greatest practical extent as determined by the building authority, basing its decision on the criteria specified in subsection (3) below. If the completed foundation does not extend beyond the exterior dimensions of the structure , except for expansion in conformity with section (f) above, and the foundation does not cause the structure to be elevated by more than three (3) additional feet as measured from the uphill side of the structure (from original ground level to the bottom of the first floor sill), it shall not be considered to be an expansion of the structure.

(3) A nonconforming structure may be relocated within the boundaries of the parcel on which the structure is located provided that the site of the relocation conforms to all setback requirements to the greatest practical extent as determined by the building authority, 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 event shall a structure be relocated in a manner that causes the structure to be more nonconforming. In determining whether the building relocation meets the setback requirements to the greatest practical extent, the building authority 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 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 building authority shall require replanting of native vegetation to compensate for the destroyed vegetation. In addition, the area from which the relocated structure was removed must be replanted with vegetation. Replanting shall be required as follows:

- (a) Trees removed in order to relocate a structure must be replanted with at least one native tree, three (3) feet in height, for every tree removed.

If more than five trees are planted, no one species of tree shall make up more than 50% of the number of trees planted. Replaced trees must be planted no further from the water or wetland than the trees that were removed.

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

(b) Where feasible, when a structure is relocated on a parcel the original location of the structure shall be replanted with vegetation which may consist of grasses, shrubs, trees, or a combination thereof.

(4) Buildings in existence on January 1, 1989, and located in shoreland zones may be expanded once during the lifetime of the structure up to twenty-five (25) feet toward a freshwater wetland or tributary stream, provided that a minimum setback of forty (40) feet is maintained and that the existing floor area or volume is not increased by more than thirty (30) percent, and shall not create any undue environmental impact or flood prone condition.

Sec. 14-447. Applicability.

This division applies to all land areas, uses, structures and land use activities within two hundred fifty (250) feet, horizontal distance, of the normal high water line of any river ~~or saltwater body;~~ within two hundred fifty (250) feet, horizontal distance, of the upland edge of a coastal wetland, including all areas affected by tidal actions within two hundred fifty (250) feet, horizontal distances, of the upland edge of a ~~or~~ freshwater wetland; and within seventy-five (75) feet, horizontal distance, of the normal high water line of a stream. This division also

applies to any structure built on, over or abutting a dock, wharf or pier, or other structure extending beyond the normal high water line of a water body or within a wetland.

Sec. 14-449. Land use standards.

All land uses and land use activities subject to this division shall conform to the following standards and regulations, as applicable:

(a) *Principal and accessory structures:*

1. All principal and accessory structures shall be set back at least seventy-five (75) feet horizontal distance, from the normal high water line of water bodies, ~~tributary streams~~ or the upland edge of a wetland or associated tributary streams within a shoreland zone, except that in the following zones the setback shall be as indicated:
 - a. B-3: Twenty-five (25) feet.
 - b. W-C, W-PD, W-SU, I-B: No setback required.
 - c. EWP: Thirty-six(36) feet as provided for in section 14-302(a)(7)(c)(4).

For principle structures, setback measurements shall be taken from the top of a coastal bluff that has been identified on Coastal Bluff maps as being "highly unstable or "unstable" by the Maine Geological Survey pursuant "Classification of Coastal Bluffs", and published in the most recent Coastal Bluff Map as further referenced on the Zoning Map.

Notwithstanding this requirement, when a lot is a lot of record as defined in section 14-433 or cannot otherwise meet the setback requirement of this section due to physical limitations of the site, the Planning Board may approve a reduction of the setback requirement for a principal

structure to the least amount necessary to achieve a building dimension of twenty-eight (28) feet, provided that the setback is not reduced to less than forty (40) feet. Structures in existence on June 15, 1992, may be expanded once during the lifetime of the structure up to twenty-five (25) feet toward a freshwater wetland, stream or tributary stream, provided that the setback is not reduced to less than forty (40) feet and the floor area or volume is not increased by more than thirty (30) percent. In no event shall the setback from a coastal wetland be reduced to less than seventy-five (75) feet, except in the B-3, W-C, EWP, W-PD, W-SU and I-B zones, where setbacks shall be as set forth above in this subsection.

