

**TITLE 16**  
**WORKING WATERFRONT**

1 **1. AMEND 16.3.2 DEFINITIONS as follows:**

2 **AQUACULTURE**

3 The breeding, rearing and harvesting of fish, shellfish, aquatic plants and algae in all  
4 types of water environments for the purpose of human use. The term includes all  
5 processing and storage facilities on land that may be required to engage in such water-  
6 based farming.

7 **FUNCTIONALLY WATER-DEPENDENT USES**

8 Those principal uses that can only occur when in, on, or adjacent to ~~require, for their~~  
9 ~~primary purpose, location on submerged lands or that require direct access to, or~~  
10 ~~location in,~~ coastal and inland waters and which cannot be located away from these  
11 waters, and those uses or structures which are customarily appurtenant to those  
12 principal uses. The uses include, but are not limited to, commercial and recreational  
13 fishing and boating facilities, finfish and shellfish processing, aquaculture, fish storage  
14 and retail and wholesale fish marketing facilities, waterfront dock and port facilities,  
15 ~~excluding recreational boat storage buildings,~~ shipyards and boat-building facilities,  
16 marine construction business facilities, marinas, navigation aids, basins and channels,  
17 industrial uses dependent upon waterborne transportation or requiring large volumes  
18 of cooling or processing water and which cannot reasonably be located or operated at  
19 an inland site, and uses which primarily provide general public access to marine or tidal  
20 waters. ~~as well as structures to house educational programs, apprenticeships and~~  
21 scientific research uses directly related to functionally water-dependent uses and/or  
22 the marine or tidal waters themselves. Recreational boat storage buildings and  
23 accessory marinas intended for recreational boats owned by residents of dwelling units  
24 located on the site, even if additional vessels may lease slips or moorings, are not  
25 functionally water-dependent uses.

26 **2. AMEND 16.1.8 GENERAL DEVELOPMENT REQUIREMENTS as they relate to**  
27 **commercial fishing and working waterfront as follows:**

28 § 16.1.8 General development requirements.

29 A. This chapter outlines requirements for conformity; discusses nonconformance and  
30 waivers; and defines various development review thresholds and requirements to  
31 further the safe and orderly development of the Town.

32 B. Conformity.

33 (1) Conformity required. No building, structure or land may hereafter be used or  
34 occupied, and no building or structure or part thereof may hereafter be erected,  
35 constructed, expanded, moved or altered, and no new lot may be created except in  
36 conformity with all of the regulations herein specified for the zone where it is

- 37 located, unless such structure or use exists as a legally nonconforming use or a  
38 variance is granted. See § 16.7.11B and § 16.8.10D for specific requirements related to  
39 septic waste disposal systems.
- 40 (2) Minimums and uniformity. The regulations specified by this title for each class of  
41 district are minimum requirements and apply uniformly to each class or kind of  
42 structure or land.
- 43 (3) Land within street lines. Land within the lines of a street on which a lot abuts is not  
44 considered as part of such lot for the purposes of meeting the area/frontage  
45 requirements of Chapter 16.4, notwithstanding the fact that the fee to such land  
46 may be in the owner of such lot.
- 47 (4) Yard, parking or loading space. No part of a yard or other space or off-street parking  
48 or loading space about or in connection with any building and required for the  
49 purpose of complying with this title may be included as part of a yard, open space  
50 or off-street parking or loading space similarly required for any other building,  
51 except as authorized in § 16.7.11F.
- 52 (5) Zone boundary line extension. Where a zoning district boundary line divides a lot,  
53 the regulations applicable to either zone of such lot may extend not more than 50  
54 feet into the portion in the other zone(s), except when a less restrictive portion  
55 abuts the Resource Protection Zone.
- 56 (a) Before granting any such extension, the Planning Board must determine that the  
57 proposed use of the extended portion will:
- 58 [1] Not prevent the orderly and reasonable use of properties in the adjacent zone;
- 59 [2] Be in harmony with the character of the adjacent zone;
- 60 [3] Not adversely affect the property values of adjacent zone's immediate  
61 neighborhoods;
- 62 [4] Not create any traffic hazards or undue traffic congestion on streets in the adjacent  
63 zone;
- 64 [5] Not give off obnoxious gases, odors, smoke or soot;
- 65 [6] Not cause disturbing emission of electrical discharges, dust, light, vibration or noise;  
66 and
- 67 [7] Be adequately screened from the adjacent zone.
- 68 [8] Not replace, diminish or adversely impact any existing functionally water-  
69 dependent uses.
- 70 (b) The Planning Board may require a study to be performed or commissioned by the

