

Order

Of the Bar Harbor Town Council

For the June 12, 2018 Town Meeting

It is hereby ordered that the following article be placed on the special town meeting warrant with voting thereon to be held by Australian ballot.

Warrant Article

Article _ LAND USE ORDINANCE AMENDMENT – Adoption of the Statewide timber harvesting standards and repeal of Forest Management and Timber Harvesting Provisions in the Land Use Ordinance – Shall an Ordinance dated November 1, 2017 and entitled “An amendment to adopt the statewide timber harvesting standards and repeal the forest management and timber harvesting provisions in the Land Use Ordinance” be enacted?

Adoption of Statewide Timber Harvesting Provisions

An amendment adopt the statewide timber harvesting standards and repeal the forest management and timber harvesting provisions in the Land Use Ordinance.

The Town of Bar Harbor hereby ordains that Chapter 125 of the Town Code is amended as follows:

[Please Note: Old language is ~~stricken~~. New language is underlined.]

Chapter 125 , LAND USE ORDINANCE

ARTICLE I General Provisions

§ 125-8 When effective; filing; repealer.

A. The effective date of this chapter or any amendments thereto shall be 30 calendar days following its/their adoption at a regular or special Town Meeting; provided, however, that those portions of this chapter related to shoreland regulation shall not be effective unless approved by the Commissioner of the Department of Environmental Protection. A certified copy of this chapter, attested and signed by the Town Clerk, shall be forwarded to the Commissioner of the Department of Environmental Protection for approval. If the Commissioner fails to act on this chapter within 45 days of his/her receipt of this chapter, it shall be deemed approved. Any application for a permit submitted to the Town within such forty-five-day period shall be governed by the terms of this chapter if the chapter is approved by the Commissioner of the Department of Environmental Protection.

B. A certified copy of this chapter shall also be filed with the Hancock County Registry of Deeds.

C. The adoption of this chapter hereby repeals and supersedes all conflicting land use provisions of all ordinances adopted prior to the effective date of this chapter.

~~D. Repeal of municipal timber harvesting regulation. The municipal regulation of timber harvesting activities is repealed on the statutory date established under 38 M.R.S.A. § 438-B, Subdivision 5, at which time the State of Maine Department of Conservation's Bureau of Forestry shall administer timber harvesting standards in the shoreland zone. On the date established under 38 M.R.S.A. § 438-B, Subdivision 5, the following provisions of this chapter are repealed:~~

~~(1) Table of Uses: "Forest management activities except for timber harvesting" and "Forest management activities including timber harvesting...#2."~~

~~(2) Section 125-68B(2) in its entirety.~~

~~(3) Section 125-109 definitions for "forest management activities."~~

The Town of Bar Harbor hereby ordains that Chapter 125 of the Town Code is amended as follows:

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Chapter 125 , LAND USE ORDINANCE

ARTICLE III Land Use Activities and Standards

§ 125-17 Bar Harbor Gateway.

E. Allowed activities.

(1) Activities allowed without a building permit, provided that they comply with all provisions of Chapter 125: activities necessary for managing/protecting land; filling/earthmoving activity of less than 16 cubic yards; ~~forest management activities except timber harvesting~~; nonintensive recreation uses not requiring structures; public utility installation/essential services.

§ 125-18 Village Historic.

E. Allowed activities.

(1) Activities allowed without a building permit: activities necessary for managing/protecting land; filling/earthmoving activity of less than 16 cubic yards; ~~forest management activities except timber harvesting~~; nonintensive recreation uses not requiring structures; public utility installation and essential services.

§ 125-19 Mount Desert Street Corridor District.

E. Allowed activities.

(1) Activities allowed without a permit, provided that the activity complies with all provisions of Chapter 125: activities necessary for managing/protecting land; filling/earthmoving activity of less than 16 cubic yards; ~~forest management activities except timber harvesting~~; nonintensive recreation uses not requiring structures; public utility installations/essential services.

§ 125-20 Village Residential.

F. Allowed activities.

(1) Activities allowed without a permit, provided that it complies with all provisions of Chapter 125: activities necessary for managing/protecting land; filling/earthmoving activity of less than 16 cubic yards; ~~forest management activities except timber harvesting~~; nonintensive recreation uses not requiring structures; public utility installation.

§ 125-21 Downtown Village I.

D. Allowed activities.

(1) Activities allowed without a permit, provided that they comply with all provisions of the Chapter 125: activities necessary for managing/protecting land; filling/earthmoving activity of less than 10 cubic yards; ~~forest management activities, except timber harvesting~~; nonintensive recreation uses not requiring structures; public utility installation/essential services.

