

# **Title 38: WATERS AND NAVIGATION**

## **Chapter 6: SACO RIVER CORRIDOR**

### **Table of Contents**

<b>Section 951. PURPOSE.....</b>	<b>3</b>
<b>Section 952. DEFINITIONS.....</b>	<b>3</b>
<b>Section 953. SACO RIVER CORRIDOR ESTABLISHED.....</b>	<b>6</b>
<b>Section 954. CREATION OF THE SACO RIVER CORRIDOR COMMISSION.....</b>	<b>7</b>
<b>Section 954-A. OFFICERS AND MEETINGS.....</b>	<b>7</b>
<b>Section 954-B. COMMISSION BUDGET; FINANCING AND EXECUTIVE DIRECTOR.....</b>	<b>8</b>
<b>Section 954-C. RULE-MAKING POWERS.....</b>	<b>8</b>
<b>Section 954-D. ADDITIONAL POWERS AND DUTIES.....</b>	<b>9</b>
<b>Section 955. ACQUISITION OF PROPERTY INTERESTS.....</b>	<b>9</b>
<b>Section 956. THE COMPREHENSIVE PLAN.....</b>	<b>9</b>
<b>Section 957. USE DISTRICTS AND CLASSIFICATIONS.....</b>	<b>10</b>
<b>Section 957-A. RESOURCE PROTECTION DISTRICT.....</b>	<b>10</b>
<b>Section 957-B. LIMITED RESIDENTIAL DISTRICT.....</b>	<b>13</b>
<b>Section 957-C. GENERAL DEVELOPMENT DISTRICT.....</b>	<b>15</b>
<b>Section 957-D. OMITTED USES.....</b>	<b>17</b>
<b>Section 958. EXISTING USES.....</b>	<b>17</b>
<b>Section 959. PERMITS REQUIRED.....</b>	<b>18</b>
<b>Section 959-A. REQUIREMENTS FOR GRANTING PERMITS.....</b>	<b>18</b>
<b>Section 959-B. PERMITS WITH CONDITIONS.....</b>	<b>19</b>
<b>Section 960. DISTRICT BOUNDARY MAPS.....</b>	<b>19</b>
<b>Section 961. RELATION TO MUNICIPAL, STATE AND FEDERAL REGULATIONS.....</b>	<b>19</b>
<b>Section 962. GENERAL PERFORMANCE STANDARDS.....</b>	<b>20</b>
<b>Section 962-A. ADDITIONAL PERFORMANCE STANDARDS.....</b>	<b>21</b>
<b>Section 962-B. AMENDMENTS TO DISTRICT BOUNDARIES AND PERFORMANCE STANDARDS.....</b>	<b>22</b>
<b>Section 963. VARIANCE FROM PERFORMANCE STANDARDS.....</b>	<b>22</b>
<b>Section 963-A. SPECIAL USE VARIANCE.....</b>	<b>23</b>
<b>Section 964. CERTIFICATE OF COMPLIANCE.....</b>	<b>24</b>
<b>Section 965. FEES.....</b>	<b>24</b>
<b>Section 966. PARTIES TO PROCEEDINGS.....</b>	<b>24</b>
<b>Section 966-A. CITIZENS' GROUPS OR ORGANIZATIONS.....</b>	<b>24</b>
<b>Section 967. ENFORCEMENT, INSPECTION AND PENALTIES FOR VIOLATIONS.....</b>	<b>25</b>
<b>Section 968. APPEALS TO SUPERIOR COURT.....</b>	<b>26</b>

**Section 969. SACO RIVER CORRIDOR FUND..... 27**

**Maine Revised Statutes**  
**Title 38: WATERS AND NAVIGATION**  
**Chapter 6: SACO RIVER CORRIDOR**

**§951. PURPOSE**

The Legislature finds that the Saco, Ossipee and Little Ossipee Rivers are largely unspoiled by intensive or poorly planned commercial, industrial or residential development; that existing water quality on the inland portions of these rivers is extremely high; that these rivers and their associated wetlands constitute an important present and future source of drinking water; that they support large and diverse aquatic populations; and that they are heavily used for fishing, swimming, canoeing, camping and other forms of outdoor recreation. [1979, c. 459, §1 (NEW).]

The Legislature finds that the wetlands associated with these rivers constitute important water storage areas; that they moderate the flow of these rivers in time of flood and drought; that they replenish the groundwater; and that they provide nutrients and essential habitat for numerous species of fish, migratory birds and other forms of wildlife. [1979, c. 459, §1 (NEW).]

The Legislature finds that the periodic flooding of these rivers contributes to the fertility of the adjacent lands; that the unrestricted flow of water within the floodway in the upper portions of these rivers is an essential factor in limiting the severity of flooding in the lower portions of these rivers; and that because the floodplains are largely undeveloped, the flooding which now occurs results in relatively little loss of life, personal injury and damage to property. [1979, c. 459, §1 (NEW).]

The Legislature finds that these rivers and their adjacent lands possess outstanding scenic and aesthetic qualities and that certain areas along these rivers are of outstanding scenic, historic, archaeological, scientific and educational importance. [1979, c. 459, §1 (NEW).]

The Legislature finds that the towns along these rivers are experiencing rapid population growth and that the rivers themselves are subject to increasing development pressures which threaten to destroy the quality of these rivers and the character of the adjacent lands. [1979, c. 459, §1 (NEW).]

In view of the dangers of intensive and poorly planned development, it is the purpose of this chapter to preserve existing water quality, prevent the diminution of water supplies, to control erosion, to protect fish and wildlife populations, to prevent undue extremes of flood and drought, to limit the loss of life and damage to property from periodic floods; to preserve the scenic, rural and unspoiled character of the lands adjacent to these rivers; to prevent obstructions to navigation; to prevent overcrowding; to avoid the mixture of incompatible uses; to protect those areas of exceptional scenic, historic, archaeological, scientific and educational importance; and to protect the public health, safety and general welfare by creating the Saco River Corridor, established in section 953, and by regulating the use of land and water within this area. [1989, c. 503, Pt. B, §177 (AMD).]

**SECTION HISTORY**

1979, c. 459, §1 (NEW). 1983, c. 812, §293 (AMD). 1989, c. 503, §B177 (AMD).

**§952. DEFINITIONS**

As used in this chapter, unless the context otherwise indicates, the following terms shall have the following meanings. [1979, c. 459, §1 (NEW).]

**1. Accepted road.** "Accepted road" means a state, county or town road which is under the control of state, county or municipal authorities and maintained at public expense.

[ 1979, c. 459, §1 (NEW) .]

**2. Accessory use or structure.** "Accessory use or structure" means a use or structure of a nature customarily incidental and subordinate to a principal use or structure.

[ 1979, c. 459, §1 (NEW) . ]

**3. Automobile graveyard.** "Automobile graveyard" means a yard, field or parcel of land used as a place of storage for 3 or more unserviceable, discarded, worn out or junked motor vehicles.

[ 1979, c. 459, §1 (NEW) . ]

**4. Billboard.** "Billboard" means a sign, structure or surface, or combination thereof, used for advertising purposes exceeding 15 square feet in area.

[ 1979, c. 459, §1 (NEW) . ]

**5. Bog.** "Bog" means a periodically or continually wet, spongy area exceeding 1,000 square feet in area with soil composed mainly of decayed vegetable matter.

[ 1979, c. 459, §1 (NEW) . ]

**6. Building.** "Building" means any structure, regardless of the materials of which it is constructed, which has a roof or partial roof supported by columns or walls, used or intended to be used for the habitation, enclosure or shelter of persons or animals or to provide uses which include, but are not limited to, working, office, display, sales, storage or parking space.

[ 1979, c. 459, §1 (NEW) . ]

**7. Development.** "Development" means the carrying out of any significant earthmoving, grading, dredging, filling, building, construction or mining operation; the deposit of refuse or solid or liquid wastes on a parcel of land other than agricultural utilization of animal wastes; the making of any material change in noise levels, thermal conditions or emissions of waste material; the commencement or change in the location of advertising; or the alteration of a shore, bank or floodplain of an estuary, river or pond.

[ 1979, c. 459, §1 (NEW) . ]

**8. District.** "District" means a specified area of land or water within the corridor, delineated on the district boundary map, within which certain regulations and requirements apply under this chapter.

[ 1979, c. 459, §1 (NEW) . ]

**9. 100-year floodplain.** "100-year floodplain" means any land adjacent to the Saco River, Ossipee River or the Little Ossipee River which is of lower elevation than the profiles of the 100-year flood established for that location by the United States Army Corps of Engineers, or by other state or federal agency, or which was actually covered by flood waters in the flood of March, 1936. Where the location of the boundary of the 100-year floodplain is at issue under this chapter, the district boundary map adopted by the commission shall be prima facie evidence of the location of the boundary.