In all cases, accessory detached structures of less than one hundred (100) square feet of floor area shall be permitted with no setback, provided that such structures shall be used only for the storage of fish, bait, and related equipment. No setback shall be required for piers, docks, retaining walls, or any other structures which require direct access to the water as an operational necessity.

2. Development activities within the shoreland zone are reviewed by the Zoning Administrator for compliance with required setbacks of this Division. Submission of plans for such development activity shall be prepared by competent professionals, based upon a boundary survey.

23. The lowest ~~first~~ floor elevation or openings of all buildings and structures including basements shall be elevated at least one (1) foot above the elevation of the one hundred (100) year flood, the flood of record, or in the absence of these, the flood as defined by soil types identified as recent flood plain soils.

34. Notwithstanding the requirements of this section, stairways or similar structures may be allowed with a permit from the building

authority to provide shoreline access in areas of steep slopes or unstable soils, provided that:

- a. The structure is limited to a maximum of four (4) feet in width;
- b. The structure does not extend below or over the normal high water line of a water body or upland edge of a wetland, unless permitted by the department of environmental protection pursuant to 38 M.R.S.A. Section 480-C; and
- c. The applicant demonstrates that no reasonable access alternative exists on the property.

(b) *Piers, docks, wharves, bridges and other structures and uses extending over or ~~beyond~~ below the normal high water line of a water body or within a wetland:*

1. Access from shore shall be developed on soils appropriate for such use and constructed so as to control erosion;
2. The location shall not interfere with existing developed or natural beach areas;
3. The facility shall be located so as to minimize adverse effects on fisheries;
4. The facility shall be no larger in dimension than necessary to carry on the activity and shall be consistent with surrounding character ~~existing conditions~~, and uses ~~and character of the area~~;
5. New permanent structures, and expansions thereof, projecting into or over water bodies shall require a permit from the Department of Environmental Protection pursuant to the National Resources Protection Act, 38 M.R.S.A., section 480-C. Permits may also be required from the Army

Corps of Engineers if located in navigable waters

- 6 5. Except in the W-C, EWP, W-PD, W-SU, and I-B zones, no new structure shall be built on, over or abutting a pier, wharf, dock or other structure extending beyond the normal high water line of a water body or within a wetland unless the structure requires direct access to the water as an operational necessity;
- 7 6. No existing structures built on, over or abutting a pier, dock, wharf or other structure extending beyond the normal high water line of a water body or within a wetland shall be converted to residential dwelling units in any zone.

(c) Clearing or removal of vegetation:

1. In all shoreland areas in resource protection zones, the clearing cutting or removal of vegetation shall be limited to that which is necessary for uses expressly authorized in that zone.
2. The clearing or removal of vegetation standards of this section shall not apply to the following zones: EWP,WCZ, WPD and WSU.
3. Other than the cutting or removal of vegetation as provided for in this section, timber harvesting shall not be permitted. For purposes of this section, timber harvesting is defined as the cutting and removal of timber for the primary purpose of selling or processing forest products. The cutting or removal of trees in the shoreland zone on a lot that has less than (2) acres within the shoreland zone shall not be considered timber harvesting. Cutting or removal of such trees shall be regulated pursuant to this section.
4. For purposes of this section, vegetation is defined as all live trees, shrubs and other

plants including without limitation, trees both over and under 4 inches in diameter, measured at 4 ½ feet above ground level.

a. In all areas other than resource protection zones areas, a buffer strip of vegetation shall be preserved, except where clearance is required for development of permitted uses, within a strip of land extending seventy-five (75) feet, horizontal distance, from the normal high-water or upland edge of a coastal wetland, river, stream or tributary stream within a shoreland zone, from any water body, tributary stream, or the upland edge of a wetland, in accordance with the following:

i. There shall be no cleared opening greater than two hundred fifty (250) square feet in the forest canopy or other existing vegetation if a forested canopy is not presented as measured from the outer limits of the tree or shrub crown. Notwithstanding this limitation, a footpath not to exceed ~~ten~~ six(10)6 feet in width as measured between tree trunks and/ or shrub stems is allowed ~~permitted~~ provided that a cleared line of sight to the water through the buffer strip is not created.