§ 125-21.1 Downtown Village II.

D. Allowed activities:

(1) Activities allowed without a permit, provided that they comply with all provisions of Chapter 125: activities necessary for managing/protecting land; filling/earthmoving activity of less than 10 cubic yards; ~~forest management activities, except timber harvesting~~; nonintensive recreation uses not requiring structures; public utility installation.

§ 125-21.2 Downtown Village Transitional.

D. Allowed activities.

(1) Activities allowed without a permit, provided that they comply with all provisions of Chapter 125: activities necessary for managing/protecting land; filling/earthmoving activity of less than 10 cubic yards; ~~forest management activities, except timber harvesting~~; nonintensive recreation uses not requiring structures; public utility installation.

§ 125-49.1 Shoreland General Development III.

E. Allowed activities.

(1) Activities allowed without a building permit, provided that they comply with all provisions of Chapter 125: activities necessary for managing/protecting land; filling/earthmoving activity of less than 16 cubic yards; ~~forest management activities except timber harvesting~~; nonintensive recreation uses not requiring structures; public utility installation/essential services.

§ 125-49.2 Shoreland General Development IV.

E. Allowed activities.

(1) Activities allowed without a building permit, provided that they comply with all provisions of Chapter 125: activities necessary for managing/protecting land; filling/earthmoving activity of less than 16 cubic yards; ~~forest management activities except timber harvesting~~; nonintensive recreation uses not requiring structures; public utility installation/essential services.

The Town of Bar Harbor hereby ordains that Chapter 125 of the Town Code is amended as follows:

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Chapter 125 , LAND USE ORDINANCE

ARTICLE XII Construction and Definitions

§ 125-109 Definitions.

The following terms shall have the following meanings:

~~DBH~~ — The diameter of a standing tree measured 4.5 feet from ground level.

~~FOREST MANAGEMENT ACTIVITIES~~ — Timber cruising and other forest resources evaluation activities, management planning activities, insect and disease control, timber stand improvement, pruning, timber harvesting and other similar associated activities, but not the construction or creation of roads. See also "timber harvesting." [7]

~~LICENSED FORESTER~~ — A forester licensed under 32 M.R.S.A. Chapter 76.

~~RESIDUAL BASAL AREA~~ — The average of the basal area of trees remaining on a harvested site.

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

~~SLASH~~ — The residue, e.g., treetops and branches, left on the ground after a timber harvest.

~~TIMBER HARVESTING~~ — The selective cutting and removal of at least 50 cords, or equivalent, of timber from one lot or from abutting lots, irrespective of the ownership of such lots, within a one-year period for the primary purpose of selling or processing forest products, and the attendant operation of harvesting machinery. Timber harvesting does not include the construction of roads or the clearing of land for approved construction for which a lawful permit has been issued in accordance with state and local codes, ordinances, statutes, rules and regulations. The cutting or removal of trees in the shoreland zone on a lot that has less than two acres within the shoreland zone shall not be considered timber harvesting. Such cutting or removal of trees shall be regulated pursuant to § 125-68B(13).

The Town of Bar Harbor hereby ordains that Chapter 125 of the Town Code is amended as follows:

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Chapter 125 , LAND USE ORDINANCE

ARTICLE V Site Plan Review

§ 125-68 Shoreland standards.

[Amended 11-5-1991; 5-4-1992; 5-6-1996; 6-13-2006[1]]

A. Notwithstanding and in addition to any other provisions of this chapter, before granting site plan approval or a building permit for:

[Amended 11-3-2009]

(1) Any structure built on, over or abutting a dock, wharf, pier or other structure extending below the normal shoreline of a water body or within a wetland;

(2) Any land use activity situated entirely or partially within 250 feet, horizontal distance, of the normal shoreline of any great pond or river, within 250 feet, horizontal distance, of the upland edge of a coastal or freshwater wetland, or within 75 feet, horizontal distance, of the normal high-water line of a stream, tributary stream, significant vernal pool as such terms are defined in 38 M.R.S.A. § 435 et seq. and § 125-109 of this chapter.