[ 1979, c. 459, §1 (NEW) . ]

**10. Home occupation or enterprise.** "Home occupation or enterprise" means an occupation, enterprise or profession which is carried on in a dwelling unit or accessory structure by a person residing in the dwelling unit, incidental and secondary to the use of the dwelling unit for residential purposes, which conforms to the following performance standards:

A. Not more than 2 full-time employees or the equivalent thereof not living on the premises shall be employed in the home occupation or enterprise; [1979, c. 459, §1 (NEW) . ]

B. All exterior signs and displays shall comply with the performance standards enacted by or established pursuant to this chapter; and [1979, c. 459, §1 (NEW).]

C. There shall be no nuisance, offensive noise, vibration, smoke, dust, odors, heat, glare or radiation generated which is incompatible with the character of the area in which the home occupation or enterprise is located. [1979, c. 459, §1 (NEW).]

[ 1979, c. 459, §1 (NEW) . ]

**11. Junkyard.** "Junkyard" means a yard, field or other parcel of land used as a place for storage for:

A. Discarded, worn-out or junked plumbing and heating supplies or household appliances and furniture; [1979, c. 459, §1 (NEW).]

B. Discarded scrap and junked lumber; [1979, c. 459, §1 (NEW).]

C. Old or scrap copper, brass, rope, rags, batteries, paper, trash, rubbish, debris, waste and all scrap iron, steel and other scrap ferrous or nonferrous material; and [1979, c. 459, §1 (NEW).]

D. Garbage dumps, waste dumps and sanitary fill. [1979, c. 459, §1 (NEW).]

[ 1979, c. 459, §1 (NEW) . ]

**12. Marsh.** "Marsh" means a periodically wet or continually flooded land area exceeding 1,000 square feet with the surface not deeply submerged, covered dominantly with sedges, cattails, rushes or other hydrophytic plants.

[ 1979, c. 459, §1 (NEW) . ]

**13. Mean high waterline.** "Mean high waterline" means the average high tide level.

[ 1979, c. 459, §1 (NEW) . ]

**14. Normal high water line.** "Normal high water line" means the line on the shore or bank of the fresh-water portion of a river at the point or elevation where the natural vegetation changes from predominantly aquatic to predominantly terrestrial. Where the location of the normal high water line is at issue under this chapter, the district boundary map adopted by the commission shall be prima facie evidence of its location.

[ 1979, c. 459, §1 (NEW) . ]

**15. Public right-of-way.** "Public right-of-way" is an improved roadway maintained for passage by motor vehicles in which the owner of fee does not control the right of passage.

[ 1995, c. 171, §1 (AMD) . ]

**15-A. Service drop.** "Service drop" means any utility line extension that does not cross or run beneath any portion of a water body as long as:

A. In the case of electric service:

(1) The placement of wires or the installation of utility poles is located entirely upon the premises of the customer requesting service or upon a roadway right-of-way; and

(2) The total length of the extension is less than 1,000 feet; or [1995, c. 171, §2 (NEW) . ]

B. In the case of telephone service:

(1) The extension, regardless of length, is made by the installation of telephone wires to existing utility poles; or

(2) The extension requiring the installation of new utility poles or placement underground is less than 1,000 feet in length. [1995, c. 171, §2 (NEW).]

[ 1995, c. 171, §2 (NEW) .]

**16. Structure.** "Structure" means any object of a significant nature constructed or erected with a fixed location on or in the ground, or attached to something having a fixed location or in the ground, which may include, but is not limited to, buildings, mobile homes, walls, fences, billboards, signs, piers and floats.

[ 1979, c. 459, §1 (NEW) .]

**17. Swamp.** "Swamp" means a periodically or continually wet area exceeding 1,000 square feet in area which supports tree growth.

[ 1979, c. 459, §1 (NEW) .]

**17-A. Tributary stream.** "Tributary stream" means a channel between defined banks and associated flood plain wetlands. A channel is created by the action of surface water and has 2 or more of the following characteristics.

A. It is depicted as a solid or broken blue line on the most recent edition of the U.S. Geological Survey 7.5 series topographic map or, if not available, a 15-minute series topographic map. [1995, c. 171, §2 (NEW).]

B. It contains or is known to contain water flowing continuously for a period of at least 3 months of the year in most years. [1995, c. 171, §2 (NEW).]

C. The channel bed is primarily composed of mineral material such as sand and gravel, parent material or bedrock that has been deposited or scoured by water. [1995, c. 171, §2 (NEW).]

D. The channel contains aquatic animals such as fish, aquatic insects or mollusks in the water or, if no surface water is present, within the stream bed. [1995, c. 171, §2 (NEW).]

E. The channel contains aquatic vegetation and is essentially devoid of upland vegetation. [1995, c. 171, §2 (NEW).]

"Tributary stream" does not mean a ditch or other drainage way constructed and maintained solely for the purpose of draining storm water, nor does it mean a grassy swale.

[ 1995, c. 171, §2 (NEW) .]

**18. Wetlands.** "Wetlands" means marshes, bogs, swamps and other areas exceeding 1,000 square feet, periodically covered by water which exhibit predominantly aquatic vegetation.

[ 1979, c. 459, §1 (NEW) .]

#### SECTION HISTORY

1979, c. 459, §1 (NEW). 1995, c. 171, §§1,2 (AMD).

### §953. SACO RIVER CORRIDOR ESTABLISHED

There is hereby created the Saco River Corridor, herein referred to as the "corridor," which includes the Saco River from the landward side of the rock jetty in Saco Bay to the New Hampshire border; the Ossipee River from its confluence with the Saco River to the New Hampshire border; and the Little Ossipee River from its confluence with the Saco River to the New Hampshire border at Balch Pond. [1995, c. 171, §3 (AMD).]

The corridor also includes the lands adjacent to these rivers to a distance of 500 feet as measured on a horizontal plane from the normal or mean high water line of these rivers or to the edge of the 100-year floodplain if that extends beyond 500 feet, up to a maximum of 1,000 feet. [1995, c. 171, §3 (AMD).]

#### SECTION HISTORY

1979, c. 459, §1 (NEW). 1995, c. 171, §3 (AMD).

### **§954. CREATION OF THE SACO RIVER CORRIDOR COMMISSION**

To carry out the purpose stated in section 951, the Saco River Corridor Commission, as established by Title 5, section 12004-G, subsection 13, shall hereafter in this chapter be called the "commission." The commission is charged with implementing this chapter within the Saco River Corridor and shall have and exercise all the powers and authorities necessary to carry out the purposes of this chapter and the powers and authorities granted herein. The commission shall consist of one member and one alternate from each municipality whose jurisdiction includes lands or bodies of water encompassed by the Saco River Corridor. Members and alternates shall not be personally liable for the official acts of the commission. [1989, c. 503, Pt. B, §178 (AMD).]

Appointments to the commission shall be made by the municipal officers of each municipality who may consult with the planning board of that municipality. The initial members and alternates shall be appointed within 30 days of the effective date of this chapter. Members of the commission and alternates shall serve staggered 3-year terms. The term of office of the initial members and alternates shall be determined by lot with 1/3 of the initial members and alternates selected respectively for one, 2 and 3-year terms. The member and alternate from the same municipality shall serve the same term. [1979, c. 459, §1 (NEW).]

Appointed and elected officials of the municipalities with lands within the corridor shall be eligible to serve as members of the commission, and such service shall not be considered a conflict of interest. The members shall be sworn to the faithful performance of their duties as such by a dedimus justice and 7 members or alternates qualified to vote shall constitute a quorum for the transaction of business. [1979, c. 459, §1 (NEW).]

#### SECTION HISTORY

1979, c. 459, §1 (NEW). 1983, c. 812, §294 (AMD). 1989, c. 503, §B178 (AMD).

### **§954-A. OFFICERS AND MEETINGS**

The commission shall elect annually, from its own membership, a chair and secretary and such other officers as it deems necessary. Meetings must be held at the call of the chair or at the call of more than 1/2 of the membership. The meetings must be held no less frequently than 8 times a year. The minutes of all proceedings of the commission are a public record available and on file in the office of the commission. Members of the commission must be compensated according to the provisions of Title 5, chapter 379. [2013, c. 2, §49 (COR).]

Alternate members shall be allowed to participate in all proceedings of the commission, but shall vote only in the absence of the regular member from the municipality which they represent. Public hearings conducted under the authority of this chapter may be held by a single member, alternate or hearing officer designated by the commission. [1979, c. 459, §1 (NEW).]