71 applicant to ensure compliance with the above requirements.

72 (6) Averaging building setbacks. Building setback from the street line need not be  
73 greater than the average of the setback distances of the buildings on the lots next  
74 thereto on either side.

75 C. Nonconformance.

76 (1) Purpose. The purpose of this title is to promote land use conformities and to  
77 regulate nonconforming structures, uses, and lots, and to promote the following  
78 objectives.

79 (2) Prohibitions and allowances.

80 (a) Except as otherwise provided in this title, a nonconforming condition must not be  
81 permitted to become more nonconforming.

82 (b) Nonconforming vacant lots of record may be developed, maintained or repaired.

83 (c) Nonconforming uses may continue, may be changed to an equal or more  
84 appropriate nonconforming use, or be changed to a conforming use.

85 (3) General.

86 (a) Transfer of ownership. Legally nonconforming structures, lots, and uses may be  
87 transferred, and the new owner may continue the nonconforming use or continue  
88 to use the nonconforming structure and/or lot, subject to the provisions of this title.

89 (b) Repair and maintenance. This title allows the normal upkeep and maintenance of  
90 nonconforming uses and structures including repairs or renovations that do not  
91 involve expansion of the nonconforming use or structure that is not otherwise  
92 permitted by this title, and such other changes in a nonconforming use or  
93 structure as federal, state, or local building and safety codes may require.

94 (c) Nonconforming parking or loading space. A structure and/or use which is  
95 nonconforming as to the requirements for off-street loading and/or parking spaces  
96 may not be enlarged or added to unless off-street space is provided sufficient to  
97 satisfy the requirements of this title for both the original and addition or  
98 enlargement of the structure or use.

99 (4) Nonconforming structures.

100 (a) Nonconforming structure relocation. Except where otherwise permitted in this title,  
101 relocation of a nonconforming structure must be approved by the Board of  
102 Appeals. In cases where the structure is located in the Shoreland ~~or~~ Resource  
103 Protection Overlay ~~Zone~~, [or Commercial Fisheries/Maritime Activities Overlay](#)  
104 [Zone\(s\)](#) the relocation must be approved by the Planning Board.