[Amended 6-8-2010]

B. The Planning Board, Code Enforcement Officer or Planning Department, as applicable, must find that the proposed plan will comply with such of the following standards, and all land use activities within the shoreland zone shall conform to the following standards as are applicable:

[Amended 11-7-2006; 11-4-2008; 11-3-2009; 6-8-2010]

~~(2) Timber harvesting. All site plans shall demonstrate that all timber harvesting proposed in a shoreland area shall comply with the following minimum requirements:~~

~~(a) Within a shoreland area zoned for resource protection abutting a great pond there shall be no cutting of vegetation within the strip of land extending 75 feet inland from the normal high water line, except to remove safety hazards.~~

~~(b) Beyond the seventy five foot strip referred to in § 125-68(B)(2)(a) above, timber harvesting is permitted in accordance with § 125-68(B)(2)(c) below, except that in no case shall the average residual basal area of trees over 4 1/2 feet above ground level be reduced to less than 30 square feet per acre.~~

~~(c) Except as provided in the preceding subsection and in Subsection B(2)(a) and (b), selective cutting of no more than 40% of the trees four inches or more in diameter, measured at 4 1/2 feet above ground level, shall be allowed in any ten-year period. In addition:~~

[1] Within 100 feet, horizontal distance, of the normal high water line of a great pond classified GPA or a river flowing to a great pond classified GPA, and within 75 feet, horizontal distance, of the normal high water line of other water bodies, tributary streams, or the upland edge of a wetland, or within 25 feet from a significant vernal pool, there shall be no clear-cut openings and a well-distributed stand of trees and other vegetation, including existing ground cover, shall be maintained.

[2] At distances greater than 100 feet, horizontal distance, of a great pond classified GPA or a river flowing to a great pond classified GPA and greater than 75 feet, horizontal distance, of the normal high water line of other water bodies or the upland edge of a wetland, harvesting operations shall not create single clear-cut openings greater than 10,000 square feet in the forest canopy. Where such openings exceed 5,000 square feet they shall be at least 100 feet apart. Such clear-cut openings shall be included in the calculation of total volume removal. For the purposes of these standards, volume may be considered to be equivalent to basal area.

[3] Any debris that falls below the normal high water line of a water body or tributary stream shall be removed. No accumulation of slash shall be left within 50 feet, horizontal distance, of the normal high water line or upland edge of a wetland, and between 50 feet and 250 feet, horizontal distance, of the normal high water line or upland edge of a wetland, all slash larger than three inches in diameter must be disposed of in such a manner that no part thereof extends more than four feet above the ground.

[4] Timber harvesting equipment shall not use stream channels as travel routes except when:

[a] Surface waters are frozen; and

[b] The activity will not result in any ground disturbance.

[5] 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.

[6] 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.

[7] 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 75 feet in width in horizontal distance for slopes up to 10% shall be retained between the exposed mineral soil and the normal high water line of a water body, significant vernal pool or upland edge of a wetland. For each ten percent increase in slope, the unscarified strip shall be increased by 20 feet in horizontal distance. The provisions of this subsection apply only to a face sloping toward the water body, wetland or significant vernal pool; provided, however, that no portion of such exposed mineral soil on a back face shall be closer than 25 feet in horizontal distance from the normal high water line of a water body or upland edge of a wetland.

(d) Subject to all other limitations imposed in Subsection B(2)(c), the Planning Board shall approve timber harvesting in excess of the forty percent limitation within a shoreland district upon a clear showing, including a forest management plan signed by a Maine licensed professional forester, that such harvesting is necessary for good forest management and will be carried out in accordance with the

purposes of this chapter and the mandatory shoreland zoning laws of the State of Maine. The Planning Board shall notify the Commissioner of the Department of Environmental Protection of each approval granted under this section within 14 days of the Planning Board approval.

The Town of Bar Harbor hereby ordains that Chapter 125 of the Town Code is amended as follows:

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Chapter 125 , LAND USE ORDINANCE

ARTICLE V Site Plan Review

§ 125-69 Standards for particular uses, structures or activities.

Notwithstanding and in addition to any other provision of this chapter, before granting site plan approval for any land use activity described in this section, the Planning Board must find that the proposed plan will comply with such of the following standards as are applicable:...