#### SECTION HISTORY

1979, c. 459, §1 (NEW). 1983, c. 812, §295 (AMD). RR 2013, c. 2, §49 (COR).

## §954-B. COMMISSION BUDGET; FINANCING AND EXECUTIVE DIRECTOR

The commission shall prepare a biennial budget and shall submit to the Legislature requests for appropriations sufficient to carry out its assigned tasks. The commission may accept contributions of any type from any source to assist it in carrying out its assigned tasks, and make such agreements in respect to the administration of such funds, not inconsistent with this chapter, as are required as conditions precedent to receiving such funds, federal or otherwise. The commission may contract with municipal, state and federal governments or their agencies to assist in the carrying out of any of its assigned tasks. The commission is authorized to employ an executive director who shall be the principal administrative, operational and executive employee of the commission. The executive director shall attend all meetings of the commission and be permitted to participate fully, but shall not be a voting member of the commission. The executive director, with the approval of the commission, may hire whatever competent professional personnel and other staff as may be necessary and he may obtain office space, goods and services as required. [1979, c. 459, §1 (NEW).]

### SECTION HISTORY

1979, c. 459, §1 (NEW).

## §954-C. RULE-MAKING POWERS

1. The commission shall have the power, after notice and public hearing, to adopt such rules and regulations governing its procedures as it deems necessary to carry out the purposes of this chapter. The rules and regulations may cover but shall not be limited to:

- A. The form and content of applications; [1979, c. 459, §1 (NEW).]
- B. The conduct of meetings and hearings; [1979, c. 459, §1 (NEW).]
- C. The determination of parties to hearings; [1979, c. 459, §1 (NEW).]
- D. The provision, form and content of both public notice and notice to individuals, groups and property owners affected by proposed action of the commission; [1979, c. 459, §1 (NEW).]
- E. The issuance and revocation of permits and certificates of compliance; [1979, c. 459, §1 (NEW).]
- F. The issuance of decisions and findings of facts; [1979, c. 459, §1 (NEW).]
- G. The adoption, amendment and interpretation of district boundaries; [1979, c. 459, §1 (NEW).]
- H. The amendment and revision of the comprehensive plan; [1979, c. 459, §1 (NEW).]
- I. The adoption and amendment of a schedule of fees; [1979, c. 459, §1 (NEW).]
- J. The adoption and amendment of additional performance standards for permitted uses under section 962-A; and [1979, c. 459, §1 (NEW).]
- K. The grant or denial of variances. [1979, c. 459, §1 (NEW).]

[ 1979, c. 459, §1 (NEW) .]

2. In adopting rules and regulations under this section, the commission shall consider, in addition to the other requirements set forth in this chapter, the following factors:

- A. Expense and facility of administration; [1977, c. 459, §1 (NEW).]
- B. Convenience to landowners and individuals affected; [1977, c. 459, §1 (NEW).]
- C. Encouragement of public participation; and [1977, c. 459, §1 (NEW).]

D. Cooperation with municipal and state officials. [1977, c. 459, §1 (NEW).]

[ 1979, c. 459, §1 (NEW) .]

#### SECTION HISTORY

1979, c. 459, §1 (NEW).

### §954-D. ADDITIONAL POWERS AND DUTIES

**1. -- additional.** In order to implement this chapter, the commission may, in addition to the powers and duties otherwise authorized by this chapter:

A. Adopt an official seal; [1979, c. 459, §1 (NEW).]

B. Compel attendance of witnesses and require production of evidence; [1979, c. 459, §1 (NEW).]

C. Designate or request municipal, state or federal agencies to receive applications, provide assistance, make investigations and submit recommendations; [1979, c. 459, §1 (NEW).]

D. Conduct joint hearings with municipal officers or other appropriate state or local agencies where joint approval may be required; and [1979, c. 459, §1 (NEW).]

E. Sue and be sued in its own name, plead and be impleaded. [1979, c. 459, §1 (NEW).]

[ 1979, c. 459, §1 (NEW) .]

#### SECTION HISTORY

1979, c. 459, §1 (NEW).

### §955. ACQUISITION OF PROPERTY INTERESTS

The commission may acquire conservation easements or other interest in real estate in the name of the State by gift, purchase, grant, bequest, devise or lease for any of its purposes and may convey administration thereof to any appropriate agency. [1979, c. 459, §1 (NEW).]

A conservation easement under this section may be a development right, covenant or other contractual right, including a conveyance with conditions or with limitations or reversions, as may be desirable to conserve and properly utilize open spaces and other land and water areas in the corridor. [1979, c. 459, §1 (NEW).]

#### SECTION HISTORY

1979, c. 459, §1 (NEW).

### §956. THE COMPREHENSIVE PLAN

**1. Guide for boundaries.** The comprehensive plan submitted to the 106th Legislature by the Saco River Environmental Advisory Committee must be used as a guide by the planning boards of the municipalities within the corridor in making recommendations for district boundaries and by the commission in establishing final boundaries. The comprehensive plan may not be regarded as a final and complete design for the future of the land and water areas within the corridor, but as the basis of a continuing planning process to be carried out by the commission in conjunction with local officials, regional planning districts, councils of government and the Department of Agriculture, Conservation and Forestry.

[ 2011, c. 655, Pt. JJ, §35 (AMD); 2011, c. 655, Pt. JJ, §41 (AFF); 2011, c. 657, Pt. W, §5 (REV) .]

**2. Prerequisites to amendment or revision.** The commission shall not amend or revise the comprehensive plan, unless:

A. The proposed amendment or revision has been submitted to the Southern Maine Regional Planning Commission, the Greater Portland Council of Governments and other appropriate agencies, which shall forward their comments and recommendations, if any, to the commission within 30 days; [1979, c. 663, §233 (NEW).]

B. The proposed amendment or revision has been submitted to the Department of Agriculture, Conservation and Forestry, which shall forward its comments and recommendations, if any, to the commission within 30 days; and [2011, c. 655, Pt. JJ, §36 (AMD); 2011, c. 655, Pt. JJ, §41 (AFF); 2011, c. 657, Pt. W, §5 (REV).]

C. The commission has considered all the comments. [1979, c. 663, §233 (NEW).]

[2011, c. 655, Pt. JJ, §36 (AMD); 2011, c. 655, Pt. JJ, §41 (AFF); 2011, c. 657, Pt. W, §5 (REV) .]

**3. Basis for amendment or revision.** The commission shall have the authority, after notice and public hearing, to revise, expand or amend the comprehensive plan on the basis of new information, improved professional techniques or changing conditions in the corridor.

[1979, c. 663, §233 (NEW) .]

#### SECTION HISTORY

1979, c. 459, §1 (NEW). 1979, c. 663, §233 (RPR). 2011, c. 655, Pt. JJ, §§35, 36 (AMD). 2011, c. 655, Pt. JJ, §41 (AFF). 2011, c. 657, Pt. W, §5 (REV).

## §957. USE DISTRICTS AND CLASSIFICATIONS

**1. Classification.** The land and water area within the Saco River Corridor shall be classified by the commission according to the following land and water use districts:

A. Resource protection; [1979, c. 459, §1 (NEW).]

B. Limited residential; and [1979, c. 459, §1 (NEW).]

C. General development. [1979, c. 459, §1 (NEW).]

[1979, c. 459, §1 (NEW) .]

**2. Use.** Within each of these districts, the possible uses of land and water shall be divided into the following 3 categories:

A. Uses for which no permit from the commission is required; [1979, c. 459, §1 (NEW).]

B. Uses allowed by permit; and [1979, c. 459, §1 (NEW).]

C. Prohibited uses. [1979, c. 459, §1 (NEW).]

[1979, c. 459, §1 (NEW) .]

#### SECTION HISTORY

1979, c. 459, §1 (NEW).