- 105 [1] A nonconforming structure may be relocated within the boundaries of the parcel  
106 on which the structure is located provided the site of relocation conforms to all  
107 dimensional requirements, to the greatest practical extent, as determined by the  
108 Planning Board or Board of Appeals, and provided the applicant demonstrates the  
109 present subsurface sewage disposal system meets the requirements of state law  
110 and the State of Maine Subsurface Wastewater Disposal Rules, or a new system can  
111 be installed in compliance with the law and said rules. In no case may the  
112 relocation of a structure be permitted that causes the structure to be more  
113 nonconforming. See § 16.7.11B and § 16.8.10D, for other specific requirements related  
114 to septic waste disposal systems.
- 115 [2] In determining whether the structure relocation meets the setback to the greatest  
116 practical extent, the Planning Board or Board of Appeals must consider the  
117 following conditions:
- 118 [a] The size of the lot;
- 119 [b] The slope of the land;
- 120 [c] The potential for soil erosion;
- 121 [d] The location of other structures on the property and on adjacent properties;
- 122 [e] The location of the septic system and other on-site soils suitable for septic systems;
- 123 [f] The type and amount of vegetation to be removed to accomplish the relocation.
- 124 [\[g\] Relocation of structures in the Commercial Fisheries/Maritime Activities Overlay](#)  
125 [Zone cannot replace, diminish or adversely impact existing functionally water-](#)  
126 [dependent uses. See §16.4.30, Commercial Fisheries/Maritime Activities Overlay](#)  
127 [Zone.](#)
- 128 [3] When it is necessary to remove vegetation within the water or wetland setback  
129 area to relocate a structure, replanting of native vegetation to compensate for the  
130 destroyed vegetation is required. The Planning Board or Board of Appeals may  
131 restrict mowing around and pruning of the replanted native vegetation to  
132 encourage a more natural state of growth. Tree removal and vegetation replanting  
133 is required as follows, effective February 28, 2015:
- 134 [a] Prior to the commencement of on-site construction, areas to remain undisturbed  
135 must be clearly marked with stakes and caution tape. All stakes, caution tape, silt  
136 fences, and other materials used during construction must remain until all on-site  
137 work is completed. Prior to removal, written permission to remove such materials  
138 must be given by the Code Enforcement Officer.
- 139 [b] Trees removed to relocate a structure must be replanted with at least one native  
140 tree, six feet in height, for every tree removed. If more than five trees are planted, no  
141 one species of tree can be used to make up more than 50% of the number of trees

- 142 planted. Replaced trees must be planted no farther from the water or wetland than  
143 the trees removed.
- 144 [c] Other woody and herbaceous vegetation and ground cover that is removed, or  
145 destroyed, to relocate a structure must be reestablished. An area at least the same  
146 size as the area where vegetation and/or ground cover was disturbed, damaged, or  
147 removed must be reestablished within the setback area. The vegetation and/or  
148 ground cover must consist of native vegetation and/or ground cover similar to that  
149 disturbed, destroyed or removed.
- 150 [d] Where feasible, when a structure is relocated on a parcel, the original location of  
151 the structure must be replanted with vegetation consisting of grasses, shrubs, trees  
152 or a combination thereof.
- 153 [4] If the total footprint of the original structure can be relocated beyond the required  
154 setback area, no portion of the relocated structure may be constructed at less than  
155 the setback requirement for a new structure.
- 156 (b) Nonconforming structure repair and/or expansion.
- 157 [1] The Code Enforcement Officer may approve the repair and/or expansion of a  
158 nonconforming structure provided the proposed expansion is not located in the  
159 base zone setback of the Shoreland Overlay Zone or at any location and meets  
160 either of the following criteria:
- 161 [a] A vertical expansion that follows the existing building footprint;
- 162 [b] Will not result in setbacks less than those existing.
- 163 [c] Installation or replacement of solar energy systems and energy storage systems.
- 164 [2] Except where otherwise permitted in this title, repair and/or expansion of a  
165 nonconforming structure must be approved by the Board of Appeals. In cases  
166 where the structure is located in the base zone setback of the Shoreland ~~Overlay~~  
167 ~~or~~ Resource Protection, or Commercial Fisheries/Maritime Activities Overlay  
168 Zone(s), the repair and/or expansion must be approved by the Planning Board.
- 169 [3] This subsection does not apply to any proposed vertical expansion of a patio, deck  
170 or accessory structure permitted to be closer to a water body or to a principal  
171 structure in accordance with Table 16.5.30, Minimum Setbacks from Wetlands and  
172 Water Bodies.
- 173 [a] A nonconforming structure may be repaired or maintained and may be expanded  
174 in conformity with the dimensional requirements, such as setback, height, etc., as  
175 contained in this title. If the proposed expansion of a nonconforming structure  
176 cannot meet the dimensional requirements of this title, the Board of Appeals or the  
177 Planning Board will review such expansion application and may approve proposed  
178 changes provided the changes are no more nonconforming than the existing