ii. Selective cutting of trees within the buffer strip is allowed ~~permitted~~ provided that a well-distributed stand of trees and other vegetation is maintained. For the purposes of this section, a "well-distributed stand of trees" ~~and other vegetation"~~ adjacent to a water body, tributary stream or wetland shall be defined as maintaining a

minimum rating score of sixteen
(16) ~~eight (8)~~ or more in any
twenty-five-foot by fifty foot
rectangle area
~~square area~~ as determined by the
following rating system:

*Diameter of tree at four and
one-half (4 1/2) feet above ground
level*

<i>(Inches)</i>	<i>Points</i>
2- <u>4</u>	1
Greater than 4 - <u>8</u> 12	2
Greater than 8 - <u>12</u>	4
<u>12 in. or greater</u>	<u>8</u>

The following shall govern in applying
this point system:

- (i) The 25-foot by 50-foot rectangular
plots must be established where
the landowner or lessee proposes
clearing within the required
buffer;
- (ii) Each successive plot must be
adjacent to, but not overlap a
previous plot;
- (iii) Any plot not containing the
required points must have no
vegetation removed except as
otherwise allowed by this
Ordinance;
- (iv) Any plot containing the required
points may have vegetation removed
down to the minimum points
required or as otherwise allowed
by this Ordinance;

(v) Where conditions permit, no more than 50% of the points on any 25-foot by 50-foot rectangular area may consist of trees greater than 12 inches in diameter.

For the purposes of this section, "other natural vegetation" is defined as retaining existing vegetation under three (3) feet in height and other ground cover and retaining at least five (5) saplings less than two (2) inches in diameter at four and one-half (4 ½) feet above ground level for each 25-foot by 50-foot rectangular area. If five samplings do not exist, no woody stems less than two (2) inches in diameter can be removed until 5 samplings have been recruited into the plot.

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

iii. In order to protect water quality and wildlife habitat, existing vegetation under three feet in height and other groundcover, including leaf litter and the forest duff layer, shall not be cut, covered, or removed, except to provide a footpath or other permitted uses as described in this section.

iv. Pruning of tree branches on the bottom one-third of the tree is allowed ~~permitted.~~

v. In order to maintain a buffer strip of vegetation when ~~where~~ the removal of storm-damaged, diseased, unsafe or dead trees results in the creation of

cleared openings, these openings shall be replanted with native tree species unless existing new tree growth is present.

The provisions contained in subsection b. of this section shall not apply to those portions of public recreational facilities adjacent to public swimming areas as long as ~~cleared~~ areas in these locations are ~~shall~~ be limited to the minimum amount necessary.

2. Selective cutting of not more than forty (40) percent of the volume of trees four (4) inches or more in diameter, measured four and one-half (4 1/2) feet above ground level, shall be allowed ~~permitted~~ within any ten-year period at distances greater than seventy-five (75) feet, horizontal distance, from the normal high water line of any other water body, tributary stream, or the upland edge of a wetland, except to allow for the development of permitted uses. Tree removal in conjunction with the development of permitted uses shall be included in the forty (40) percent calculation. For the purposes of these standards, volume may be considered to be equivalent to basal area. In no event shall cleared openings for any purpose development, including but not limited to, principal and accessory structures, driveways, lawns and sewage disposal areas, exceed in the aggregate twenty-five (25) percent of the lot area within the shoreland zone, including land previously cleared developed.
3. Legally existing nonconforming cleared openings ~~legally in existence on June 15, 1992,~~ may be maintained but shall not be enlarged, except as allowed permitted by this division.
4. Fields and other cleared openings which have reverted to primarily shrubs, trees, or other woody vegetation shall be regulated under the provisions of this section.