## §957-A. RESOURCE PROTECTION DISTRICT

**1. Areas to be included.** The Resource Protection District shall include the following areas:

- A. Wetlands, swamps, marshes and bogs; [1979, c. 459, §1 (NEW).]
- B. Areas where the entire width of the corridor on one or both sides of the river is within the 100-year floodplain; [1979, c. 459, §1 (NEW).]
- C. Land in private ownership designated for inclusion within this district by the owner thereof and accepted by the commission because of its importance as a fish and wildlife habitat or its educational, scientific, scenic, historic or archaeological value, or its open space value; [1979, c. 459, §1 (NEW).]
- D. Land held in federal, state and municipal ownership which is designated for inclusion within this district by the controlling state, local or federal agency or board and accepted by the commission because of its importance as a fish and wildlife habitat or its educational, scientific, scenic, historic or archaeological value, or its open space value; [1979, c. 459, §1 (NEW).]
- E. Land subject to easements or other restrictions that limit permissible uses to those allowed within this district; [1995, c. 171, §4 (AMD).]
- F. Areas of importance as a fish or wildlife habitat or containing exceptional educational, scientific, scenic, historic or archaeological resources, which are nominated in writing to the commission by a municipal or state agency and approved by the commission after public hearing in the municipality within which the area is located.
- (1) Areas of importance as fish and wildlife habitat shall be included within the Resource Protection District upon a finding by the commission that all of the following requirements are met:
- (a) The area is of importance to a specific species of fish, migratory birds or other wildlife which inhabits the Saco River Corridor;
  - (b) The maintenance and preservation of the populations of such species will promote the public welfare; and
  - (c) More intensive development would result in the total or partial loss of the wildlife resources to be protected.
- (2) Areas of exceptional scenic importance shall be included within the Resource Protection District upon a finding by the commission that all of the following requirements are met:
- (a) The area is of exceptional scenic value because of distinct and clearly identifiable geological formations, vegetation or other natural features, such as bluffs, cliffs, rapids, falls, rock out-croppings or islands;
  - (b) The natural features are visible from the river or from an accepted road during the months of June through September;
  - (c) Preservation of the scenic value of the area will promote the public welfare; and
  - (d) More intensive development would result in the total or partial loss of the scenic value of the area.
- (3) Areas of exceptional historic importance shall be included within the Resource Protection District only upon a finding by the commission that all of the following requirements are met:
- (a) The area to be included is associated with persons or events of national, state or local historic significance;
  - (b) The area to be included, or the persons or events associated with the area, have been described or alluded to in historic documents, state or local histories, historic novels or other published materials;
  - (c) Protection of the historic values of the area will contribute to public understanding and appreciation of the history of the Saco River Valley and its people; and
  - (d) More intensive development would result in the total or partial loss of the historic value of the area.

(4) Areas of exceptional archaeological importance shall be included within the Resource Protection District upon a finding by the commission that all of the following requirements are met:

- (a) The area to be included is one of exceptional importance as a source of fossils or prehistoric Indian remains;
- (b) The protection of the area would promote the public welfare by increasing public understanding and appreciation of the past of the Saco River Valley and its inhabitants; and
- (c) More intensive development would result in the total or partial loss or inaccessibility of such fossils or Indian remains.

(5) Areas of exceptional scientific and educational importance shall be included within the Resource Protection District only upon a finding by the commission that all of the following requirements are met:

- (a) The area contains rare or unusual flora, fauna or other natural features of scientific or educational importance;
- (b) That protection of the area will promote scientific and educational purposes; and
- (c) More intensive development would result in the total or partial destruction of the educational or scientific value of the area; and [1995, c. 171, §5 (AMD).]

G. Areas of 2 or more contiguous acres with sustained slopes of 20% or greater. [1995, c. 171, §6 (NEW).]

[ 1995, c. 171, §§4-6 (AMD) .]

**2. Uses for which no permit from the commission is required.** Uses within the Resource Protection District for which no permit from the commission is required shall include:

- A. Open space uses which do not involve development including erosion and flood control, parks, game management, harvesting of cranberries and wild crops, tent camping, picnic areas, fishing, hunting, and other forms of outdoor recreation compatible with the purposes of this district; [1979, c. 459, §1 (NEW).]
- B. Piers, docks and floats in compliance with state and federal requirements and applicable performance standards; [1979, c. 459, §1 (NEW).]
- C. Forestry, agriculture, horticultural and aquacultural uses not involving development; and [1979, c. 459, §1 (NEW).]
- D. Maintenance, reconstruction or relocation of existing public ways or bridges. [1979, c. 459, §1 (NEW).]

[ 1979, c. 459, §1 (NEW) .]

**3. Uses allowed by permit.** Uses within the Resource Protection District which may be allowed by permit shall include:

- A. Structures related, necessary and accessory to the uses for which no permit is required; [1979, c. 459, §1 (NEW).]
- B. Dredging, filling or alteration of wetlands related, necessary and accessory to permitted uses; [1979, c. 459, §1 (NEW).]
- C. Any fill or deposit of material related, necessary and accessory to permitted uses; [1979, c. 459, §1 (NEW).]
- D. Sand, gravel and topsoil (loam) excavations; [1979, c. 459, §1 (NEW).]
- E. Necessary expansion or enlargement of nonconforming uses; and [1979, c. 459, §1 (NEW).]

F. Reconstruction of nonconforming structures damaged or destroyed by casualty. [1979, c. 459, §1 (NEW).]

[ 1979, c. 459, §1 (NEW) .]

**4. Prohibited uses.** Prohibited uses within the Resource Protection District shall include:

A. Structures designed for human habitation; [1979, c. 459, §1 (NEW).]

B. Buildings not related, necessary and accessory to uses for which no permit is required; [1979, c. 459, §1 (NEW).]

C. Any fill or deposit of materials, or dredging or alteration of wetlands, not permitted as accessory to uses allowed within the district; [1979, c. 459, §1 (NEW).]

D. Billboards; [1979, c. 459, §1 (NEW).]

E. Commercial uses other than those undertaken and permitted pursuant to subsections 2 and 3; [1979, c. 459, §1 (NEW).]

F. Industrial or manufacturing uses; [1979, c. 459, §1 (NEW).]

G. Dumping or disposing of any liquid or solid wastes other than agricultural utilization of animal wastes; and [1979, c. 459, §1 (NEW).]

H. Uses prohibited in the Limited Residential or General Development District. [1979, c. 459, §1 (NEW).]

[ 1979, c. 459, §1 (NEW) .]

#### SECTION HISTORY

1979, c. 459, §1 (NEW). 1995, c. 171, §§4-6 (AMD).

## §957-B. LIMITED RESIDENTIAL DISTRICT

**1. Areas to be included.** The Limited Residential District shall include lands within the corridor which may be suitable for development, but which are not necessary for the growth of areas of intensive development. The Limited Residential District shall serve as the residuary district and shall include all areas within the corridor which are not included in the Resource Protection or General Development Districts.

[ 1979, c. 459, §1 (NEW) .]

**2. Uses for which no permit from the commission is required.** Uses for which no permit from the commission is required within the Limited Residential District shall include those uses for which no permit from the commission is required within the Resource Protection District.

[ 1979, c. 459, §1 (NEW) .]

**3. Uses allowed by permit.** Uses within the Limited Residential District which may be allowed by permit shall include:

A. Uses allowed by permit within the Resource Protection District; [1979, c. 459, §1 (NEW).]

B. Roads; [1979, c. 459, §1 (NEW).]

C. Commercial establishments related, necessary and accessory to uses allowed without permit, except as prohibited by subsection 4; [1979, c. 459, §1 (NEW).]

D. Home occupations or enterprises; [1979, c. 459, §1 (NEW).]

E. Single-family residences and accessory structures meeting all of the following performance standards:

- (1) The minimum lot frontage on the river measured at the normal or mean high water line is 100 feet;
- (2) The minimum setback of any building is 100 feet from the normal or mean high water line of the river and is 75 feet from the normal or mean high water line of any tributary stream;
- (3) The combined river frontage and setback of any building is not less than 500 feet;
- (4) The structures and fill do not encroach on the 100-year floodplain;
- (5) Where there is an accepted road or public right-of-way, as of March 19, 1974, within 500 feet of the normal or mean high water mark of the river with different land ownership on either side of the road or public right-of-way, the landowner on the far side of the road or public right-of-way from the river has an aggregate of setback from the river and frontage on the far side of the road or public right-of-way equal to 500 feet;
- (6) Where there is a recorded subdivision, as of March 19, 1974, "frontage," for the purposes of determining compliance with this section, means lot frontage on the side of the lot nearest to and most nearly parallel to the river; and
- (7) Where a landowner, as of March 19, 1974, owns a lot abutting land owned by a public utility, and the public utility land lies between the abutting landowner's lot and the river, "frontage," for the purpose of determining compliance with this section, means the frontage on the side of the lot abutting that public utility land that is nearest to and most nearly parallel to the river; [1995, c. 171, §7 (AMD).]

F. Libraries and firehouses; [1979, c. 459, §1 (NEW).]

G. Public utility structures; [1979, c. 459, §1 (NEW).]

H. Necessary expansion or enlargement of nonconforming uses; and [1979, c. 459, §1 (NEW).]

I. Reconstruction of nonconforming structures damaged or destroyed by casualty. [1979, c. 459, §1 (NEW).]

[ 1995, c. 171, §7 (AMD) .]