- 179 condition and the Board of Appeals or the Planning Board makes its decision per  
180 § 16.2.12F(2).
- 181 [b] Except in the Residential - Village (R-V) Zone, minimum setbacks of residential  
182 storage sheds that are less than 121 square feet, one-story residential garages that  
183 are less than 577 square feet, and decks less than 251 square feet may be one-half  
184 the minimum rear and side yard setbacks, providing the lots are legally  
185 nonconforming.
- 186 [c] Where the expansion of the residential use within the commercial zones involves  
187 an expansion of a structure, the structure must be expanded in conformity with the  
188 dimensional requirements contained in this title. If the proposed structure  
189 expansion cannot meet the dimensional requirements of this title, the application  
190 may be submitted to the Board of Appeals for review as a miscellaneous variation  
191 request. In reviewing all such applications, the Board of Appeals must use the  
192 criteria established in this section, and then may approve the proposed variations  
193 to the dimensional requirements.
- 194 [d] The addition of steps and landings, exterior to the structure, does not constitute  
195 expansion. Such steps are not to be considered part of the structure for such  
196 determination. Step landings may not exceed three feet by three feet in size.
- 197 [e] In addition to the standards in the above § 16.1.8C(4)(b)[3][a] through [d], the  
198 expansion of nonconforming and the construction of new, enlarged, or  
199 replacement foundation beneath a nonconforming structure located in the  
200 Shoreland or Resource Protection Overlay Zone must meet the following:
- 201 [i] Wherever a new, enlarged, or replacement foundation is constructed under an  
202 existing nonconforming structure the structure and new foundation must be  
203 placed such that setback requirements are met to the greatest practical extent as  
204 determined by the Planning Board, basing its decision on the criteria specified in  
205 § 16.1.8C(4)(a), Nonconforming structure relocation.
- 206 [ii] All new principal and accessory structures, excluding functionally water-dependent  
207 uses, must meet the water body, tributary stream, or wetland setback  
208 requirements contained in § 16.4.28E. A nonconforming structure may be added to  
209 or expanded after obtaining a permit from the same permitting authority as that  
210 for a new structure, if such addition or expansion does not increase the  
211 nonconformity of the structure and is in accordance with § 16.1.8C(4)(b)[3][e][iv] and  
212 [v] below.
- 213 [iii] If a legally nonconforming principal structure is located partially within 25 feet from  
214 the normal high-water line of a water body, tributary stream, or upland edge of a  
215 coastal or freshwater wetland, expansion of the footprint and/or height of any  
216 portion of the structure that is located within 25 feet of the normal high-water line  
217 of a water body, tributary stream, or upland edge of a coastal or freshwater wetland  
218 is prohibited even if the expansion will not increase nonconformity with the water

219 body, tributary stream, or wetland setback requirement. Expansion of an accessory  
220 structure that is located closer to the normal high-water line of a water body,  
221 tributary stream, or upland edge of a coastal or freshwater wetland than the  
222 principal structure is prohibited, even if the expansion will not increase  
223 nonconformity with the water body, tributary stream, or coastal or freshwater  
224 wetland setback requirement.

225 [iv] Notwithstanding § 16.1.8C(4)(b)[3][e][ii], if a legally existing nonconforming principal  
226 structure is entirely located less than 25 feet from the normal high-water line of a  
227 water body, tributary stream, or upland edge of a coastal or freshwater wetland,  
228 that structure may be expanded as follows, as long as all other applicable municipal  
229 land use standards are met and the expansion is not prohibited by  
230 § 16.1.8C(4)(b)[3][e][ii]:

231 [A] The maximum total footprint for the principal structure may not be expanded to a  
232 size greater than 800 square feet or 30% larger than the footprint that existed on  
233 January 1, 1989, whichever is greater. The maximum height of the principal  
234 structure may not be made greater than 15 feet or the height of the existing  
235 structure, whichever is greater.