(d) *Erosion and sedimentation control:*

1. All activities which involve filling, grading, excavation or other similar activities which result in unstabilized soil conditions and which require a permit shall require a written soil erosion and sedimentation control plan in accordance with Maine Erosion and Sediment Control Handbook for Construction: Best Management Practices, published by the Cumberland County Soil and Water Conservation District and the Maine Department of Environmental Protection ~~of~~ and the City of Portland Technical and Design Standards and Guidelines. The plan shall be submitted to the permitting authority for approval and shall include, where applicable, provisions for:
 - a. Mulching and revegetation of disturbed soil.
 - b. Temporary runoff control features such as hay bales, silt fencing or diversion ditches.
 - c. Permanent stabilization structures such as retaining walls or riprap.
2. In order to create the least potential for erosion, development shall be designed to fit with the topography and soils of the site. Areas of steep slopes where high cuts and fills may be required shall be avoided wherever possible, and natural contours shall be followed as closely as possible.
3. Erosion and sedimentation control measures shall apply to all aspects of the proposed project involving land disturbance, and shall be in operation during all stages of the activity. The amount of exposed ground area at every phase of construction shall be minimized to reduce the potential for erosion.

4. Any exposed ground area shall be temporarily or permanently stabilized within one (1) week from the time it was last actively worked, by use of riprap, sod, seed, and mulch, or other effective measures. In all cases, permanent stabilization shall occur within nine (9) months of initial exposure. The following standards shall also be met:
 - a. Where mulch is used, it shall be applied at a rate of at least one (1) bale per five hundred (500) square feet and shall be maintained until a catch of vegetation is established.
 - b. Anchoring the mulch with netting, peg and twine or other suitable method may be required to maintain the mulch cover.
 - c. Additional measures shall be taken where necessary in order to avoid siltation into the water. Such measures may include the use of staked hay bales and/or silt fences.
5. Natural and man-made drainage ways and drainage outlets shall be protected from erosion from water flowing through them. Drainage ways shall be designed and constructed in accordance with the City of Portland Technical and Design Standards and Guidelines.
 - (e) *Soils*: All land uses shall be located on soils in or upon which the proposed uses or structures can be established or maintained without causing adverse environmental impacts, including severe erosion, mass soil movement, improper drainage, and water pollution, either during or after construction. Proposed uses requiring subsurface wastewater disposal and commercial or industrial development or other similar intensive land uses shall require a soils report based on

an on-site investigation and prepared by state-certified professionals. Certified persons may include Maine Certified Soil Scientists, Maine Registered Professional Engineers, Maine State Certified Geologists and other persons who have training and experience in the recognition and evaluation of soil properties. The report shall be based upon the analysis of the characteristics of the soil and surrounding land and water areas, maximum ground water elevation, presence of ledge, drainage conditions, and other pertinent data which the evaluator deems appropriate. The soils report shall include recommendations for a proposed use to counteract soil limitations where they exist.

- (f) *Water quality:* No activity shall deposit on or into the ground or discharge to the waters of the state any pollutant that by itself or in combination with other activities or substances will impair designated uses or the water classification of the water body, tributary stream or wetland.
- (g) *Archaeological sites:* Any proposed land use activity involving structural development or soil disturbance on or adjacent to sites listed on, or eligible to be listed on, the National Register of Historic Places, as determined by the department of planning and urban development, shall be submitted by the applicant to the Maine Historic Preservation Commission for review and comment at least twenty (20) days prior to action being taken by the building authority. The building authority shall consider comments received from the commission prior to rendering a decision on the application. Such sites shall also comply with all applicable provisions of article IX of this chapter.
- (h) *Installation of public utility service:* No public utility of any kind shall install services to any new structure located in the shoreland zone unless written authorization attesting to the validity and currency of all local permits required under this Code has been issued by the appropriate municipal authorities. Following

installation of service, the public utility shall forward the written authorization to the appropriate municipal authorities, indicating that installation has been completed.