**4. Prohibited uses.** Prohibited uses within the Limited Residential District shall include:

A. Hotels, motels, mobile home parks and trailer courts; [1979, c. 459, §1 (NEW).]

B. Restaurants, cafeterias or other commercial establishments involved in the preparation or sale of food or other beverages; [1979, c. 459, §1 (NEW).]

C. Commercial uses other than those undertaken and permitted pursuant to subsections 2 and 3; [1979, c. 459, §1 (NEW).]

D. Any fill or deposit of materials, or dredging or alteration of wetlands, not permitted as accessory to uses allowed within this district; [1979, c. 459, §1 (NEW).]

E. Manufacturing and industrial uses; [1979, c. 459, §1 (NEW).]

F. Hospitals and clinics; [1979, c. 459, §1 (NEW).]

G. Billboards; and [1979, c. 459, §1 (NEW).]

H. All uses prohibited in the General Development District. [1979, c. 459, §1 (NEW).]

[ 1979, c. 459, §1 (NEW) .]

SECTION HISTORY

1979, c. 459, §1 (NEW). 1995, c. 171, §7 (AMD).

## §957-C. GENERAL DEVELOPMENT DISTRICT

**1. Areas to be included.** The General Development District shall include those areas within the corridor which exhibit a clearly defined pattern of intensive residential, commercial or industrial development and such reserve growth areas as may be deemed necessary by the commission after considering whether or not:

- A. There is suitable area outside the corridor which could adequately accommodate the anticipated growth of the area of intensive development; [1979, c. 459, §1 (NEW).]
- B. The growth of the area of intensive development within the corridor is both necessary and desirable; [1979, c. 459, §1 (NEW).]
- C. The reserve growth area qualifies for inclusion in the Resource Protection District; [1979, c. 459, §1 (NEW).]
- D. The reserve growth area is suitable for the uses permitted within this district; [1979, c. 459, §1 (NEW).]
- E. The uses permitted in this district within the reserve growth area would result in water quality degradation; and [1979, c. 459, §1 (NEW).]
- F. The uses permitted in this district within the reserve growth area would unreasonably interfere with the fish or wildlife habitat or educational, scenic, scientific, historic or archaeological values of those areas eligible for inclusion within the Resource Protection District. [1979, c. 459, §1 (NEW).]

[ 1979, c. 459, §1 (NEW) .]

**2. Uses for which no permit from the commission is required.** Uses and accessory structures within the General Development District for which no permit from the commission is required include:

- A. Uses for which no permit from the commission is required within the Resource Protection District; and [1995, c. 171, §8 (AMD).]
- B. [1995, c. 171, §8 (RP).]
- C. [1995, c. 171, §8 (RP).]
- D. Home occupations or enterprises. [1995, c. 171, §8 (AMD).]
- E. [1995, c. 171, §8 (RP).]
- F. [1995, c. 171, §8 (RP).]
- G. [1995, c. 171, §8 (RP).]
- H. [1995, c. 171, §8 (RP).]
- I. [1995, c. 171, §8 (RP).]
- J. [1995, c. 171, §8 (RP).]
- K. [1995, c. 171, §8 (RP).]
- L. [1995, c. 171, §8 (RP).]
- M. [1995, c. 171, §8 (RP).]
- N. [1995, c. 171, §8 (RP).]
- O. [1995, c. 171, §8 (RP).]
- P. [1995, c. 171, §8 (RP).]

[ 1995, c. 171, §8 (AMD) .]

**3. Uses allowed by permit.** Uses allowed within the General Development District by permit only include:

- A. Manufacturing and industrial uses; [1979, c. 459, §1 (NEW).]
- B. Sand, gravel and topsoil (loam) excavations; [1979, c. 459, §1 (NEW).]
- C. Dredging, filling or other alteration of wetlands; [1979, c. 459, §1 (NEW).]
- D. Any fill or deposit of material in excess of 100 cubic yards; [1979, c. 459, §1 (NEW).]
- E. Oil or petroleum storage facilities; [1979, c. 459, §1 (NEW).]
- F. Processing plants; [1995, c. 171, §8 (AMD).]
- G. Airports; [1995, c. 171, §8 (AMD).]
- H. Roads; [1995, c. 171, §8 (NEW).]
- I. Single-family residences; [1995, c. 171, §8 (NEW).]
- J. Multi-unit residential dwellings; [1995, c. 171, §8 (NEW).]
- K. Restaurants and cafeterias; [1995, c. 171, §8 (NEW).]
- L. Retail commercial establishments, such as stores, supermarkets and pharmacies; [1995, c. 171, §8 (NEW).]
- M. Municipal buildings; [1995, c. 171, §8 (NEW).]
- N. Schools; [1995, c. 171, §8 (NEW).]
- O. Hospitals and clinics; [1995, c. 171, §8 (NEW).]
- P. Funeral homes; [1995, c. 171, §8 (NEW).]
- Q. Warehouses; [1995, c. 171, §8 (NEW).]
- R. Churches; [1995, c. 171, §8 (NEW).]
- S. Libraries; and [1995, c. 171, §8 (NEW).]
- T. Public utility structures except for service drops. [1995, c. 171, §8 (NEW).]

[ 1995, c. 171, §8 (AMD) .]

**4. Prohibited uses.** Prohibited uses within the General Development District shall include:

- A. Dumping or disposing of any liquid or solid wastes other than agricultural uses of animal wastes and sanitary wastes in accordance with all federal, state and municipal requirements; [1979, c. 459, §1 (NEW).]
- B. Auto graveyards; [1979, c. 459, §1 (NEW).]
- C. Junkyards; [1979, c. 459, §1 (NEW).]
- D. Extractive uses of mining other than sand, gravel and topsoil (loam) excavations allowed by permit; [1979, c. 459, §1 (NEW).]
- E. Oil refineries; and [1979, c. 459, §1 (NEW).]
- F. Smelting operations. [1979, c. 459, §1 (NEW).]

[ 1979, c. 459, §1 (NEW) .]

#### SECTION HISTORY

1979, c. 459, §1 (NEW). 1995, c. 171, §8 (AMD).

## §957-D. OMITTED USES

**1. Omitted uses.** Uses not specifically mentioned or covered by any general category in the enumeration of permitted and prohibited uses for each district shall be deemed prohibited unless allowed by special permit upon a showing by the applicant that the soils are suitable for the proposed use and that it will not unreasonably interfere with the use and enjoyment of their property by adjacent landowners or involve any significant:

- A. Degradation of air and water quality; [1979, c. 459, §1 (NEW).]
- B. Harmful alteration of wetlands; [1979, c. 459, §1 (NEW).]
- C. Increase in erosion or sedimentation; [1979, c. 459, §1 (NEW).]
- D. Danger of increased flood damage; [1979, c. 459, §1 (NEW).]
- E. Obstruction of flood flow; [1979, c. 459, §1 (NEW).]
- F. Damage to fish and wildlife habitat; [1979, c. 459, §1 (NEW).]
- G. Despoliation of the scenic, rural and open space character of the corridor; [1979, c. 459, §1 (NEW).]
- H. Overcrowding; [1979, c. 459, §1 (NEW).]
- I. Excessive noise; [1979, c. 459, §1 (NEW).]
- J. Obstruction to navigation; or [1979, c. 459, §1 (NEW).]
- K. Interference with the educational, scenic, scientific, historic or archaeological values of those areas designated and approved for inclusion within the Resource Protection District. [1979, c. 459, §1 (NEW).]

[ 1979, c. 459, §1 (NEW) .]

The burden of proof shall be upon the applicant to show entitlement to a permit under this section. [1979, c. 459, §1 (NEW).]

### SECTION HISTORY

1979, c. 459, §1 (NEW).

## §958. EXISTING USES

Any existing building or structure or use of a building or structure lawful March 19, 1974, or on the date of any subsequent amendment of this chapter or of any regulation adopted hereunder, may continue although such a use of a structure does not conform to this chapter or the regulations adopted hereunder. Any existing building or structure may be repaired, maintained and improved, but an existing building, structure or nonconforming use may be extended, expanded or enlarged only by permit from the commission. A nonconforming use, other than a single family residential use, that is discontinued for any reason for a period of one year is deemed abandoned and may not be resumed thereafter except in compliance with the requirements of this chapter. [1995, c. 171, §9 (AMD).]

If, as a result of flood, fire or other casualty, the value of a nonconforming building or structure is reduced by more than 75%, it may be rebuilt and the nonconforming use housed therein may be continued only by permit from the commission. If a nonconforming building or structure is decreased in value less than 75% by flood, fire or other casualty, it may be rebuilt in substantially the same location and in the same size without a permit from the commission, even though it would otherwise violate the requirements of this chapter, provided that the rebuilding shall be commenced within 12 months of the casualty. [1979, c. 459, §1 (NEW).]