236 [v] All other legally existing nonconforming principal and accessory structures that do  
237 not meet the water body, tributary stream, or coastal or freshwater wetland  
238 setback requirements may be expanded or altered as follows, as long as other  
239 applicable municipal land use standards are met and the expansion is not  
240 prohibited by § 16.1.8C(4)(b)[3][e][ii] and [iii], above:

241 [A] For structures located less than the base zone setback from the normal high-water  
242 line of a water body, tributary stream, or upland edge of a coastal or freshwater  
243 wetland, the maximum combined total footprint for all structures may not be  
244 expanded to a size greater than 1,000 square feet, or 30% larger than the footprint  
245 that existed on January 1, 1989, whichever is greater. The maximum height of any  
246 portion of a structure that is located within the base zone setback may not be  
247 made greater than 20 feet, or the height of the existing structure, whichever is  
248 greater.

249 [B] In addition to the limitations in § 16.1.8C(4)(b)[3][e][v] above, for structures that are  
250 legally nonconforming due to their location within the Resource Protection Overlay  
251 Zone when located at less than 250 feet from the normal high-water line of a water  
252 body or the upland edge of a coastal or freshwater wetland, the maximum  
253 combined total footprint for all structures may not be expanded to a size greater  
254 than 1,500 square feet, or 30% larger than the footprint that existed at the time the  
255 Resource Protection Overlay Zone was established on the lot, whichever is greater.  
256 The maximum height of any structure may not be greater than 25 feet, or the  
257 height of the existing structure, whichever is greater, except that any portion of  
258 those structures located less than the base zone setback from the normal high-  
259 water line of a water body, tributary stream, or upland edge of a coastal or  
260 freshwater wetland must meet the footprint and height limits in

261 § 16.1.8C(4)(b)[3][e][iv][A] and [v][A], above.

262 [vi] An approved plan for expansion of a nonconforming structure must be recorded by  
263 the applicant with the York County Registry of Deeds within 90 days of approval.  
264 The recorded plan must show the existing and proposed footprint of the  
265 nonconforming structure, the existing and proposed structure height, the footprint  
266 of any other structures on the parcel, the Shoreland Overlay Zone and/or the  
267 Resource Protection Overlay Zone boundary and evidence of approval by the  
268 municipal review authority.

269 [\[f\] Expansion or changes in structures in the Commercial Fisheries/Maritime Activities](#)  
270 [Overlay Zone cannot replace, diminish or adversely impact existing functionally](#)  
271 [water-dependent uses. See §16.4.30, Commercial Fisheries/Maritime Activities](#)  
272 [Overlay Zone.](#)

273 (c) Nonconforming structure reconstruction.

274 [1] In the Shoreland or Resource Protection Overlay Zone(s), any nonconforming  
275 structure which is located less than the required setback from a water body,  
276 tributary stream, or coastal or freshwater wetland and which is removed, damaged  
277 or destroyed, by any cause, by more than 50% of the assessed value of the structure  
278 before such damage, destruction or removal, may be reconstructed or replaced,  
279 provided that a permit is obtained within 18 months of the date of said damage,  
280 destruction, or removal, and provided that such reconstruction or replacement is in  
281 compliance with the water body, tributary stream or coastal or freshwater wetland  
282 setback requirement to the greatest practical extent as determined by the  
283 Planning Board. In determining whether the structure reconstruction meets the  
284 setback to the greatest practical extent the Planning Board must consider, in  
285 addition to the criteria in § 16.1.8C(4)(a), Nonconforming structure relocation, the  
286 physical condition and type of foundation present, if any.

287 [2] In the Shoreland or Resource Protection Overlay Zone(s), any nonconforming  
288 structure which is located less than the required setback from a water body,  
289 tributary stream, or coastal or freshwater wetland and removed, damaged or  
290 destroyed by any cause by 50% or less of the assessed value of the structure before  
291 such damage, destruction or removal, may be reconstructed in place if a permit is  
292 obtained from the Code Enforcement Officer within 12 months of the established  
293 date of damage or destruction.

