

ARTICLE 3
ESTABLISHMENT OF DISTRICTS

Section 1. Zoning Districts

A. To implement the provisions of this Ordinance, the Town is hereby divided into the following districts:

- (1) Resource Protection District (RP)
- (2) Branch Brook Aquifer Protection District (BB)
- (3) Rural Conservation District (RC)
- (4) Rural Residential District (RR)
- (5) Coastal Residential District (CR)
- (6) Suburban Residential District (SR)
- (7) Village Residential District(s) (VR) & (WKVR)
- (8) Downtown Business District (DB)
- (9) Upper Square District (US)
- (10) York Street Mixed Residential and Commercial Use District (MRCU)
- (11) Lower Village Business District (LVB)
- (12) West Kennebunk Village Mixed Use District (WKV)
- (13) Suburban Commercial District (SC)
- (14) Business Park District (BP)
- (15) Industrial District (I)
- (16) *Shoreland Overlay District (SZ)*
- (17) *Historic Preservation Overlay District (HP)*
- (18) 39 Portland Road Contract Zone
- (19) 12 Depot Street Contract Zone
- (20) One Alfred Road Contract Zone
- (21) 119 Main Street Contract Zone
- (22) Cousens School Contract Zone
- (23) Terrace Green Contract Zone
- (24) Webber Hill Road Contract Zone
- (25) Portland Road Mixed Use District (PRMU)
- (26) Western Avenue Contract Zone
- (27) 14 Perkins Lane Contract Zone

B. In addition, there are created the following Overlay Districts:

- (16) Shoreland Overlay District (SZ)
- (17) Historic Preservation Overlay District (HP)

C. Official Zoning Map

Said districts are defined and/or described herein and are as shown on the Official Zoning Map of the Town of Kennebunk which is comprised of the following:

- (1) Zoning District Map, adopted November 2, 1993, as amended.
- (2) Resource Protection/Shoreland Zoning Map, 2009

(3) Branch Brook Aquifer Protection District Map: Town of Kennebunk, 1986.

D. Uncertainty of District Boundaries

Where uncertainty exists with respect to the boundaries of the various districts as shown on the Zoning Map, the following rules shall apply:

- (a) Boundaries indicated as approximately following the center lines of streets, highways, or alleys shall be construed to follow such center lines;
- (b) Boundaries indicated as approximately following well established lot lines shall be construed as following such lot lines;
- (c) Boundaries indicated as approximately following municipal limits shall be construed as following municipal limits;
- (d) Boundaries indicated as following shorelines shall be construed to follow the normal high water line, and in the event of natural change in the shoreline shall be construed as moving with the actual shoreline; boundaries indicated as approximately following the center line of streams, rivers, canals, lakes, or other bodies of water shall be construed to follow such center line;
- (e) Boundaries indicated as being parallel to or extensions of features indicated in paragraphs (a) through (d) above shall be so construed. Distances not specifically indicated on the Zoning Map shall be determined by the scale of the map. Any conflict between the Zoning Map and description of metes and bounds in a deed shall be resolved in favor of the description by metes and bounds;
- (f) Where physical or cultural features existing in the ground are at variance with those shown on the Zoning Map or as described in this Article, or in circumstances where the items covered by paragraphs (a) through (e) are not clear, the Zoning Board of Appeals shall interpret the district boundaries.
- (g) Resource Protection and Shoreland Overlay Zoning Districts - The determination of the boundaries of the Resource Protection and Shoreland Overlay Zoning Districts shall be based upon the descriptions in Sections 2 and 3 of this Article, with guidance provided from the 2009 Kennebunk Shoreland Zoning Map. Where uncertainty exists, the determination shall be based upon the descriptions rather than the map delineations.

E. Division of Lots by District Boundaries

When a lot is divided by a zoning district boundary, the regulations set forth in this Ordinance applying to the portion of such lot which is larger in area may be deemed to govern the smaller portion in the different zoning district, but only to an extent not more than thirty (30) linear feet in depth beyond the zoning district boundary. This standard shall not be applied to the Resource Protection District, nor to the Shoreland and Historic Preservation Overlay Districts.

F. Map Corrections - Resource Protection District (RP) and Shoreland Overlay District (SZ)

Any person owning a parcel of land which is shown to be located within the Shoreland Overlay District or the Resource Protection District on the official Kennebunk Resource

Protection/Shoreland Zoning Map, may apply to the Planning Board for a map correction. Such application shall include supporting evidence prepared by a wetland biologist or other qualified biologist, botanist or wetland scientist. As part of their review, the Planning Board shall provide public notice and hearing in conformance with the standards of Title 30-A M.R.S.A., Section 4352.

If the Planning Board determines that the applicant's land or any portion of the applicant's land was incorrectly included in the Shoreland Overlay District or in the Resource Protection District, the Planning Board shall issue a "Notice of Map Correction" finding that the applicant's property or some specifically described portion of the applicant's property was incorrectly mapped. If the map correction eliminates the applicant's land or any portion thereof from the Resource Protection District, the affected land shall be governed by the regulations applicable in the zoning district which was in place prior to the effective date of this amendment, and if applicable, by the regulations of the Shoreland Overlay District. The Notice of Map Correction shall be recorded in the office of the Town Clerk and may be recorded by the applicant in the Registry of Deeds.

A map correction under this section shall constitute administrative action by the Planning Board and shall not constitute a rezoning or an amendment to the Town of Kennebunk Shoreland Zoning Map of the Town of Kennebunk Zoning Ordinance. However, any corrections established by a map correction under this section shall be incorporated into any subsequent amendments of the Town of Kennebunk Shoreland Zoning Map.