(i) Essential Services

(1) Where feasible, the installation of essential services shall be limited to existing public ways and existing service corridors.

(2) The installation of essential services, other than road-side distribution lines and within existing service corridors, is not allowed in a Resource Protection or Stream Protection District, except where the applicant demonstrates that no reasonable alternative exists.

(3) Damaged or destroyed public utility transmission and distribution lines, towers and related equipment may be replaced or reconstructed without a permit.

j(±) Roads and driveways:

(1) Roads and driveways shall meet setbacks from the normal high-water or upland edge of a coastal wetland, freshwater wetland, river or tributary stream within a shoreland zone as described in this section. Except in the EWP, WC, WPD and WSU W-1, W-2 and I-3b zones where setbacks shall be the same as those established in subsection (1)a.ii. and iii. of this section for structures, roads and driveways shall be set back at least seventy-five (75) feet from the normal high water line, unless the Planning Board determines that no other reasonable alternative exists. If no other reasonable alternative exists, the Planning Board may reduce the road and/or driveway setback requirement to no less than fifty (50) feet, horizontal distance, upon clear showing by the applicant that appropriate techniques will be used to prevent sedimentation of the

water body, tributary stream or wetland. Such techniques may include, but are not limited to, the installation of settling basins, and/or effective use of additional ditch relief culverts and turnouts place so as to avoid sedimentation of the water body, tributary stream or wetland. Where the Planning Board makes a determination that no other reasonable alternative exists, the Planning Board may reduce the road and/or driveway setback requirement to the least amount necessary for construction, provided that the applicant proves by a preponderance of the evidence that appropriate techniques will be used to prevent sedimentation of the water body.

On slopes of greater than twenty (20) percent the road and or driveway shall be increased by ten (10) feet, horizontal distance, for each five (5) percent increase in slope above twenty (20) percent.

This section does not apply to approaches to water crossings or to roads or driveways that provide access to permitted structures, and facilities located nearer to the shoreline or tributary stream due to an operational necessity, excluding temporary docks for recreational uses. Roads and driveways providing access to permitted structures within the setback area shall comply with the requirements of section 14-449 (j) except for that portion of the road or driveway necessary for direct access to the structure.

- (2) Existing public roads may be expanded within the legal road right of way regardless of their setback from a waterbody, tributary stream or wetland.
- (3) New roads and driveways are prohibited in a Resource Protection Zone except that the Planning Board may grant a permit to construct a road or driveway to provide access to permitted uses within the district.

A road or driveway may also be approved by the Planning Board in a Resource Protection Zone, upon a finding that no reasonable alternative route or location is available outside the district. When a roadway or driveway is permitted in a Resource Protection District the road and/or driveway shall be setback as far as practicable from the normal high-water line of a water body, tributary stream, or upland edge of a wetland.

- (4) Road and driveways banks shall be no steeper than slope of two (2) horizontal to one (1) vertical, and shall be graded and stabilized in accordance with the provisions for erosion and sedimentation control contained in sec. 14-449 (d).
- (5) Road and driveway grades shall be no greater than ten (10) percent except segments of less than two hundred (200) feet.
- (6) In order to prevent road and driveway surface drainage from directly entering water bodies, tributary streams or wetlands, roads and driveways shall be designed, constructed, and maintained to empty onto an unscarified buffer strip at least (50) feet plus two times the average slope, in width between the outflow point of the ditch or culvert and the normal high-water line of a water body, tributary stream or upland edge of a wetland. Surface drainage which is directed to an unscarified buffer strip shall be diffused or spread out to promote infiltration of the runoff and to minimize channelized flow of the drainage through the buffer strip.
- (7) Ditch relief (cross drainage) culverts, drainage dips and water turnouts shall be installed in a manner effective in directing drainage onto unscarified buffer strips before the flow gains sufficient volume or head to erode the road, driveway, or ditch.