If 2 or more contiguous lots or portions thereof are in single ownership on or after March 19, 1974, and if all or part of the lots do not meet the criteria of lot width, area, frontage or other measures required under this chapter or if a building thereon could not meet the aggregate requirements established by this chapter, the lots involved shall be considered to be one parcel for the purposes of this chapter. [1979, c. 459, §1 (NEW).]

To avoid undue hardship, nothing in this chapter may be deemed to require a change in the design, construction or intended use of any building or structure with respect to which substantial construction was legally carried out prior to March 19, 1974 or the effective date of any amendment to this chapter. An intended use within the meaning of this section is any use for which such a building or structure is designed as evidenced by the construction or by plans or specifications in existence as of March 19, 1974 or, in the case of any intended use affected by any amendment to this chapter, construction, plans or specifications in existence on the effective date of that amendment. [1995, c. 171, §9 (AMD).]

#### SECTION HISTORY

1979, c. 459, §1 (NEW). 1995, c. 171, §9 (AMD).

### §959. PERMITS REQUIRED

Except as otherwise provided in this chapter, after March 19, 1974, a person may not engage in any use of land or water for which a permit is required under this chapter without first obtaining a permit from the commission and complying with all federal, state and municipal regulations. [1995, c. 171, §10 (AMD).]

#### SECTION HISTORY

1979, c. 459, §1 (NEW). 1995, c. 171, §10 (AMD).

### §959-A. REQUIREMENTS FOR GRANTING PERMITS

**1. Permits.** The commission shall grant permits for uses allowed under this chapter upon a showing by the applicant that the soils are suitable for the proposed use and that it will be in compliance with all applicable performance standards and requirements established under this chapter. The commission shall also find that the proposed use will not involve any unreasonable:

- A. Degradation of air and water quality; [1979, c. 459, §1 (NEW).]
- B. Harmful alteration of wetlands; [1979, c. 459, §1 (NEW).]
- C. Increase in erosion or sedimentation; [1979, c. 459, §1 (NEW).]
- D. Danger of increased flood damage; [1979, c. 459, §1 (NEW).]
- E. Obstruction of flood flow; [1979, c. 459, §1 (NEW).]
- F. Damage to fish and wildlife habitat; [1979, c. 459, §1 (NEW).]
- G. Despoliation of the scenic, rural and open space character of the corridor; [1979, c. 459, §1 (NEW).]
- H. Overcrowding; [1979, c. 459, §1 (NEW).]
- I. Excessive noise; [1979, c. 459, §1 (NEW).]
- J. Obstructions to navigation; or [1979, c. 459, §1 (NEW).]
- K. Interference with the educational, scenic, scientific, historic or archaeological values of those areas designated and approved for inclusion within the Resource Protection District. [1979, c. 459, §1 (NEW).]

The burden of proof shall be upon the applicant to show entitlement to a permit under this section, but if the applicant makes the requisite showing, a permit shall be issued by the commission.

[ 1979, c. 459, §1 (NEW) .]

#### SECTION HISTORY

1979, c. 459, §1 (NEW).

### **§959-B. PERMITS WITH CONDITIONS**

Permits granted under this chapter may be made subject to such reasonable conditions concerning setback, location, spacing, size of structure or development, type of construction, time of completion, landscaping, retention of trees, screening, reclamation, erosion control, noise level, quantity and quality of discharge, sewage disposal and manner and method of operation, as the commission deems necessary to avoid the dangers enumerated in section 959-A. For the purpose of enforcement, permits issued by the commission and conditions thereof shall be considered as orders of the commission. [1979, c. 459, §1 (NEW).]

#### SECTION HISTORY

1979, c. 459, §1 (NEW).

### **§960. DISTRICT BOUNDARY MAPS**

Maps showing district boundaries within the Saco River Corridor shall be kept in the office of the commission and the maps or conformed copies of them shall be available for public inspection during normal business hours. Copies of those portions of such maps including the area of each municipality shall be furnished by the commission to the municipal officers thereof and shall be available for public inspection at the office of the town clerk or at the town office. [1979, c. 459, §1 (NEW).]

#### SECTION HISTORY

1979, c. 459, §1 (NEW).

### **§961. RELATION TO MUNICIPAL, STATE AND FEDERAL REGULATIONS**

Nothing in this chapter prevents municipal, state or federal authorities from adopting and administering more stringent requirements regarding performance standards or permitted uses within use districts established by the commission or within districts overlapping the districts established pursuant to this chapter. Where there is a conflict between a provision adopted under this chapter and any other municipal, state or federal requirement applicable to the same land or water areas within the corridor, the more restrictive provision takes precedence. All performance standards, rules and regulations proposed for hearing by the commission must be submitted to the Commissioner of Environmental Protection, the Department of Agriculture, Conservation and Forestry, the Greater Portland Council of Governments and the Southern Maine Regional Planning Commission at least 7 days prior to the hearing for review and comment. The commission may not adopt any rule establishing air or water quality standards within the corridor in conflict with the rules of the Department of Environmental Protection without the prior approval of the Board of Environmental Protection. [2011, c. 655, Pt. JJ, §37 (AMD); 2011, c. 655, Pt. JJ, §41 (AFF); 2011, c. 657, Pt. W, §5 (REV).]

#### SECTION HISTORY

1979, c. 459, §1 (NEW). 1989, c. 890, §§A40,B204 (AMD). 2011, c. 655, Pt. JJ, §37 (AMD). 2011, c. 655, Pt. JJ, §41 (AFF). 2011, c. 657, Pt. W, §5 (REV).

## §962. GENERAL PERFORMANCE STANDARDS

**1. Standards.** Unless otherwise specified, the following performance standards shall be applicable to all uses of land and water areas within the corridor, whether or not a permit is required from the commission.

A. No building may be located closer to the Ossipee, Little Ossipee or Saco rivers than 100 feet from the normal or mean high water line, nor may any building in the Limited Residential or Resource Protection Districts be located less than 30 feet from any accepted road. Within the Resource Protection and Limited Residential Districts there may be no construction or placement of residential structures within the 100-year floodplain. [1995, c. 171, §11 (AMD).]

B. Within the Resource Protection District or Limited Residential District no part of a septic system or other system of underground sewage disposal shall be located within the 100-year floodplain. [1979, c. 459, §1 (NEW).]

C. On the Ossipee and Little Ossipee Rivers and fresh-water portions of the Saco River:

(1) No privately-owned pier, dock or float shall extend more than 10% of the width of the river at any time or extend into the water more than 10 feet perpendicular to the shore, whichever is less; and

(2) All piers, docks or floats shall be temporary and capable of seasonal removal. [1979, c. 459, §1 (NEW).]

D. Agriculture.

(1) All agriculture practices must be in conformance with existing state and federal laws and regulations relating to the use of insecticides, herbicides, fertilizers and cleaning agents, and with state and federal laws and regulations to the placement of disposal of wastes in waterways or on the banks thereof.

(2) Where soil is tilled, an untilled buffer strip of natural vegetation must be retained between the tilled ground and the normal or mean high water line of the river. The width of this strip must be a minimum of 25 feet, measured directly from the normal or mean high water line of the river.

(3) Newly created fields and tillage and grazing operations must be set back from the normal or mean high water line at least 75 feet. [1995, c. 171, §11 (AMD).]

E. [1995, c. 171, §12 (RP).]

E-1. Within a strip extending 100 feet inland from the normal or mean high water line, there may be no cleared opening or openings, except for approved construction, and a well-distributed stand of vegetation must be retained. Selective cutting of no more than 40% of the trees 4 inches or more in diameter, measured at 4 1/2 feet above ground level, is allowed in any 10-year period, provided that a well-distributed stand of trees and other natural vegetation remains. [1995, c. 171, §13 (NEW).]

F. The following standards govern timber harvesting within 250 feet of the normal or mean high water line of any water body within the corridor.

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

(2) In any stand, harvesting may remove not more than 40% of the volume of trees 6 inches in diameter and larger, measured at 4 1/2 feet above ground level in any 10-year period.

(3) No significant accumulation of slash may be left within 50 feet of the normal or mean high water line of any water body within the corridor. At distances greater than 50 feet from the normal or mean high water line of such water bodies extending to the limits of the corridor, all slash must be disposed of in such a manner that it lies on the ground and no part thereof extends more than 4 feet above the ground.

(4) Harvesting operations must be conducted in such a manner and at such a time that minimal soil disturbance results. Adequate provision must be made to prevent soil erosion and sedimentation of surface waters. [1995, c. 171, §14 (AMD).]

G. The minimum lot size for each residential dwelling unit is 40,000 square feet and the minimum lot size for any principal commercial structure is 60,000 square feet. [1995, c. 171, §15 (NEW).]