294 [3] Outside of the Shoreland or Resource Protection Overlay Zone(s), any  
295 nonconforming structure which is removed, damaged or destroyed by any cause  
296 may be restored or reconstructed in place if a permit is obtained from the Code  
297 Enforcement Officer within 18 months of the date of said removal, damage or  
298 destruction. Such restoration or reconstruction must not make the structure more  
299 nonconforming than the prior nonconforming structure.

300 [4] Nothing in this section prevents the demolition of the remains of any structure

- 301 damaged or destroyed. Application for a demolition permit for any structure that  
302 has been partially damaged or destroyed must be made to the Code Enforcement  
303 Officer.
- 304 [5] In the Shoreland or Resource Protection Overlay Zone(s), if the total footprint of the  
305 original structure can be reconstructed beyond the required setback area, no  
306 portion of the reconstructed structure may be reconstructed at less than the  
307 setback requirement for a new structure. If the reconstructed or replacement  
308 structure is less than the required setback, it may not be any larger than the  
309 original structure, except as allowed in § 16.1.8C(4)(b), Nonconforming structure  
310 repair and expansion.
- 311 [6] When it is necessary to remove vegetation to reconstruct a structure, vegetation  
312 must be replanted in accordance with § 16.1.8C(4)(a)[3], Nonconforming structure  
313 relocation.
- 314 [7] Except where expressly permitted in this title, in no case may a structure be  
315 reconstructed or replaced so as to increase its nonconformity.
- 316 [\[8\] Reconstruction of structures in the Commercial Fisheries/Maritime Activities  
317 Overlay Zone cannot replace, diminish or adversely impact existing functionally  
318 water-dependent uses. See §16.4.30, Commercial Fisheries/Maritime Activities  
319 Overlay Zone.](#)
- 320 (5) Nonconforming uses.
- 321 (a) Nonconforming use continuance. The use of land, or structure, lawful at the time  
322 such use began, may continue although such use may not meet the provisions of  
323 this title.
- 324 (b) Resumption of discontinued use prohibited. A nonconforming use discontinued for  
325 a period exceeding one year, or which is superseded by a conforming use, loses its  
326 status as a permitted nonconforming use. The uses of the land or structure must  
327 thereafter meet the provisions of this title. This provision does not apply to the  
328 resumption of a use of a residential structure where it can be demonstrated that  
329 the structure has been used or maintained for residential occupancy during the  
330 preceding five-year period.
- 331 (c) Nonconforming use expansion. Expansion of nonconforming uses is prohibited,  
332 except nonconforming residential uses may be expanded within existing  
333 residential structures. Where the expansion of a nonconforming residential use  
334 involves the expansion of a structure, the structure must be expanded in  
335 conformity with all requirements as outlined in § 16.1.8C(4), Nonconforming  
336 structures. [Expansion of nonconforming residential uses shall not include  
337 expanding the number of nonconforming residential units on the property.](#)
- 338 [\[1\] Expansion or changes in uses, including any pertinent structures, in the](#)

339 [Commercial Fisheries/Maritime Activities Overlay Zone cannot replace, diminish or](#)  
340 [adversely impact existing functionally water-dependent uses. See §16.4.30,](#)  
341 [Commercial Fisheries/Maritime Activities Overlay Zone.](#)

342 (d) Nonconforming use change: review authority and evaluations. The reviewing  
343 authority may require evaluations be prepared by a person certified and/or  
344 qualified to perform the required evaluation. It is the burden and responsibility of  
345 the applicant to bear the costs for such evaluations. In the event there are existing  
346 official maps, data and/or reports for general use, the applicant is encouraged to  
347 submit copies of these documents to the reviewing authority. In determining that  
348 no greater adverse impact will occur, the applicant may be required to submit an  
349 evaluation in writing regarding the probable effects on public health and safety,  
350 erosion and sedimentation, water quality, fish and wildlife habitat, vegetative cover,  
351 visual and actual points of public access to waters, natural beauty, floodplain  
352 management, archaeological and historic resources, and commercial fishing and  
353 maritime activities, and other functionally water-dependent uses.