To accomplish this, the following shall apply:

(a) Ditch relief culverts, drainage dips and associated water turnouts shall be spaced along the road, or driveway at intervals no greater than indicated in the following table:

<u>Grade (percent)</u>	<u>Spacing (feet)</u>
0-2	250
3-5	200-135
6-10	100-80
11-15	80-60
16-20	60-45
21+	40

(b) Drainage dips may be used in place of ditch relief culverts only where the grade is ten (10) percent or less.

(c) On sections having slopes greater than (10) percent, ditch relief culverts shall be placed at approximately a thirty (30) degree angle downslope from a line perpendicular to the centerline of the road or driveway.

(d) Ditch relief culverts shall be sufficiently sized and properly installed in order to allow for effective functioning, and their inlet and outlet ends shall be stabilized with appropriate materials.

(8) Ditches, culverts, bridges, dips, water turnouts and other storm water runoff control installations associated with roads and driveways shall be maintained on a regular basis to assure effective functioning.

(k)(j) Parking areas: Parking areas shall meet setbacks from the from the normal high-water or upland edge of a coastal wetland, freshwater

wetland, river or tributary stream within a shoreland as described in this section. All parking areas shall be set back a minimum of seventy-five (75) feet, except in the EWP, WC, WPD and WSU W-1, W-2, I-3b, and S-P zones, where setbacks shall be as established for structures in those zones, and in the R-OS, I-B, and I-2, where parking areas shall be set back a minimum of twenty-five (25) feet from the normal high water line, unless the Planning Board determines that no other reasonable alternative exists. Where the Planning Board finds makes a determination that no other reasonable alternative exists further from the shoreline or tributary stream, the Planning Board may reduce the parking setback requirement to no less than fifty (50) feet in the R-OS and I-B and I-2 zones to the least amount necessary for construction, provided that the applicant proves by a preponderance of the evidence that appropriate techniques will be used to prevent sedimentation of the water body.

(1) Septic Waste Disposal

(1) All subsurface sewage disposal systems shall be installed in conformance with the State of Maine Subsurface Wastewater Disposal Rules and the following: a) clearing or removal of woody vegetation necessary to site a new system and any associated fill extensions, shall not extend closer than seventy-five (75) feet, horizontal distance, from the normal high-water line of a water body or the upland edge of a wetland and b) a holding tank is not allowed for a first-time residential use in the shoreland zone.

(m) (k) Stormwater runoff:

1. All new construction and development shall be designed to be in compliance with the City of Portland Technical and Design Standards and Guidelines to minimize stormwater runoff from the site in excess of the natural predevelopment conditions. Where possible, existing natural runoff control features, such as berms, swales, terraces

and wooded areas shall be retained in order to reduce runoff and encourage infiltration of stormwater.

2. Stormwater runoff control systems shall be maintained as necessary to ensure proper functioning.

(n)(±) *Agriculture:*

1. All spreading or disposal of manure shall be accomplished in conformance with the ~~Maine Guidelines for Manure and Manure Sludge Disposal on Land published by the University of Maine Soil and Water Conservation Commission in July, 1972~~ Manure Utilization Guidelines published by the Maine Department of Agriculture on November 1, 2001, and the Nutrient Management Law (7 M.R.S.A. sections 4201-4209).
2. Manure shall not be stored or stockpiled within seventy-five (75) feet, horizontal distance, of water bodies, tributary streams, or wetlands. ~~Within five years from the effective date of this section, a~~All manure storage areas within the shoreland zone must be constructed or modified such that the facility produces no discharge of effluent or contaminated stormwater. ~~Existing facilities which do not meet the setback requirement may remain, but must meet the no discharge provision within the five year period.~~
3. Agricultural activities involving tillage of soil greater than forty thousand (40,000) square feet in surface area, ~~or the spreading, disposal or storage of manure~~ within the shoreland zone shall require a soil and water ~~e~~Conservation ~~p~~Plan to be filed with the building authority.
4. There shall be no new tilling of soil within seventy-five (75) feet, horizontal distance, from water bodies and coastal wetlands or within twenty-five (25) feet, horizontal

distance, of tributary streams and freshwater wetlands when such new tilling, by itself or combined with all other contiguous tillage, shall exceed forty thousand (40,000) square feet in surface area. Operations in existence on the effective date of this section and not in conformance with these provisions may be maintained but ~~by~~ shall not be expanded. When the new tilling, by itself or combined with all other contiguous tillage, shall total forty thousand (40,000) square feet or less, the tillage shall be set back a minimum of twenty-five (25) feet from all water bodies, tributary streams or wetlands.