H. Principal or accessory structures and expansions of existing structures that are permitted in the Resource Protection and Limited Residential Districts may not exceed 35 feet in height. This paragraph does not apply to structures such as transmission towers, windmills, antennas and similar structures having no floor area. [1995, c. 171, §15 (NEW).]

[ 1995, c. 171, §§11-15 (AMD) .]

#### SECTION HISTORY

1979, c. 459, §1 (NEW). 1995, c. 171, §§11-15 (AMD).

### **§962-A. ADDITIONAL PERFORMANCE STANDARDS**

The commission, after notice and public hearing, may establish such additional performance standards as it deems necessary to carry out the purposes of this chapter, provided that such standards are consistent with the standards established in section 962. [1977, c. 459, §1 (NEW).]

**1. Standards.** In establishing additional performance standards under this section for any permitted use, the commission shall endeavor to develop standards which will assure that the uses under consideration will be located on suitable soils and will not result in unreasonable:

A. Degradation of air and water quality; [1979, c. 459, §1 (NEW).]

B. Harmful alteration of wetlands; [1979, c. 459, §1 (NEW).]

C. Increase in erosion or sedimentation; [1979, c. 459, §1 (NEW).]

D. Obstruction of flood flow; [1979, c. 459, §1 (NEW).]

E. Destruction of fish and wildlife habitat; [1979, c. 459, §1 (NEW).]

F. Despoliation of the scenic, rural and open space character of the corridor; [1979, c. 459, §1 (NEW).]

G. Overuse of the rivers for recreation; [1979, c. 459, §1 (NEW).]

H. Overcrowding; [1979, c. 459, §1 (NEW).]

I. Excessive noise; [1979, c. 459, §1 (NEW).]

J. Obstruction to navigation; or [1979, c. 459, §1 (NEW).]

K. Interference with the educational, scenic, historic or archaeological values of those areas designated and approved for inclusion within the Resource Protection District. [1979, c. 459, §1 (NEW).]

[ 1979, c. 459, §1 (NEW) .]

#### SECTION HISTORY

1979, c. 459, §1 (NEW).

## §962-B. AMENDMENTS TO DISTRICT BOUNDARIES AND PERFORMANCE STANDARDS

The commission may initiate, and any municipal agency, an organization qualified under section 966-A or any property owner or lessee may petition for a change in the boundary of any land use district or for amendments to any additional performance standard adopted pursuant to section 962-A. [1979, c. 459, §1 (NEW).]

No change in a district boundary shall be approved unless substantial evidence shows that the area is better suited for uses other than those permitted in the district in which it is situated, or changes in conditions have made the present classification unreasonable. [1979, c. 459, §1 (NEW).]

No amendment to performance standards shall be approved unless substantial evidence shows that: [1979, c. 459, §1 (NEW).]

**1. Conditions not in evidence.** Conditions exist which were not evident when the performance standard was adopted;

[ 1979, c. 459, §1 (NEW) .]

**2. Purpose not served.** The performance standard does not serve the purpose of this chapter; or

[ 1979, c. 459, §1 (NEW) .]

**3. Amendment preferable.** The amendment would better fulfill the purpose of this chapter.

[ 1979, c. 459, §1 (NEW) .]

### SECTION HISTORY

1979, c. 459, §1 (NEW).

## §963. VARIANCE FROM PERFORMANCE STANDARDS

**1. Variance.** A relaxation of the performance standards enacted by this chapter or adopted pursuant thereto may be granted by the commission, after notice and public hearing, upon a finding by the commission that the following provisions are met:

A. Application of the performance standard to the land or water area in question will result in undue hardship to the applicant, provided that hardship to the applicant, provided that hardship shall not be construed to include:

- (1) Any hardship attributable to any act, course of conduct or failure to act of the applicant or his predecessor in interest beginning with the owner of record on the effective date of this chapter or of a performance standard adopted pursuant thereto from which a variance is sought; or
- (2) Any hardship that is not unique to the petitioner's land; [1979, c. 459, §1 (NEW).]

B. The variance, if granted, will not subvert the intent of this chapter as stated in section 951 or as manifested in the standards from which a variance is sought; and [1979, c. 459, §1 (NEW).]

C. The proposed use, if a variance is granted, will not unreasonably interfere with the use and enjoyment of their lands by adjacent landowners, or result in any unreasonable:

- (1) Degradation of air and water quality;
- (2) Harmful alteration of wetlands;
- (3) Increase in erosion or sedimentation;
- (4) Danger of increased flood damage;

- (5) Obstruction of flood flow;
- (6) Damage to fish and wildlife habitat;
- (7) Despoliation of the scenic, rural and open space character of the corridor;
- (8) Overcrowding;
- (9) Excessive noise;
- (10) Obstructions to navigation; or
- (11) Interference with the educational, scenic, scientific, historic or archaeological values of those areas designated and approved for inclusion within the Resource Protection District. [ 1977, c. 459, §1 (NEW) . ]

No variance shall be granted because of other nonconforming uses within a district or because of similar uses in an adjoining district. The burden of proof shall be on the applicant to show entitlement to a variance under this section. The owner of a building lot of record which is wholly within the corridor on March 19, 1974, shall be entitled to a variance for a single family residence which may be granted by the commission without public hearing. Any variance granted by the commission may be granted subject to such reasonable conditions concerning matters enumerated in section 959-B as the commission finds necessary to avoid the dangers enumerated in section 957-D. For the purposes of enforcement, variances granted hereunder and the conditions thereto shall be treated as orders of the commission.

[ 1979, c. 459, §1 (NEW) . ]

#### SECTION HISTORY

1979, c. 459, §1 (NEW) .

### §963-A. SPECIAL USE VARIANCE

**1. No variance where prohibited.** No variance shall be granted in order to permit a use within a district in which such use is expressly prohibited, except in accordance with this section. A special use variance may be granted, after notice and public hearing, to permit a single family dwelling within the Resource Protection District upon a finding by the commission that the grant of such a special use variance is necessary to avoid undue hardship to the applicant, provided that hardship shall not be construed to include:

A. Any hardship attributable to any act, course of conduct or failure to act of the applicant or his predecessor in interest, beginning with the owner of record on March 19, 1974; or [ 1979, c. 459, §1 (NEW) . ]

B. Any hardship that is not unique to the petitioner's land. [ 1979, c. 459, §1 (NEW) . ]

A special use variance under this section may be granted by the commission only in cases where such a variance is necessary to avoid a deprivation of property in violation of the Constitution of Maine, Article I, Section 6, a taking of private property without compensation in violation of the Constitution of Maine, Article I, Section 21, a violation of due process clause of the 14th Amendment of the Constitution of the United States, or a violation of other applicable state or federal constitutional provisions.

The owner of a building lot of record which is wholly within the corridor on March 19, 1974, shall be entitled to a variance for a single family residence which may be granted by the commission without public hearing. Any variance granted by the commission may be granted subject to such reasonable conditions concerning matters enumerated in section 959-B as the commission finds necessary to avoid the dangers enumerated in section 957-D. For purposes of enforcement, special use variances granted hereunder and the conditions thereto shall be treated as orders of the commission.

[ 1979, c. 459, §1 (NEW) . ]

#### SECTION HISTORY

1979, c. 459, §1 (NEW).

## §964. CERTIFICATE OF COMPLIANCE

It shall be unlawful to use or occupy, or permit the use or occupancy of, any land, structure or part of any land or structure created, erected, changed, converted or wholly or partly altered or enlarged in its use or structural form, which use or structure requires a permit under this chapter unless the permit requirements and conditions of approval have been met. [1985, c. 481, Pt. A, §96 (RPR).]

For the purposes of inspection and to assure compliance with this chapter and any standards, rules and orders issued by the commission pursuant to this chapter, commission members, staff, consultant personnel and designated municipal officials may conduct such investigations, examinations, tests and site evaluations as necessary to verify compliance with any permits or variances issued by the commission. [1985, c. 481, Pt. A, §96 (RPR).]

### SECTION HISTORY

1979, c. 459, §1 (NEW). 1985, c. 481, §A96 (RPR).

## §965. FEES

The commission may establish reasonable fees for permit applications, variance applications and certificates of compliance. The funds derived from the collection of such fees shall be retained by the commission. The commission may also establish a reasonable schedule of fees for providing copies of this chapter, maps of district boundaries, the comprehensive plan, copies of rules and regulations, performance standards, official publications or other materials which may be requested by the public. The fees for any such materials shall be retained by the commission and used to defray the expense of printing, copying, mailing or otherwise providing such materials to the public. [1983, c. 819, Pt. A, §65 (AMD).]