~~I. Timber harvesting. The selective cutting and removal of trees from their growing sites in those districts indicated in Article III as allowing timber harvesting are permitted in accordance with the following conditions:~~

~~(1) Forest management and harvest plan required. A licensed professional forester shall prepare a forest management and harvest plan for the proposed harvest tract, pursuant to the Maine Forest Service Information Sheet "Guidelines for Forest Management and Harvest Plans," and a copy of said plan shall be filed with the permit application.~~

~~(2) Harvesting operations shall be conducted in such a manner and at such a time that minimal soil disturbance results. Adequate provisions shall be made to prevent soil erosion and sedimentation of surface waters.~~

~~(3) Harvesting operations shall be conducted in such a manner that a well-distributed stand of trees is retained.~~

~~(4) Harvesting activities shall not create single openings greater than 7,500 square feet in the forest canopy.~~

~~(5) In any stand, harvesting shall remove not more than 40% of the volume of trees in any ten-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.~~

~~(6) No accumulation of slash shall be left within 75 feet of the normal high water mark of any pond, lake, river, or saltwater body as defined. At distances greater than 75 feet from the normal high water mark of such waters, all slash shall be disposed of in such a manner that it lies on the ground and no part thereof extends more than four feet above the ground.~~

~~(7) Log yards and other sites where logging activities result in the exposure of areas of mineral soil shall be located such that an unscarified filter strip is retained between the exposed mineral soil and the normal high water mark of any pond, lake, river, or saltwater body as defined. The width of this strip shall vary according to the average slope of the land as follows:~~

Average Slope of Land Between Exposed Mineral Soil and Normal High Water Mark	Width of Strip Between Exposed Mineral Soil and Normal High Water Mark (feet)
Up to 30%	85
40%	105
50%	125
60%	145
70%	165

(8) Inspection by licensed forester required. The timber harvesting operation shall be administered by a licensed professional forester consistent with the provisions of the forest management and harvest plan on file and shall be inspected by a licensed professional forester weekly throughout the operation. A final inspection shall be made by the licensed forester upon harvest completion.

(9) Best management practices required. Best management practices shall be implemented to help control and reduce nonpoint source pollution of water resources by adhering to provisions in the Maine Forest Service publication "Erosion and Sediment Control Handbook for Maine Timber Harvesting Operations."

The Town of Bar Harbor hereby ordains that Chapter 125 of the Town Code is amended as follows:

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Chapter 125 , LAND USE ORDINANCE

APPENDIX C, Table of Permitted Uses

	Downtown Residential	Educational Institution	Emery	Hulls Cove Business	Hulls Cove Residential Corridor	Hulls Cove Rural	Indian Point Residential	Indian Point Rural	Industrial	Ireson Hill Corridor	Ireson Hill Residential	McFarland Hill Residential	McFarland Hill Rural	Marine Research	Otter Creek
Forest management activities except timber harvesting... ¹	a	a	a	a	a	a	a	a	a	a	a	a	a	a	a
Forest management activities including timber harvesting...#2 ¹			c	c		c	c	c				c	c		c
	Resource Protection	Salisbury Cove Corridor	Salisbury Cove Residential	Salisbury Cove Rural	Salisbury Cove Village	Schooner Head	Scientific Research	Shoreland General Development I	Shoreland General Development II	Shoreland Limited Residential	Stream Protection	Town Hill Business	Town Hill Residential Corridor	Town Hill Residential	Town Hill Rural
Forest management activities except timber harvesting... ¹	a	a	a	a	a	a	a	a	a	a	a	a	a	a	a
Forest management activities including timber harvesting...#2 ¹	e	e	e	e	e		-							e	e

Appendix C Table of Permitted Uses, Key to Appendix C – Permissibility of Use (Excerpt)

a = Activity or structure allowed without a permit, provided it complies with all provisions of this chapter.

c = Activity or structure requires permit issued by Code Enforcement Officer (CEO) before it may be commenced or built.

#2 = Forest management activities, including timber harvesting supervised by a licensed forester.

¹ = NOTE: An amendment adopted 11-4-2008 provided that these provisions are repealed on the date established under 38M.R.S.A. § 438-B, Subdivision 5.

EXPLANATION:

Title 38 M.R.S.A. section 438-A provides that, notwithstanding other provisions of the Mandatory Shoreland Zoning Act, the regulation of timber harvesting and timber harvesting activities in shoreland areas must be in accordance with section 438-B and rules adopted by the Maine Bureau of Forestry pursuant to Title 12, section 8867-B. Section 438-B establishes three options from which each municipality may choose as the State implements a set of statewide timber harvesting standards in shoreland areas.

The Town of Bar Harbor elects to utilize Option 1.

Option 1: The first option available to a municipality is the complete repeal of timber harvesting provisions from the shoreland zoning ordinance. Under this option the Bureau of Forestry will administer the regulation of all forestry activities within the municipality.

Additionally the Town elects to remove the forest management and timber harvesting standards from the remaining (non-shoreland zoning) areas of the Land Use Ordinance as well.