354 [1] The Town Planner and the Code Enforcement Officer may approve the change of  
355 use of a nonconforming structure where it can be deemed the proposed use is a  
356 conforming use and the proposed use does not impact a water body, tributary  
357 stream, or wetland.

358 [2] Outside the areas regulated by Shoreland Overlay Zone or Resource Protection  
359 Overlay Zone, an existing nonconforming use may be changed to another  
360 nonconforming use with approval of the Board of Appeals.

361 [3] Within areas regulated by Shoreland Overlay, ~~Zone or~~ Resource Protection, [or](#)  
362 [Commercial Fisheries/Maritime Activities](#) Overlay Zone(s), an existing  
363 nonconforming use may be changed to another nonconforming use with the  
364 approval of the Planning Board.

365 **3. AMEND 16.4.30 COMMERCIAL FISHERIES/MARITIME ACTIVITIES OVERLAY ZONE**  
366 **as follows:**

367 § 16.4.30 Commercial Fisheries/Maritime Activities Overlay Zone (OZ-CFMU).

368 A. Purpose. The purpose of the Commercial Fisheries/Maritime Uses Overlay Zone is  
369 to provide [the protection and/or expansion of existing](#) ~~for the development and~~  
370 ~~expansion of functionally~~ water-dependent ~~commercial fisheries/maritime~~  
371 ~~activities~~ [uses while encouraging additional development of](#) ~~working waterfront~~  
372 [associated with functionally water-dependent uses. The](#) ~~Commercial~~ [Commercial](#)  
373 ~~fisheries~~ [Fisheries/maritime](#) ~~Maritime activities~~ [Activities Zone](#) ~~and other~~ [includes](#)  
374 [both areas where the existing pattern of development is consistent with uses](#)  
375 [described in §16.4.30 D and other](#) areas suitable for functionally water-dependent  
376 uses, [taking the following factors into](#) ~~considerations~~:

377 (1) Shelter from prevailing winds and waves;

- 378 (2) Slope of the land within 250 feet, horizontal distance, of the normal high-water line;
- 379 (3) Depth of the water within 150 feet, horizontal distance, of the shoreline;
- 380 (4) Available support facilities, including utilities and transportation facilities; and
- 381 (5) Compatibility with adjacent upland uses.

382 B. Authority. These provisions have been prepared in accordance with the provisions  
383 of 38 M.R.S.A. §§ 435 to 449.

384 C. Applicability and boundaries. The provisions of this section apply to all uses, lots  
385 and structures within applicable areas as shown on the Zoning Map where:

386 (1) ~~where~~ The existing predominant pattern of development on the property is  
387 consistent with the allowed uses for this overlay zone,

388 (2) ~~where consistent~~ The uses, lots and structures are consistent with dimensional  
389 requirements of the underlying base zone, and

390 (3) ~~where~~ The active use of lands, ~~buildings~~ structures, wharves, piers, floats or  
391 landings ~~with the principal intent of such activity is~~ are principally intended for the  
392 production of income by an individual or legal business entity through the  
393 operation of a vessel(s) ~~as shown on the Zoning Map~~. The activity may be either a  
394 principal or accessory use, as defined in this title.

395 D. Permitted uses. Functionally water-dependent ~~commercial fisheries/marine~~  
396 ~~activities~~ uses as defined in §16.3.2.

397 E. Special exception uses: Facilities to house educational programs, scientific research  
398 or apprenticeships directly related to functionally water-dependent use(s) or to  
399 marine or tidal waters.