### SECTION HISTORY

1979, c. 459, §1 (NEW). 1983, c. 819, §A65 (AMD).

## §966. PARTIES TO PROCEEDINGS

The parties to any proceeding before the commission may include the applicant, if any, any landowner whose lands will be directly affected by the proposed action of the commission, any landowner whose lands are adjacent to, directly across the river from, or within 500 feet of lands to be directly affected, any municipality or agency thereof whose jurisdiction includes lands or bodies of water to be directly affected and any citizens' group or organization qualified under section 966-A. [1979, c. 459, §1 (NEW).]

Nothing in this section may be construed so as to limit the right of any member of the public to appear or be heard at any public hearing of the commission, subject only to such reasonable rules and regulations as the commission may establish. [1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §205 (AMD).]

### SECTION HISTORY

1979, c. 459, §1 (NEW). 1989, c. 890, §§A40,B205 (AMD).

## §966-A. CITIZENS' GROUPS OR ORGANIZATIONS

**1. Participation.** A citizens' group or organization may participate in all hearings held by the commission, request and receive notices, bring judicial proceedings and exercise all other rights of parties to proceedings before the commission, provided that the group or organization is designated as qualified by an order of the commission under this section.

[ 1979, c. 459, §1 (NEW) .]

**2. Organizations qualified.** The commission shall issue an order designating a citizens' group or organization as qualified under this section if it finds that:

A. The group or organization has filed an application showing:

- (1) That it has significant and definable interest in the Saco, Ossipee or Little Ossipee Rivers and their adjacent lands; and
- (2) That it has at least 50 members in the municipalities whose lands comprise the Saco River Corridor or at least 15 members in a municipality which will be directly affected by a proposed action of the commission. [1979, c. 459, §1 (NEW).]

[ 1979, c. 459, §1 (NEW) .]

**3. Contents.** Every application for designation as a qualified organization under this section shall contain the name and address of a representative or office for the receipt of notices and other communications and the names and addresses of the organization's officers, directors and members.

[ 1979, c. 459, §1 (NEW) .]

**4. Time period.** The commission may establish a period of time after which qualifications under this section will expire unless renewed, and in such cases shall give notice of the necessity for renewal not less than one month prior to the expiration date.

[ 1979, c. 459, §1 (NEW) .]

#### SECTION HISTORY

1979, c. 459, §1 (NEW).

## §967. ENFORCEMENT, INSPECTION AND PENALTIES FOR VIOLATIONS

**1. Effect of standards, rules and orders.** Standards, rules and orders issued by the commission pursuant to this chapter have the force and effect of law.

[ 2003, c. 452, Pt. W, §8 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

**2. Conformance required.** A person may not undertake development except in conformance with this chapter and the standards, rules and orders issued by the commission pursuant to this chapter. Real estate or personal property may not exist or be used in violation of this chapter or the standards, rules and orders issued by the commission pursuant to this chapter.

[ 2003, c. 452, Pt. W, §8 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

**3. Ensuring compliance; access.** For the purposes of inspection and to ensure compliance with this chapter and standards, rules and orders issued by the commission pursuant to this chapter, commission members, staff, consultant personnel and designated municipal officials may conduct such investigations, examinations, tests and site evaluations determined necessary to verify information presented to the commission and may obtain access to any lands and structures subject to this chapter.

[ 2003, c. 452, Pt. W, §8 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

**4. Violations.** A person who violates a provision of this chapter or of standards, rules and orders issued by the commission pursuant to this chapter commits a civil violation for which a fine of not more than \$100 for each day of the violation may be adjudged. In addition, the person's permit, certificate of compliance or variance issued by the commission is subject to revocation.

[ 2003, c. 452, Pt. W, §8 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

**5. Falsification.** A person who intentionally or knowingly falsifies a statement to the commission commits a civil violation for which a fine of not more than \$1,000 may be adjudged. In addition, the person's permit, certificate of compliance or variance granted by the commission in reliance on such statement must be revoked.

[ 2003, c. 452, Pt. W, §8 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

**6. Additional remedies.** In addition to enforcing any other penalties provided, either the commission or the Attorney General may institute any appropriate action, injunction or other proceeding to prevent, restrain, correct or abate a violation of this chapter or the standards, rules and orders issued by the commission pursuant to this chapter.

[ 2003, c. 452, Pt. W, §8 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

**7. Commission's status.** Subject to written approval of the Attorney General as provided in Title 5, section 191 and within the limits of the commission's budget, the commission may retain private counsel for the conduct of commission meetings and hearings and advice on other legal matters.

[ 2003, c. 452, Pt. W, §8 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

#### SECTION HISTORY

1979, c. 459, §1 (NEW). 2003, c. 452, §X2 (AFF). 2003, c. 452, §W8 (RPR).

## §968. APPEALS TO SUPERIOR COURT

Except where otherwise specified by statute, any party or person aggrieved by any order or decision of the commission, in regard to any matter upon which there was a hearing before the commission and of which a record of said hearing is available, may, within 30 days after notice of the filing of such order or decision, appeal therefrom to the Superior Court by filing a notice of appeal stating the points of appeal. Notice of the appeal shall be ordered by the court without a jury in the manner and with the rights provided by law in other civil actions so heard. The proceedings shall not be de novo. The court shall receive into evidence true copies of the transcript of the hearing, the exhibits thereto and the decision of the commission. The court's review shall be limited to questions of law and to whether the commission acted regularly and within the scope of its authority and the commission's decision shall be final so long as supported by substantial evidence. The court may affirm, reverse or remand the commission's decision for further proceedings. Appeals from all other orders or decisions of the commission, unless otherwise specified by statute, shall be taken pursuant to the Maine Rules of Civil Procedure, Rule 80B. [1979, c. 459, §1 (NEW).]

#### SECTION HISTORY

1979, c. 459, §1 (NEW).

## §969. SACO RIVER CORRIDOR FUND

**1. Fund established.** The Saco River Corridor Fund, referred to in this section as the "fund," is established as a nonlapsing dedicated, interest-bearing account. All charges collected pursuant to this section must be deposited into the fund. All interest earned by the account accrues to the fund. Any balance remaining in the fund at the end of the fiscal year does not lapse but is carried forward into subsequent fiscal years.

[ 1997, c. 330, §1 (NEW) . ]

**2. Fund purpose.** The purpose of the fund is to preserve existing water quality and prevent the deterioration of water supplies in the Saco River, the Ossipee River and the Little Ossipee River within the Saco River Corridor, as created in section 953, by partially underwriting the administration and operation of the Saco River Corridor Commission, as established by Title 5, section 12004-G, subsection 13.

[ 1997, c. 330, §1 (NEW) . ]

**3. Assessment on the sale of water.** For purposes of funding its activities, the commission shall impose a fee of 1% on the sale of water and fire protection services by a water utility that draws water either from the Saco River or from a groundwater source under the influence of the Saco River, as determined by the Department of Human Services, for sale and distribution to its customers. The fee must be levied on the rates of the water utility as authorized by the Public Utilities Commission to be charged for services provided by the utility. "Water utility" has the same meaning as the term is defined in Title 35-A, section 102, subsection 22.

The fee must be collected by the water utility and remitted quarterly to the commission. Notwithstanding any limitations set forth in Title 35-A regarding a water utility's right to increase its charges to its customers, a water utility with sales subject to this subsection is authorized to increase its overall charges for the purpose of collecting the fee set forth in this subsection.

Each water utility may retain a portion of the total fees collected equivalent to the utility's administrative costs incurred in the collection and remission of the fees, not to exceed 2% of the total fees collected. For purposes of the Public Utilities Commission's rate-making authority, costs actually incurred by the utility associated with the collection and remission of the fees for the fund are considered just and reasonable for rate-making purposes.

The commission shall adopt rules that are reasonably necessary to carry out the purposes of this section pursuant to section 954-C. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

[ 1997, c. 330, §1 (NEW) . ]

**4. Reporting requirements.** The commission shall submit a report by February 1, 1998 and each subsequent year to the joint standing committees of the Legislature having jurisdiction over natural resources matters, energy and utilities matters and appropriations and financial affairs, identifying the amount collected and how the fund was disbursed by the commission.

[ 2007, c. 651, §22 (AMD) . ]

**5. Additional sources of revenue.** The commission shall study usage within the Saco River Corridor for the purpose of identifying additional management needs and funding sources. The commission shall take all steps necessary to obtain revenue from these funding sources to ensure that assessments on the sale of water are not the sole source of revenue for the fund.

[ 1997, c. 330, §1 (NEW) .]

SECTION HISTORY

1997, c. 330, §1 (NEW). 2007, c. 651, §22 (AMD).

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