Section 2. Boundaries of the Zoning Districts

A. Location of Districts

The location of the zoning districts shall be as shown on the Official Zoning Map and 2009 Shoreland Zoning Map and as further described in this Section.

B. Resource Protection District (RP) major changes

The Resource Protection District includes areas in which development would adversely affect water quality, productive habitat, biological ecosystems, or scenic and natural values. The boundaries of the Resource Protection District shall encompass the following areas:

(1) Portions of Priority 1 Wetlands:

- (a) Areas including and within two hundred and fifty (250) feet, horizontal distance, of the upland edge of the portions of the following Priority 1 Wetlands (as identified on the 2009 Shoreland Zoning Map) which are classified as E2EM and PEM on the 1990 National Wetlands Inventory (NWI) Map and listed below:

<u>Kennebunk Protection Priority 1 Wetlands per</u>	<u>NWI Classification per</u>
2009 Shoreland Zoning Map	NWI Map
201,301,303,401 (Salt Marsh)	E2EM Estuarine Intertidal Emergent
201,307,313,315,(Freshwater & Brackish Marsh)	PEM Palustrine Emergent

- (b) Areas within 250 feet, horizontal distance, of the upland edge of freshwater

wetlands, salt marshes and salt meadows, and wetlands associated with great ponds and rivers, which are rated “moderate” or “high” value waterfowl and wading bird habitat, including nesting and feeding areas, by the Maine Department of Inland Fisheries and Wildlife (MDIF&W) that are depicted on the State’s GIS data layer. For the purposes of this paragraph “wetlands associated with great ponds and rivers” shall mean areas characterized by non-forested wetland vegetation and hydric soils that are contiguous with a great pond or river, and have a surface elevation at or below the water level of the great pond or river during the period of normal high water. “Wetlands associated with great ponds or rivers” are considered to be part of that great pond or river.

- (c) Notwithstanding areas described in subsection (1) (a) and (b) above, the following lots shall be excluded from the Resource Protection District:

Lots located in the following Commercial or Industrial Zoning Districts:

- Downtown Business
- Upper Square
- Lower Village Business
- York Street Mixed Residential and Commercial Use
- West Kennebunk Village
- Suburban Commercial
- Business Park
- Industrial

- (2) Flood plains along rivers and flood plains along artificially formed great ponds along rivers, defined by the 100 year flood plain as designated on the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps or Flood Hazard Boundary Maps, or the flood of record, or in the absence of these, by soil types identified as recent flood plain soils. This district shall also include 100 year flood plains adjacent to tidal waters as shown on FEMA's Flood Insurance Rate Maps or Flood Hazard Boundary Maps.
- (3) Areas of two or more contiguous acres with sustained slopes of twenty (20) percent or greater and which fall within the Shoreland Overlay District as defined by the State and as shown on the Shoreland Zoning Map (2009).
- (4) Land areas along Branch Brook, the Kennebunk River and the Mousam River which are subject to severe bank erosion, undercutting, or river bed movement, and lands adjacent to tidal waters which are subject to severe erosion or mass movement, such as steep coastal bluffs.

C. Branch Brook Aquifer Protection District (BB)

The boundaries of the Branch Brook Aquifer Protection District shall be as indicated on the "Branch Brook Aquifer Protection District Map: Town of Kennebunk," on file at the Town Office,

and as further described in Article 8, Section 2(B) of this Ordinance.

(Old paragraphs C through L, containing verbal descriptions of the zoning district boundaries, are repealed. The districts are depicted on the Official Zoning Map.)

Section 3. Boundaries of the Overlay Districts

- A. The boundaries of the Overlay Districts shall be as shown on the Official Zoning Map, the 2009 Shoreland Zoning Map, and as further described in this Section.
- B. Shoreland Overlay District (SZ)

The boundaries of the Shoreland Overlay District shall encompass the following areas:

- (1) Those lands lying within two hundred and fifty (250) feet, horizontal distance, of the normal high water line of the following:
- (a) Great Ponds (Old Falls Pond and Alewife Pond).
 - (b) Branch Brook, Mousam River and Kennebunk River.
 - (c) Atlantic Ocean.
 - (d) Portions of Protection Priority 1 Wetlands not otherwise included in the Resource Protection District (See 2009 Shoreland Zoning Map for Protection Priority ratings)
 - (e) The perennial portions of the following brooks:

Cold Water Brook	Slab Brook	Fernald Brook
Day Brook	Sucker Brook	Ward Brook
Gooch's Creek	Wonder Brook	Lake Brook
 - (f) Scotsman's Brook (portion lying north of Fletcher Street)
- (2) Those lands lying within one hundred and twenty five (125) feet, horizontal distance of the normal high water line of Protection Priority 2 Wetlands (see the Kennebunk 2009 Shoreland Zoning Map).
- (3) Those lands lying within twenty-five (25) feet, horizontal distance, of the normal high water line of the following:
- (a) All other wetlands which are one (1) acre or more in size, not listed in 2.B. (1), 3.B. (1), and 3.B. (2) above, and which meet the Article 2 definition of freshwater wetland.
 - (b) Other perennial streams and the above ground portion of Scotsman's Brook located south of Fletcher Street.

(Old paragraph B, containing a verbal description of the Historic Preservation Overlay District, is repealed. The district is depicted on the Official Zoning Map.)