5. Newly established ~~L~~livestocking grazing areas ~~established after the effective date of this section~~ shall not be permitted within seventy-five (75) feet, horizontal distance, of water bodies and coastal wetlands or within twenty-five (25) feet, horizontal distance, of tributary streams and wetlands. Livestock grazing associated with ongoing farm activities and which are not in conformance with the above setback provisions may continue, provided such grazing ~~commenced prior to the effective date of this section shall be allowed to continue provided that such activity is conducted in accordance with a soil and water conservation plan filed with the building authority.~~

(o)(m) *General site plan features:* The Planning Board or planning authority shall approve a site plan located within a shoreland zone if it finds that the following standards, in addition to the standards set forth in section 14-526, are met:

1. The proposal will maintain safe and healthful conditions;
2. The proposal will not result in water pollution, erosion, or sedimentation to surface waters;

3. The proposal will adequately provide for the disposal of all wastewater;
4. The proposal will not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat;
5. The proposal will conserve shore cover and visual, as well as actual, points of access to inland and coastal waters;
6. The proposal will protect archaeological and historic resources;
7. The proposal will not adversely affect existing commercial fishing or maritime activities;
8. The proposal will avoid problems associated with flood plain development and use; and
9. The proposal is in conformance with the standards set forth in this section.

Section 14-473: Variances.

(b) *Procedure:*

(2) Public hearing. A public hearing shall be set, advertised and conducted by the board of appeals in accordance with article VI of this chapter.

A copy of each variance request pertaining to division 26 (Shoreland Regulations) including the application and all supporting information supplied by the applicant, shall be forwarded by the municipal officials to the Commissioner of the Department of Environmental Protection at least twenty (20) days prior to action by the board. Any comments received from the Commissioner prior to action by the board

shall be made part of the record and shall be taken into consideration by the board.

(c) *Conditions for variances:*

- (1) *Undue hardship required; defined.* Except as provided in subsection (2) below, a variance may be granted by the board only where strict application of the ordinance, or a provision thereof, to the petitioner and his property would cause undue hardship. The words "undue hardship" as used in this subsection mean:
- a. That the land in question cannot yield a reasonable return unless a variance is granted;
 - b. That the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;
 - c. That the granting of a variance will not alter the essential character of the locality; and
 - d. That the hardship is not the result of action taken by the applicant or a prior owner.
- (2) *Disability variance:* Notwithstanding the provisions of subsection (c) (1) of this section, the board may grant a variance to an property owner of a residential dwelling for the purpose of making that dwelling property accessible to a person with a disability who resides in or regularly uses the dwelling is living on the property. The board shall restrict any variance granted under this subsection solely to the installation of equipment or the construction of structures necessary for access to or egress from the dwelling property by the person with the disability. The board may impose conditions on the variance, including limiting the variance to the duration of the disability or to the time that the person with the disability lives in the dwelling property. The term "structures necessary for access to or egress from the dwelling" shall include railing, wall or roof systems necessary for the safety or effectiveness of the structure. For purposes of this subsection, a disability has the same meaning as a physical or mental handicap under 5 M.R.S.A. Section 4553.

AND BE IT FURTHER ORDERED, that the Zoning Map of the City of Portland, dated December 2000, and "Zoning for the Islands of Portland, Maine, dated November 2008" on file in the Department of Planning and Urban Development, and incorporated by reference into the Zoning Ordinance by §14-49, is hereby amended to identify the highly unstable and unstable coastal bluffs as delineated on Attachment 1 attached hereto.