400 (1) The applicant seeking approval for such facilities must demonstrate to the  
401 Planning Board's satisfaction that the use and any proposed structures are directly  
402 related to functionally water-dependent uses or to the marine or tidal waters. If the  
403 use is located on the same property as a functionally water-dependent use, the  
404 applicant must also demonstrate to the Planning Board's satisfaction that any  
405 impacts to the functionally water-dependent use will be minimized. ~~none~~

406 F. Standards. Dimensional standards of the underlying base and overlay zone(s).

407 G. Prohibited uses. ~~All permitted uses in the base zones, including R-KPV, R-U, R-S,~~  
408 ~~IND and MU-KF, except as permitted herein.~~ A use that is not functionally water-  
409 dependent as defined in §16.3.2 is considered non-conforming and is prohibited.  
410 Such a non-conforming use, along with any requisite structures, cannot replace a  
411 functionally water-dependent use on a lot in this overlay zone, either as a new use  
412 or as a change of use.

413 (1) Any additional use(s) and/or structure(s) that is not functionally water-dependent  
414 proposed on the same lot as the functionally water-dependent use, must be  
415 located outside the Commercial Fisheries/Maritime Activities Overlay Zone on the  
416 lot. In addition, it is incumbent upon the applicant proposing such a use(s) and/or  
417 structure(s) to demonstrate to the Planning Board's satisfaction that any adverse  
418 impacts to the existing functionally water-dependent use will be minimized. The  
419 Planning Board may seek professional opinion(s) when making such a  
420 determination and such fees as may be incurred must be paid by the applicant.

421 (2) Expansions of non-functionally water-dependent uses or structures in the  
422 Commercial Fisheries/Maritime Activities Overlay Zone are prohibited except as  
423 allowed in §16.1.8.C (4)(b).

424  
425 H. Lots in two or more overlay zones. In cases where the Commercial  
426 Fisheries/Maritime Activities Overlay Zone is one of two or more overlay zones pertinent  
427 to a lot, this overlay zone's requirements and standards are not subordinate to  
428 Shoreland and/or Resource Protection Overlay Zone's requirements. No changes of use  
429 from functionally water-dependent uses to non-functionally water-dependent uses on  
430 a lot within the Commercial Fisheries/Maritime Activities Overlay Zone are allowed  
431 except as described in §16.4.30.G (1) above.

432 I. Submerged Lands. All appropriate permits and approvals must be issued and  
433 submitted prior to Planning Board approval.

434 J. Any structures, including but not limited to docks, wharves, or piers, proposed  
435 beyond the highest annual tide (HAT) must receive approval from the Kittery Port  
436 Authority (KPA) prior to being heard by the Planning Board.

437 **4. AMEND 16.4.24.D(3) sections of MIXED-USE-BADGER ISLAND to reference**  
438 **functionally water-dependent uses as follows:**

439 (3) Appropriate waterfront activity incentives. To encourage objectives of the  
440 Comprehensive Plan to: 1) provide public access to the waterfront; 2) retain and/or  
441 expand ~~commercial~~ functionally water-dependent uses; and 3) take extraordinary steps  
442 to preserve the environmental quality of the shoreline and tidal waters, the required  
443 setback from water bodies and wetlands may be reduced to 25 feet where the  
444 Planning Board finds a development plan significantly contributes to accomplishment  
445 of the above objectives by satisfactorily achieving one or more of the following:

446 (a) Public access. Grants an easement to the Town, or other acceptable party, providing  
447 public access to the waterfront at no charge to the general public via a developed  
448 accessible pedestrian route with appropriate signage or includes an outdoor deck or  
449 patio for customer seating at a restaurant open to the general public; or

450 (b) Retain and/or expand commercial water-dependent uses. Provides for inclusion of  
451 ~~commercial~~ functionally water-dependent use(s) on the property for the duration of

452 the portion of the project that encroaches closer than the normal minimum setback  
453 from water bodies and wetlands. Provision of fewer than six boat slips for  
454 leisure/recreational boating do not constitute a commercial water-dependent use for  
455 the purposes of this section; or